

Student Organization Tackles Arbitration Agreements, Reform in the Judiciary

By DIEGO ALVAREZ

Among the many student organizations and affinity groups that try to focus on student advocacy and institutional improvements at HLS, one organization is setting its sights on combatting arbitration agreements at law firms and sexual assault reform in the judiciary.

The People's Parity Project — formerly known as the People's Pipeline Project — is a relatively new organization, founded just two years ago here at HLS, that has become a voice for some HLS students who end up at large law firms or will be clerks for judges. The PPP, through field organizers such as 2L Beth Feldstein and 2L Andre Manuel, operates through activism, editorials, and conversations to pursue their goals of sparking action and educate their peers.

“Our mission at its core is about finding the ways that the legal profession and the law have profound effects on consumers’ and workers’ lives,” Feldstein said.

The PPP does three main types of work, including advocacy against and for certain law firms, working on local legislation to support organizations in Massachusetts that push companies to end coercive practices, and general public education about the impact of forced arbitration agreements. The PPP has developed to pursue many objectives, but it was originally established in the wake of numerous allegations against senior members in the judiciary.

“One of the reasons PPP was founded was Alex Kozinski,” Feldstein said. “He was a very prominent 9th circuit judge who was essentially exposed as having repeatedly sexually harassed his law clerks for a period of decades.”

Kozinski was among several federal judges who were implicated in sexual harassment claims. The main problem with the allegations in the judiciary however, Feldstein said, is there is a lack of information and reporting. Feldstein said the PPP plans on attempting to address the issue from HLS.

“One of our initiatives for this semester is pushing HLS and other law schools to do a climate survey so that we can find out just what the extent of the problem is,” she said. “We know that harassment in clerkships is something that happens, but people don’t feel comfortable reporting it — there are a lot of retaliation concerns.”



CREDIT: THE PEOPLE'S PARITY PROJECT

Feldstein said the issue is very relevant at HLS as judges get a large number of their clerks from the law school. The PPP looks at the barriers the reporting system inherently sets up and has been vocal about the importance of change.

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Along with sexual assault reform, the PPP is also strongly determined to combat the pervasiveness of arbitration agreements in consumer contracts. Manuel said HLS students have constantly faced arbitration agreements upon entering law firms, so the PPP has strived to combat that.

“The origin of PPP’s work with regards to forced arbitration was exposing that law firms were forcing many of their employees including summer associates who are peers at HLS to sign forced arbitration agreements giving away their right to sue if anything goes wrong,” Manuel said. “In particular, if they face issues like

sexual harassment or discrimination at work, they would not have a right to sue their employer.”

The PPP has so far been successful in getting one major firm to drop their arbitration agreement from their employee contracts through a heavy protest campaign. In coordination with other HLS groups, such as Lambda, the organization is still trying to get other law firms to do so as well, Manuel said.

“By exerting pressure, we are able to get a lot of major law firms such as Kirkland & Ellis, which is one of the largest law firms in the world, to drop their forced arbitration clauses from their employment contracts,” he said. “However, there are still some major law firms like Venable, Gibson Dunn, and DLA Piper that use forced arbitration.”

The PPP has been pairing up with multiple law schools across the country to target specific law firms, convincing student groups at HLS to refuse funding from law firms that have arbitration agreements and setting up more events to protest specific firms. The main goal concerning law firms in the future is promoting student activism and educating law firm employees.

“This summer we actually organized a leafletting campaign outside of Venable’s office in D.C. when they were having a recruiting event for rising 2Ls, so we were similarly handing out flyers and trying to

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Interview with Jonathan Herzog — Your classmate running for Congress



CREDIT: HERZOG2020.COM

The Record: Why did you decide to take a leave from HLS, and how did you end up running for Congress?

Herzog: Andrew Yang announced his candidacy for President last year. At that point he was an unknown entrepreneur who founded Venture for America. His thesis is that we are going through the fourth industrial revolution, the greatest economic and technological shift in our history. It is why Donald Trump is our President. We have automated away millions of manufacturing jobs in the swing states that you have to win. And we are now doing the same to millions of retail jobs, call center jobs, fast food jobs, truck driving jobs, and on and on. His flagship proposal was the freedom dividend, a universal basic income of \$1,000 a month for every American adult to help us transition through this economic shift.

This felt deeply urgent to me. I looked around and he was the only voice in our political process calling out what I saw to be the central high variance challenge of our time.

That is why I took a leave: to help him qualify for the National Debate Stage. I am happy to say that he is a top four, five, or six presidential candidate, depending on where you look. And one of only two candidates to get

Much of entry-level white-collar work, from corporate law to investment banking — a lot of the work that most of our classmates will be doing — is subject to automation.

more than 10% of Trump voters. If he gets the nomination, he will win. The reason I’m running for Congress is that Yang’s platform is a legislative platform. We have conflated the executive with the legislative in our national consciousness in many ways. But fundamentally you need the votes in the House to pass the freedom dividend law. My goal was to run in the only district I could, my home district of New York, to try to advance so that we have the House united in 2021 to pass his agenda.

The Record: Was there an experience you had at HLS that led you down this path?

Herzog: It is interesting because in many ways, this is not a “them” issue. This is not a working-class issue. This is an “us” issue. I have HLS friends who founded Evisort, an automated contract review company that is getting a fair bit of investment. We know that much of entry-level white-collar work, from corporate law to investment banking — a lot of the work that most of our classmates will be doing — is subject to automation. From the second I set foot on campus, the changing role — the accelerating role — of technology affecting our education, our workforce, and our labor markets, was omnipresent in my mind.

The Record: We do not spend a lot of time here thinking about the potential automation of legal work. How should we be thinking about it? Should we be furthering it? Protecting our profession? Learning to code?

Herzog: I should not shortchange my experience here because I did take a class about these topics, Law 2.0 taught by Ron Dolin, which featured really incredible guest speakers. But there are not that many law and technology classes, and I think that we should integrate the subject into our curriculum, just like any other core subject is integrated into our curriculum. In terms of what to do about it, one of the proposals that came up in my class was the reform of unauthorized practice of law regulations. This is related to Eddie Hartman’s work, the founder of Legal Zoom who was a guest speaker in Professor Dolin’s class. Eddie pointed out that we are

a self-regulating profession and that there are good principled reasons for why you need to have barriers to entry, certifications, and safeguards for the quality of legal practice to avoid exploiting people. At the same time, the current access to justice crisis and the lack of access to basic legal services suggests that we are defending the current status quo of regulatory structures rather than reforming them.

The Record: Would commoditizing and automating legal work and delivering legal services cheaply solve the access to justice issue or would it primarily put lawyers out of work?

Herzog: This is why the foundation of a freedom dividend, a universal basic income to every American adult, is so vital.

We can try to plug the holes in the ship, wherever we find them. Today, 30% of American stores in malls are closing. If you walk into a CVS or McDonald’s, you have an automated kiosk and a self-checkout. Tomorrow, it might be accounting, corporate legal work, or any other entry-level, white collar work.

The reality is some professions have strong professional lobbies and others do not. I do not think we should be protecting the job. We should be protecting the people. We are at a point where our GDP has gone up to 20 trillion, but our life expectancy as a country has gone down for three years, for the first time in a century. That is unheard of in an advanced industrialized economy. We have hit the breaking point. We already crossed the threshold. Our focus has to be on building a more

What would anyone here do, if they knew that they were guaranteed an unconditional income?

human-centered economy that works for everyone because the sky-high rates of anxiety, depression, suicidal ideation, and unhappiness are not unique to a particular job or a sector, they pervade across the board.

The Record: Many suggest that lawyers are unhappy. The access to justice crisis shows that we fail to deliver legal services to most. Would automating lawyers be a net benefit? Should the goal of HLS graduates be to automate themselves?

Herzog: My goal, my hope, is help transition us. To restore entrepreneurship, creativity, vitality, dynamism in the economy where the brightest, most talented, enterprising, agentic people are going to build enterprises and generate value in society. There are going to be lawyers for decades, centuries to come. There are going to be humans in every sector.

I think there are strong parallels between the law and other professions. There are 3.5 million people who drive a truck for a living. They spend 14 hours a day in their truck. They provide fifty to eighty thousand dollars to their family. In many ways, we should be celebrating the fact that

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1Ls Petition for Right-of-Center Clinics

By ELI NACHMANY AND JACOB RICHARDS

Earlier this week, over 80 Harvard Law students (ourselves included) signed a petition requesting more right-of-center clinical offerings at the law school. Our petition sparked a great deal of reaction online, including a particularly vitriolic response from Above the Law’s Elie Mystal. The clinics for which we are advocating, however, are not without precedent.

Commenters have pointed out that some of our clinical recommendations focus heavily on issue advocacy. This is true of a good number of clinics already at Harvard Law School, however. Look no further than Harvard’s Environmental Law & Policy Clinic, Democracy and the Rule of Law Clinic, or Health Law & Policy Clinic for examples of clinics with a strong bend toward issue advocacy. It is, then, not a far leap to imagine a Second Amendment Clinic, a Pro-Life Clinic, or a School Choice/Education Freedom Clinic engaging in similar advocacy work and giving students hands-on legal experience that aligns with their career interests.

Past these, when putting our list together, we did an exhaustive search of clinical offerings at peer schools. Perhaps the most negative response we have gotten online has been to our inclusion of a generic-sounding “Administrative Law” clinic, but this

is something that George Mason’s Antonin Scalia Law School currently offers. Meanwhile, NYU Law offers a Regulatory Policy Clinic, and Georgetown Law has a Federal Legislation Clinic which enables students to draft model legislation and regulatory comments. It is entirely appropriate for Harvard to afford clinical opportunities to students interested in thinking critically about the administrative state and applying what we learn in our first year Legislation & Regulation course.

In addition, many law schools have recently started First Amendment clinics — Virginia, Duke, Cornell, and Vanderbilt come to mind. And as for our mention of a Civil Asset Forfeiture Clinic, Cabrini Green Legal Aid’s Civil Asset Forfeiture Defense Project inspired us (along with Buffalo Law’s Civil Liberties and Transparency Clinic). We note that First Amendment and Civil Asset Forfeiture clinics need not be politically polarized, either. We are confident that the clinics would attract participation from across the political spectrum.

Our inclusion of a Conservative Appellate Advocacy Clinic looked to the Constitutional Jurisprudence Clinic at Chapman Law. That clinic, developed in conjunction with the Pacific Legal Foundation and affiliated with the Claremont Institute’s Center for Constitutional

Jurisprudence, gives students the opportunity to craft originalist arguments for federal appellate and Supreme Court briefs. These student briefs are not mere intellectual exercises; they have real-world impact and advance the development of law. Justice Thomas even cited a clinic brief in a dissenting opinion in 2013.

As law students deeply concerned about the wellbeing of our country, we long for opportunities for impact in areas that matter most to us. As future leaders in the conservative legal movement, we desire the opportunity to learn, in a hands-on way, the nuts and bolts of right-of-center legal advocacy. And in an era where originalist interpretive methods have become mainstream and are prevalent at all levels of the federal judiciary, we hope to leave law school equipped with the tools to make persuasive originalist arguments, whether as judicial clerks or in other legal roles.

Right-of-center law students care about helping underserved communities just as much as our left-leaning classmates do. That we find different causes to be more compelling is simply an indication that conservatives and liberals have different worldviews. These differences should not preclude us all from finding meaningful clinical experiences during our time at HLS.

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Harvard Agrees to Divest — Just not from Prisons

By DAVID PIÑA

In response to public pressure, Harvard University President Lawrence Bacow recently announced a plan to divest from a source of funding it called “utterly abhorrent” and which it unequivocally condemned. The announcement addressed what Bacow presented as shared community values; it gave cold, hard numbers rather than talking around the issue, and it laid out a plan to both address the immediate harm and create structural change moving forward. In other words, it agreed with everything that the Harvard Prison Divestment Campaign has asked of the administration — just not for prisons.

The HPDC has been petitioning the Harvard administration to divest from the complex web of companies propping up and incentivizing the continued construction and filling of prisons — inevitably with Black, Brown, poor, Queer and other politically marginalized people. The group's pleas and their arguments have largely been met with silence, deflections to strawmen, or delay tactics— as was the case with an October 26th meeting that had been scheduled by the university months in advance, only for the President and members of the Corporation Committee on Shareholder Responsibility to refuse to state whether they'd even consider divestment, what the formal processes were for reaching a decision to divest, or whether they'd be willing to discuss asking their external fund managers for reports on investments in prisons.

By contrast, the revelations surrounding billionaire Jeffrey Epstein's human trafficking and his extensive connections to Harvard led to a community-wide response in September that parallels the HPDC's demands almost line by line. The response

shows that Harvard knows how to do the right thing — when it cares to.

So, as a student here, I'm asking Harvard to take another look at their message. I'm asking Harvard to listen to Harvard and ...

1. Show your values: The administration opened their announcement by immediately emphasizing the shared motivating values behind their actions, expressing horror at the revelations, condemning the actions and losing no time in considering the victims. This kind of unequivocal language establishing shared values is exactly how all healing should start. Their response to the HPDC, however, has largely been to deflect any commitment to values by holding that divestment from prisons would make the endowment “political.” First, holding that investment generally is not inherently political is a hell of a political privilege. More pointedly, prisons are themselves the sites of concentrated sexual violence against Black and brown people — including against minors. So representing the horror of prisons as an issue to debated around, rather than condemned as unequivocally as the human trafficking involved in the Epstein case, points to a racist divide on whose lives are valued.

2. Take responsibility and take action.... Deflection tactics so thoroughly saturate our public discourse that they're barely given a second thought. The administration's reaction in the Epstein case, however — acknowledging that the revelations raise “important concerns” and asking for a review of Epstein's donations to Harvard rather than simply apologizing and moving on — dramatically contradict the “slippery slope” arguments comparing divestment from prisons to divesting from corn syrup. By tracking

down where these donations went, the university is also acknowledging the influence donations can have on research, highlighting the conflict of interests present in profiting from prisons while also training future judges, prosecutors, and legislators to expand prisons' reach.

3. ...Even though this could be difficult: President Bacow made a point of stressing that the decentralization of Harvard's donation process would make tracking Epstein's donations particularly difficult— but worth the effort. This effort on their part highlights another point of contention between the administration and the HPDC: the definition of the Prison-Industrial Complex (PIC). While in one instance Harvard specifies that it will investigate not only Epstein's direct donations but also any donations that may have been directed by him, they also insist that only their investments in private prisons like CoreCivic and GEO Group should even be up for debate. By doing so, they deny the existence of the vast web of economic gains that continues to incentivize the caging of Black and Brown people, including contracts with: telecommunications companies such as Securus that are allowed to charge incarcerated people and their families exploitative rates; Taser manufacturers like Axon Enterprise which have settled dozens of wrongful death lawsuits, while Taser use in US prisons have been the subject of inquiries by the UN Committee against Torture; and bail bonds companies such as Tokio Marine Holdings which use the PIC's targeting of poor communities to further exploit those people's position through threats and harassment. This expansive view — targeting not just the obvious faces of the problem but the many structures that keep up political pressure to build more prisons and write laws to fill them — may make divestment more difficult, but, as with the Epstein case, worth the effort.

4. Be transparent, share your findings and your progress: The administration took another opportunity to tackle the issue directly rather than deflecting by not only sharing hard numbers but also trusting and respecting their audience enough to understand that this is

still a first step. By contrast, requests for information about the university's investment in the PIC have been met by not only leaning into the narrow understanding of the problem as beginning and ending with private prisons, but also through complete silence, broken only after months of pressure by the HPDC. Even then, the administration alleges that the total investments in the PIC amount to “only” \$18,000, a number that the university refused to provide evidence for and that has been contradicted by independent research done by the HPDC using what mandated public disclosures were available.

5. Repair the Harm by investing in impacted communities: Harvard plans to “redirect the unspent resources to organizations that support victims of human trafficking and sexual assault.” Acknowledging this as “an unusual” but “proper” step for the university, Harvard reaches the same conclusion as the HPDC: It's not enough to acknowledge the harm. Apologies require action and change in behavior. In the Epstein case, Harvard is reinvesting in groups helping victims of human trafficking and sexual assault. The HPDC similarly asks for re-investment of funds divested from the PIC into the communities that have been and continue to be the victims of state violence and political oppression.

6. Think structurally: Rather than passing this off as an isolated event having slipped through the cracks, Harvard takes ownership over the structures that allowed for Epstein's deep and ongoing relationships with the university, flagging that this event “raises significant questions about how institutions like ours review and vet donors.” In acknowledging that, Bacow announced that he will be “convening a group ... to review how we prevent these situations in the future.” This drastically departs from Harvard's stance on keeping the endowment “apolitical” in explicitly creating standards by which to judge the sources of their donations (and, by extension, their endowment). By admitting that such standards do exist (which we all knew, given that Harvard has, after sufficient pressure, divested

from tobacco, South African apartheid, and PetroChina), Harvard has come to the same conclusion as the HPDC. All that's left is to convince the administration that state violence against marginalized communities falls on a different side of that standard than corn syrup.

7. Acknowledging Harvard's leadership position: As unfortunate and unjust as it is, moves by institutions like Harvard have an outsized influence on other institutions and the country as a whole. That's why excuses such as Harvard's position that the costs of divestment aren't worth the alleged \$18,000 invested in companies like CoreCivic fall so flat. With regard to the Epstein case, the administration is more than willing to take on the mantle of the hero by declaring the university's intention to “engage [their] peer institutions” in addressing the structural problems identified above. In other words, when the values match up, Harvard knows even the alleged \$18,000 is not actually \$18,000; it is, in fact, the limitless potential of a major voice in American discourse ringing the bell that something is wrong here and giving an example of what can be done about it.

8. Show your values: Bacow closes his message both with one final condemnation of the specific actions that prompted Harvard's new stance on donations, and with the humbling posture that “Harvard is not perfect.” Posturing as this may be, one of the central pillars of healing and change is just such an acknowledgement. Justice, however, requires not only acknowledgement of harm, but also shifting one's disposition towards grace and humility when discovering new harms you've committed, not just speaking the words when your back is against the wall. So, I'm grateful for the words, but if Harvard is going to truly acknowledge that it is not perfect and that it will indeed “always strive to be better,” then it should learn from its own message and...

9. Divest.

David Piña is a second-year student at Harvard Law School. A shortened version of this letter appeared in the Crimson

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engage with people in conversation,” Feldstein said. “We will try to show up at recruiting events or just outside their offices ... with flyers that outlined what forced arbitration is [and] why we have our campaign against them.”

In response to a question about why law firms maintain their arbitration clauses in employment contracts, DLA Piper shared a statement explaining why it chooses to include them.

“There are advantages and disadvantages to every type of dispute resolution process,” the statement explained. “It has been our experience as a firm that arbitration is a fair and efficient way to resolve internal disputes, and one that benefits all parties in what are often sensitive matters for everyone involved.” *Venable and Gibson Dunn could not be reached for comment.*

This upcoming year, the PPP will continue in their efforts to further its

aims by expanding across law firms throughout the country. The PPP encourages any and all HLS students to join them in their pursuits by using their voice to advocate for others.

“We are cognizant that as future lawyers, especially Harvard-edu-

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cated lawyers, we have a lot of privilege,” Feldstein said. “We don't just want to be advocating for ourselves, we want to be advocating for workers in all segments of the economy.”

Diego Alvarez is a 1L and the managing editor of The Record

Interview with Jonathan Herzog — Your classmate running for Congress

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autonomous vehicles could be mainstream in the next decade or so. It is not good for your body to sit in a vehicle for 14 hours a day, and there is a high incidence of chronic markers of disease and illness in the industry. According to the New York Federal Reserve, 44% of work is either repetitive manual or repetitive cognitive work. Even though lawyers and truck drivers serve very different functions, I think we are actually more alike than disparate. Again, it is not a “them” issue; it is all of us.

The Record: What advice would you give to law students? To someone who cannot code, who does not want to run for Congress, and who is thinking about going into big law?

Herzog: In many ways, this is the challenge. In many cases on the margin, our innate desire is to do something socially productive and valuable. We have set up a system where all the incentives push you the other way. At first you are loaded up with tens of thousands of dollars in debt. All the social rewards, structures, and systems in place pave a certain path. This is partly why I think the incentive system, which is set at a federal level, is an area for change: An area which allows us to incentivize our people, our talented young people, to go do those productive things.

What would you do? What would anyone here do, if they knew that they were guaranteed an unconditional income? What if your basic means of survival were not contingent upon your work at a firm or earning subsistence wages? Or sitting for a nine to five a nine to nine, or a nine to midnight? Often, we do not even ask this. We do not even ponder the possibility. What I would say is contemplate it. As Yuval Harari says, the challenge of our time is getting to know ourselves better than those who seek to exploit us

or manipulate our perception can. The hardest and most important thing is to get to know yourself better. What do you want to do? What is your competitive advantage? What are the ways in which you can contribute? You should constantly be questioning and testing, “Do these align with the choices I am making?” Note that these are conscious choices, deliberate actions you are taking about how you spend your time and what you do in the world. Hopefully, we can set paths that incentivize and make it easier for us to do the kind of work we want to do.

The Record: If members of our faculty or administration are reading this, what would you want to say to them?

Herzog: First, I want to celebrate and call out some of the excellent examples of what I view as progress in the right direction. Glenn Cohen, for example, has integrated digital course materials and multimedia into his courses.

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course should not
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He has tried to be more topical in his coursework. He also led oL, which I was lucky to play a tiny role in, which provides a digital baseline for pre-law-school knowledge. That's a really good direction to head in.

Ron Dolin's course and Jonathan Zittrain's course should not be anomalies that only few people can take, but integrated and mainstream, an unquestionable part of the fabric of people's academic journey here. I think that would be a great direction to move in.

It is really challenging because according to the data we are actually really bad at teaching entrepreneurship. We have seen a really marked increase in entrepreneurship programs and institutes at universities, but our generation's rate of entrepre-

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neurship is at multi-decade lows, in part because of pervasive financial insecurity and being loaded up with student debt, but also in part because the best way to learn something is by doing it. Right now, in the United States, 6% of high school graduates go into vocational, technical, and apprenticeship training, where you are actually doing the work and not just theorizing about it, while in a country like Germany, it's about 60%. Clinical programs where you are out there and actually doing the work are a great way of moving the ball in the right direction.

The Record: Do you have any other thoughts you would like to share?

Herzog: We are in one of the most influential, high agency, and high-potential environments, institutions, and cohorts of people. There is nothing stopping you or anyone from setting out and actively making the change you think is necessary. If not now, then when? If not here, then where? There is really nothing stopping you.

Jonathan Herzog is a JD student and is currently running for Congress as a Democrat in New York's 10th District



CREDIT: THE PEOPLE'S PARITY PROJECT

Student workers throughout Harvard University are voting to exercise our legal right to strike. Law students should vote yes.

By Sebastian Spitz, Jon Levitan, and Vail Kohnert-Yount

Did you know that the last time Harvard gave its research assistants a raise was during the Bush administration? (The younger Bush, but still.) This is just one of the many reasons that we encourage our fellow law students to vote “yes” in the Harvard Graduate Student Union’s strike authorization vote this week.

Currently, research assistants and course assistants at HLS get paid only \$12 an hour — the Massachusetts minimum wage. We used to make \$11.50 an hour, before the statewide wage increase raised our pay earlier this year. BSAs get paid even less: By some of their own estimates, they make as low as \$8 an hour, which is less than the minimum wage. Meanwhile, HLS is asking students to take on more and more debt, as tuition has skyrocketed 57% in the same period of time.

This is not normal, and it is not acceptable. Graduate student workers at other schools within Harvard are paid significantly better, often earning \$20 an hour or more. We shouldn’t have to be fighting tooth and nail for fair wages at the richest university in the world, but Harvard has given us no choice.

Students come from various economic backgrounds and have

different career plans. For some students, wages earned during the semester is an essential component of their income and budgeting. Law school is already stressful; it shouldn’t be made more taxing by forcing students to work for low wages.

Our union is negotiating for more than just fair wages. While plenty of law students are under 26 and are able to stay on their parents’ health insurance plan, many others are 26 or over, or are otherwise not able to be on their parents’ plan. Health insurance should be affordable for all students at the law school, if not free. Currently, student health insurance costs \$3,700 per year, and it costs almost \$12,000 a year to enroll a spouse and child.

Harvard allegedly has a Student Health Planning Committee with student representatives who “provide valuable input.” However, as law students, none of us have ever received an email that mentioned the existence of this committee, much less solicited our opinion. We also had no say in which students represent us, nor do we even know who they are to be able to pass along our concerns. Our elected union bargaining team, by contrast, is fighting hard to

guarantee that all student workers have health insurance.

Another major issue that has come up in bargaining is the university’s desire to carve out only the harassment and discrimination procedures from the contract’s grievance procedure. For every other provision of the union contract, the union will be able to bring a claim that the university has violated the contract before an independent arbitrator. The university does not want this to be an option in the event a student worker is harassed or discriminated against. Instead, the university wants student workers to rely on the Title IX process, the same process that has failed students in other Harvard schools. In the Government Department, Professor Jorge Dominguez was accused of sexual harassment multiple times, for decades, yet continued teaching until students inspired by #MeToo forced Harvard to take meaningful action.

This is in stark contrast to the Harvard Graduate Students Union, which represents thousands of student workers on campus. We elected our bargaining committee representatives in a democratic process, and we regularly receive updates through

multiple means of communication about what issues they’re fighting for. In fact, we first learned about this change in the health policy through our union’s Instagram account, of all things. Harvard, on the other hand, didn’t care enough to make sure we knew.

Harvard has fought our union every step of the way. First, it illegally excluded hundreds of eligible student workers from voting for our union. Next, it appealed to the Trump-controlled National Labor Relations Board to attempt to prevent student workers from getting a new and fair election — and lost. (When even Trump’s NLRB appointees think that you illegally mistreated your workers, you know you’ve acted badly.) Then, once we won our union, it stalled on providing bargaining time with our bargaining committee.

Harvard’s refusal to raise our wages, improve our health care, or include desperately needed protections against harassment and discrimination in our contract is just their latest tactic. Harvard has left us no choice but to authorize a strike — join us!

The simple truth is this: The labor provided by graduate students makes this place run. Legal Research and Writing (LRW) could not exist without the BSAs, and virtually all the research published by HLS faculty relies on student research, just to give two of many examples. If Harvard will not give us the wages, health care, and protection against harassment and discrimination that we have earned, we must be prepared to withhold that labor. Harvard has left us no choice but to authorize a strike — join us!

Jon Levitan is a 1L, Sebastian Spitz is a 2L, and Vail Kohnert-Yount is a 3L. All are members of the HLS Labor & Employment Action Project.

HLS 1Ls in Support of Board of Student Advisors Strike

Dear Board of Student Advisors,

We, the undersigned HLS 1Ls, are writing to express our support for you in going on strike to win a first union contract. We appreciate how hard you work to teach us legal research and writing skills and to help us navigate our first year of law school. We believe you deserve fair compensation and a meaningful voice at work. We also believe that by going on strike to secure a fair contract, you will help build a more just and equitable Harvard for all students on campus.

Since coming to Harvard, we have learned about the graduate student union’s efforts to secure fair pay, comprehensive and affordable healthcare, and protections against discrimination and harassment. We have learned that BSAs earn just \$2,625 per semester, which is less than half as much what teaching fellows in other departments earn for teaching one section. Moreover, while BSAs are paid significantly less than equivalent positions in other parts of the university, you have been asked to take on additional responsibilities this year with no additional pay. We are grateful to have more class time with you and we know that you enjoy teaching us, but we believe you deserve pay on par with your peers. We also know graduate students like you have often struggled to access the mental health, vision, dental, and dependent health-care services that they deserve, and we have learned about the administration’s failures to respond to student workers’ complaints of discrimination and harassment.

Though we only recently arrived at HLS, we know that student workers have been working to secure a fair contract for a year and a half. And yet, the university administration has consistently stalled in negotiations and refused to address student workers’ core concerns. We believe that a strike authorization vote — and potentially a strike — has become a necessary step in the effort to secure key rights and benefits in our union contract. As future RAs, TAs, and BSAs, we have an obvious interest in making sure that graduate student workers are treated fairly, and we appreciate your efforts to that end.

Harvard Law School has repeatedly emphasized the essential roles that BSAs perform as writing and research instructors and as mentors and advisors for first-year law students during Orientation. As the wealthiest university in the world, Harvard University has no excuse for refusing to provide fair wages and benefits for its student employees who must balance their lives, their courses, and their important job responsibilities as BSAs. We believe that you, our BSAs, deserve to be compensated and treated fairly — and we know that your working conditions are our learning conditions. We therefore strongly support you in exercising your right to strike. By doing so, you will help advance the mission of HLS — “to educate leaders who contribute to the advancement of justice and the well-being of society” — starting right here on campus.

In Solidarity,

335Harvard Law School 1Ls

HLS Student Organization Letter in Support of the HGSU Strike Authorization Vote

We, the undersigned official and unofficial Harvard Law School student organizations, represent a broad cross-section of students and student workers at HLS. After winning our union in April 2018, we were excited to win a strong first contract that guaranteed fair pay, comprehensive and affordable health care, support for international student workers, and protections against discrimination and harassment.

Here at HLS, many hourly workers make just \$12/hour (the Massachusetts minimum wage) even though we work at a university with a \$39 billion endowment. Graduate student workers at other Harvard schools generally make at least \$25-\$35/hour. At HLS, no matter how many hours we work, we need to pay thousands of dollars out of pocket for health care, increasing our already staggering six-figure student loan burdens. And, if we face discrimination or harassment, we lack access to a fair, neutral,

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Our Bicentennial Crisis: Remarks introducing October 2019 HLS Ralph Nader speech event

By Pete Davis



CREDIT: PETE DAVIS

Hello all — glad to be back at HLS! About two years ago, I published a report — *Our Bicentennial Crisis* — that speaks to many of the themes Ralph is going to talk about today.

The report came out of a tension I was feeling during my time at Harvard Law. I bet it’s a tension many of you probably feel. As we were leading up to the Bicentennial, everyone was talking about how amazing HLS is — *we have Supreme Court justices, senators, famous alumni coming back to party; look at all we’ve done in our two hundred years; look how many brilliant things have happened here.*

But at the same time as the administration was ramping up the celebration, public interest law students were sounding the alarm: of a school overtaken by corporate interests and losing relevance to the average American; of a watchdog of the law largely asleep as the institutions of the rule of law and equal justice under law were under siege; and of a law school community that had lost track of its declared mission to — and this is the formal Harvard Law mission statement — “educate leaders who contribute to the advancement of justice and the well-being of society.”

And while I was here, I didn’t buy the administration’s responses to this tension. When I was a 1L, I brought up concerns with a high-up administrator and they literally told me: “You’ll understand why everything is the way it is when you’re a 3L.” But when I became a 3L, that didn’t come to pass. So instead of getting jaded, I tried to articulate really clearly what was the problem — and what we could do about it.

So, you can read about my findings in *Our Bicentennial Crisis*, but I want

to summarize them, very briefly, here today.

But before I do, I want to begin with a story.

Has anyone here been to the Orpheum in Boston? It used to be called the Boston Music Hall. And if there is one event in American history that I think every Harvard Law student should learn about — it is what took place there on December 31, 1862.

At midnight that night, the Emancipation Proclamation would take effect. This was a big deal — it was the culmination of decades of work by members of the abolitionist movement. And hundreds of abolitionists were gathered in the Boston Music Hall to celebrate together.

On stage, William Lloyd Garrison, the tireless abolitionist newspaperman, wept next to Frederick Douglass, the world-famous author and orator who had escaped from slavery 24 years prior. Next to them was armed liberator and Union spy Harriet Tubman. Up on the balcony was Harriet Beecher Stowe, author of *Uncle Tom’s Cabin*.

At midnight the clock towers tolled and the hall erupted. The Reverend Charles Bennet Ray, an Underground Railroad promoter and editor of *The Colored American*, began to sign a hymn that the whole crowd joined in: “*Sound the loud timbrel o’er Egypt’s dark sea! Jehovah hath triumphed, His people are free!*”

Their decades of work had paid off — they had won a victory of humanity.

I wanted to share this story because the message you too often get at Harvard Law School is that “*it is what it is*” that nothing ever changes and there’s nothing you can do about it. What happened in the Boston Music Hall that night shows that when you commit to cause — when you push at it over the course of a long time... when you give your varied talents to it (writers, speakers, organizers, thinkers, fighters, layers)... when you don’t give up — you win.

Now I wrote *Our Bicentennial Crisis* because I think Harvard Law should do a better job of helping attach us to today’s respective causes

— to prepare us for good work that could, together, earn similar celebrations of long-awaited triumph in the future.

At the very least, Harvard Law should introduce us about crises in the law. And there sure are a lot of crises in the law today. Judge Learned Hand, Class of 1896 said: “*If we are to keep our democracy, there must be one commandment, Thou Shalt Not Ration Justice.*” You are in law school at a time when we are severely rationing justice.

You are in law school at a time when we are severely rationing justice.

In criminal law, we are rationing justice. Since 1995, real spending on indigent defense has fallen while felony cases have risen. ~95% of cases are settled through plea bargains, without a trial by jury. For many Americans, the experience of their criminal defense is “Meet ‘em, greet ‘em, and plead ‘em.” And this of course has contributed to the enormous spike in our prison population during our lifetimes.

In civil law, we are rationing justice. 4/5ths of the civil legal needs of poor Americans go unmet. Local legal aid offices say “two-thirds of those who walk through their doors aren’t getting help.” This means mothers evicted from their homes, domestic violence victims not getting restraining orders, elder abuse going unchecked, and veterans not receiving their rightful benefits. While this is happening, other nations are outspending us 10 to 1 on civil legal aid. And all the while, the top 100 most profitable firms are making \$28 billion in profits while only \$1-2 billion worth of lawyers time is spent annually on civil legal aid for the poor.

And in political life, we are rationing democracy. Public interests lobbyists are outspent by corporate interest lobbyists 34 to 1. Tort law, antitrust law, consumer protections are being crippled by corporate interests lawyers and lobbies. Corporate interest foundations have paid tens of millions of dollars to the legal

DisOrientation: A Call For Self-Preservation

For more information please read the DisOrientation Guide

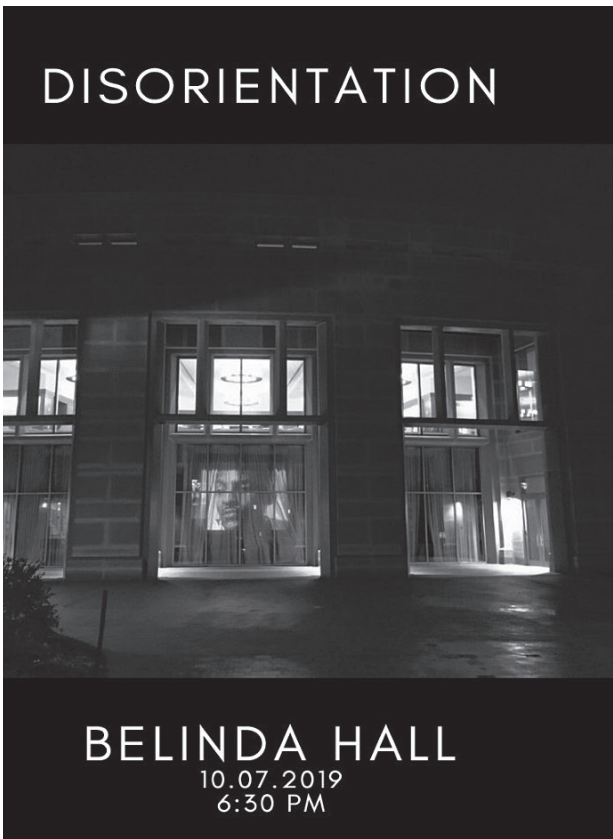
The students who excel in law schools—and the best lawyers—are the ones who are able to detach law and to see it as a system that makes sense only from a particular viewpoint. Those lawyers can operate within that view, and then shift out of it for purposes of critique, analysis, and strategy.

- Professor Mari Matsuda¹

Deal 1Ls,

You are now in week 6 of your 1L year. You have sat through Contracts, Property, Civil Procedure, Torts, Criminal Law, and/or LRW. You have probably experienced heightened anxiety, nerves, stress, or exhaustion from all the micro- and explicit-aggressions and emotional labor and boredom because of the unstimulating curriculum. You might have felt out of place because you are one of the few LGBTQ, low-income², POC, womxn, or differently-abled students in many spaces on campus. You may have felt that students can dismiss your entire existence when explaining the holding of a case and, then, when you speak up, you are labeled divisive. Yet, you weren't prepared for any of this during your orientation.

As you sit in class or walk through the banal, white halls of HLS, probably putting on a mask for your self-preservation, you may have also felt the anxiety and stress of knowing that people back home are figuring out how to respond to the injustice brought on by structural oppression. These experiences, combined with the overtly competitive and hierarchical nature



DISORIENTATION

2019

Disorientation is designed with **love** by a collective of 2Ls and 3Ls who remember the conflicted pride, anger, disappointment, isolation, frustration, and exhaustion of experiencing HLS for the first time as a person of color, a woman, an immigrant, a first-generation college student, a member of the LGBTQ community, and/or a person generally invested in liberation and solidarity work.

Disorientation will be on **10.07.2019 at 6:30 PM in Belinda Hall**. 30 minutes before Disorientation begins, a guide to supplement the in-person event will be available at **www.hlsdisorientation.wixsite.com/2019**



CREDIT: DISORIENTATION

If you feel in any way similar to this, it's not you, it's HLS.

In fact, it's the entire law school experience and legal profession, which is designed to reproduce these oppressive social hierarchies. Specifically, the toxic, competitive, and exhausting law school environment is intentionally designed to mold over 80% of HLS students to enter the rat race of big law³.

If you feel that the law school curriculum does not speak to any of your experiences or reasons for attending law school, it's not you, it's the law

school. The law is taught matter-of-factly through colorblind discourse with the Professor concentrating the production of knowledge. Students are indoctrinated to master case law, internalize the rules and rationales, and communicate in a new abstract legal writing style. However, we are not encouraged to challenge, contextualize, dismantle, build community power, or develop new paradigms of decolonial knowledge. We often avoid open discussions of racism and inequality while studying laws

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Our Bicentennial Crisis: Remarks introducing October 2019 HLS Ralph Nader speech event

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corporate firms and an “Early Interview Program” that streamlines corporate interest recruitment.

When I was here, we even had a mandatory field trip to corporate interest firm. The school career office even provided materials that encouraged students to pursue revolving door work: Joining a firm, leaving for a government agency that regulates their clients, and then returning to the firm to trade their government connections for higher corporate salaries.

Now think about what this means to Harvard Law's relevance to the country. If you're a person in an overcrowded legal aid office and you learn 80% of students receiving the best education in the country spend their time advancing the interests of the wealthy and power, what would you think? If you're a person pleading guilt to a crime you did not commit after a 15-minute meeting with your public defender, and you learn hardly any Harvard Law students go on to work in public defense after school, what would you think? Does it matter to a refugee that we produced Supreme Court justices if more of us will spend our time filling out paperwork to help the powerful move money across borders than will spend our time filling out paperwork to help the most vulnerable people at our borders? If you're a midwestern governor looking for someone to staff a state agency, do you care about Harvard's placement rate at New York corporate interest firms? Seen through the eyes of America, we risk irrelevance.

Now, when I raised these critiques two years ago, there were a lot of excuses — what some might call “work avoidance mechanisms” — that the community throws up in defense. But what I tried to do in the book is to systematically examine each of these excuses — and when you do, they don't hold water.

The first excuse is usually “pro bono work and charitable giving blurs the divide” between public interest and corporate interest work. But when you run the numbers, you find that lawyers at major corporate firms give less than eight minutes per day to pro bono. Only 18 of the nation's 100 biggest corporate interest firms meet the 50 pro bono hours per year per attorney challenge. Our own career services office states: “Firms like to emphasize their commitment to pro bono,” but they “are increasingly mindful of becoming more like a business where billable hours and profitability reign supreme.”

And then there's all the things not covered under pro bono. There was a “learn about pro bono” campus event put on by a major law firm. When I asked if a member of their firm could, say, use their pro bono hours to give legal advice to Walmart employees aiming to organize a union, the firm responded, “Well, no, Walmart's one of our clients.”

Charitable giving is a similar story. The most giving law firms only give about one tenth of one percent of their revenue to access to justice efforts. Total revenue for the Top 200 firms is \$96.3 billion. Total funding for all civil legal aid for low-income Americans is \$1.4 billion. Total donations by all lawyers and law firms to civil legal aid is \$95.8 million.

There's also the “everybody deserves a lawyer” excuse. Sure, everybody deserves a lawyer. But let's look at who is getting lawyers in this system. The reality is that a disproportionate number of corporate interest firm clients are white and male, while a disproportionate number of public interest clients (government, legal services, education and non-profit constituencies) are women of color. Almost 70% of recent Harvard Law graduates work in just four states: New York, D.C., Massachusetts, and California. In fact, more graduates work in New York than in 47 other states combined.

Another excuse is that students might be going into corporate interest work, but most will return to public interest work later. In fact, Only 7.2% of Harvard Law graduates who are working at large firms three years after graduation are working in public interest organizations 12 years after graduation.

Seen through the eyes of America, we risk irrelevance.

Let me put it bluntly. If the 1L class is no different than any other class, then about 400 of you are right now interested in public interest careers. If your class is the same as any other class, we can expect about only 100 of you to pursue public interest work after graduation while 300 of you will not. And then among those 300 of you who immediately go into big firm work for 3 years, only about 15 of you will have switched over to public interest work 12 years after graduation.

When we get to this point in the conversation, people like to say, “Well, you might be right, but this involves factors beyond Harvard Law's control?” But if that's the case, why is Harvard losing out to other schools

in terms of public interest careers in non-profits, government and education? Yale, Georgetown, Northeastern all outperform Harvard on public interest work after graduation. And CUNY Law trounces us.

A final excuse is usually, “Fine, but at least Harvard Law is a path to the upper class for students — it's a path to the American dream.” But available data shows that the majority of students at Harvard Law School are from families at the top of the income bracket. Available data indicates that about 77.5% of Harvard Law students are from families that make more than \$95,000 a year and have more than \$175,000 in net worth. This means that if you come from a family with double the median net worth of American families, you would still be in the bottom quarter of the economic bracket at Harvard Law School.

And then there's the worst excuse — that there's nothing we can do; that it's not worth fighting. I'd like to respond to this excuse with another story from that night in Boston Music Hall in 1862. There was a man on stage that night named Wendell Phillips. He was a member of the Harvard Law School Class of 1834.

Phillips was a born and raised Harvard man. Grew up on Beacon Street, perfect manners, well-connected, Boston Latin School, 7th in his class at Harvard College, entered Harvard Law in 1831, got along with everyone. And of course, when he graduated in 1834, he started a fancy law practice on Court Street.

But one year out from graduating, he saw an angry mob storm a women's anti-slavery meeting, rough up William Lloyd Garrison, and parade him mockingly through the street. What shocked Phillips most about the mob was that it was largely composed of fellow “gentlemen of property and standing” — friends and acquaintances from his elite upbringing. His curiosity now shocked awake, he reached out to a recovering Garrison to ask him about abolition. There was no going back.

Phillips soon quit his law practice and started traveling around the country speaking out against slavery. He was really effective, because his law school education helped sharpen his rhetoric — and his genial style helped sneak through the militancy of his message. Picture this guy, Harvard chipperness, saying things like: “*The spirit of freedom and the spirit of slavery are contending here for mastery...they cannot live together.*”

He didn't stop for the rest of his life — he joined anti-slavery societies, supported anti-slavery boycotts, wrote articles, and assisted fugitive slaves. When the 14th Amendment

passed, he decried it for not including voting rights. When the 15th Amendment passed, he decried it, because it did not redistribute property to freedmen. “Suffrage is nothing but a name because the voter has not ... an acre from which he could retire from the persecution of landlords.” And soon the Radical Republicans in Congress took up his cause. He became known as “abolition's golden trumpet.”

And not just that — he demanded that the World Anti-Slavery Convention have women delegates. He helped the National Women's Rights Central Committee organize conventions throughout the 1850s. He advocated for the idea that the 15th Amendment granted citizenship to Native Americans and demanded Andrew Johnson create a cabinet position for indigenous people's rights. When opinion turned against Native American advocacy after the Battle of Little Big Horn, he arranged public forums to educate Americans on the harm of “Indian Removal” policies.

We have a choice of what version of Harvard Law we want to embody in our lives.

The whole time, he ruffled feathers. He called Daniel Webster — whose standing in Massachusetts was like the Kennedys are today — “a great mass of dough.” Abraham Lincoln was a “huckster” — “the slave-hound of Illinois.” Harvard, to Phillips, was controlled by businessmen — and dishonest about its commitment to abolition. Southern sympathizers and moderates hired brass bands to drown out Phillips talks. When he died, one elderly Beacon Hill resident — his own neighbor! — said that he would not attending Phillips' funeral, but he wanted everyone to know that he approved of it.

But because of this work, Phillips got to celebrate up on that stage on that night in 1862. He got to be eulogized as “the man who as a private citizen, has exercised a greater influence upon the destinies of this country than any public man of his age.”

You probably wouldn't have expected that out of a member of the Harvard Law Class of 1834. We must not get jaded — we must be open to surprise.

There's always been two Harvards: there's the Harvard that Upton Sinclair said was a study in “class ignorance, class fear, and class repression”; and the Harvard that produced

HLS Student Organization Letter in Support of the HGSU Strike Authorization Vote

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third-party grievance procedure through which to bring our claims. Together with the 4,500 graduate student workers across this university, we recognize that student workers should have a voice in the decisions that are made about our lives while we are part of this institution.

Over the past year, we have been disappointed to see the university administration stall in negotiations and oppose student workers' efforts to secure basic rights and protections. Over the past year, student workers have: told our stories at the bargaining table; signed petitions; and held rallies, pickets, and work-ins. Despite these efforts, the administration has consistently failed to agree to a fair contract.

Therefore, we support and endorse the Harvard Graduate Students Union strike authorization vote. We urge our members who are working as BSAs, TAs, TFs, and RAs at HLS or other Harvard schools to vote “YES” in the strike authorization vote. And we call on the Harvard administration to agree to the strong contract that student workers need and deserve.

Signed,

American Civil Liberties Union - HLS
American Constitution Society - HLS
Alliance for Reproductive Justice
Asian Pacific American Law Students Association
Black Law Students Association
Civil Rights-Civil Liberties Law Review
Coalition of International Students and Global Affairs
Disability Law Students Association
Harvard Law and Policy Review
Harvard Legal Aid Bureau
Harvard Parity Project
La Alianza at HLS
Lambda at HLS
Labor and Employment Action Project
National Lawyers Guild - HLS
Progressive Jewish Alliance at HLS
Project No One Leaves
Tenant Advocacy Project
Unbound
Women's Law Association

Reginald Heber Smith, who created the American concept of legal aid, and Charles Hamilton Houston, the man who killed Jim Crow.

There's the Harvard that during the Civil Rights Movement produced these reports in the *Harvard Law Record*:

“For the most part [3Ls] who have jobs in southern cities will be doing corporate, tax and business work. Although a significant number expressed interest in criminal and civil rights cases, none said they would seek them, particularly in the first few years of practice.”

“A higher, but not high fraction of first- and second-year students showed interest in civil rights work, but only one expected to devote his professional career to it.”

“One [3L] from the Deep South said he would consider civil rights work “if there were any hope of doing any good. It takes a lot of guts and idealism to go back and work without a chance of success.”

And there's the Harvard Law where one student in the Class of 1964, Elizabeth Holtzman, had the guts to spearheaded the Civil Rights Research Council at Harvard Law, serve in Albany, Georgia for civil rights groups during her summers, and spend her time at HLS getting the word out about what was happening in the South and diverting some of Harvard Law's resources to better support the cause.

There's the Harvard Law of the 2000s that hired two famous professors fresh off their apologetic for state killing — and the Harvard Law that admitted Gina Clayton, Class of 2010, who founded the Essie Justice Group to harness the collective power of women with incarcerated loved ones to fight mass incarceration.

There's the Harvard Law I talk about in *Our Bicentennial Crisis* and today, and there's the Harvard Law that produced the creators of the People's Parity Project, fighting forced arbitration across the country.

We have a choice of what version of Harvard Law we want to embody in our lives.

Dorothy Day once said that “the biggest mistake sometimes is to play things very safe in this life and end up being moral failures.” Many of us came to law school because we have a part of us that plays it safe — we have a part of us that is risk averse about our careers. But with crises like the ones we face today, there are bigger risks to consider.

Let's get to work.

Pete Davis '18 was the editor in chief of The Record and is the author of “Our Bicentennial Crisis: A Call to Action for Harvard Law School's Public Interest Mission”

Notorious RBG: The Life and Times of Ruth Bader Ginsburg

A conversation with Josh Perelman, Chief Curator & Director of Exhibitions and Collections at the National Museum of American Jewish History

The National Museum of American Jewish History is debuting the first-ever museum retrospective of the Supreme-Court-Justice-turned-pop-culture-icon, Ruth Bader Ginsburg. The exhibit is open from October 4, 2019 through January 12, 2020.

The Record: What was the motivation for the Ruth Bader Ginsburg exhibit and what would you like people to take away from it?

Perelman: First and foremost, the exhibit is an opportunity for the National Museum of American Jewish History to tell the story of one of the most prominent, influential, and inspiring figures in our lives today. To tell the story of Ruth Bader Ginsburg, an American Jew, who is so intimately involved in the interpretation of the Constitution, from the location from where the Constitution was signed, is simply a remarkable opportunity.

Second, the exhibition is both entertaining and deeply personal. While the cases it highlights are quite relevant to our own time, I do not think it is an accident that RBG has become such a prominent popular culture figure. Part of that derives not only from her leadership on the Court, but also from what her life represents: a life of perseverance, of relentless idealism and a strong sense of justice.

I personally, in putting the exhibition together, developed a much deeper understanding of the intimacy of the relationship between

RGB and her husband Marty, the significance of their relationship to RBG, and the significance of the relationship to RBG's career. Finally, RBG already has a presence in this museum — her presence is sprinkled throughout our core exhibition. Since we opened the museum in 2010, part of the museum is an installation on the first floor called “Only in America,” which features 20 prominent American Jews in its hall of fame. It has films about each one of those people. One of them features RBG talking about one of her heroes, Louis Brandeis. In conjunction with the exhibition, we will be inducting RBG into the Only in America Hall of Fame — a fitting tribute that is happening in conjunction with the exhibition itself.

The Record: Given the Museum's focus on Judaism and Jewish life in America, how does Justice Ginsburg's story relate to those overarching themes?

Perelman: RGB once said, “What's the difference between a bookkeeper in the garment district and a Supreme Court justice? One generation.” Part of the story that this exhibition tells is about the chain of generations within the American Jewish community, the progression of Jews from immigrants, and their integration into American society. Clearly RBG is someone who has been accomplished at the highest level. Her statement about the differences between a bookkeeper and a Justice reflects the opportunities that immigrants have had upon

arriving in the United States: the opportunity to arrive in the States to define their own paths as individuals, as Jews, and as professionals. Another aspect, which is extremely relevant to the Jewish soul of the museum, is the endemic story of justice that the exhibition represents and that RGB represents herself. She has talked about the influence of Judaism and Jewish values on her own moral compass and her own set of values.

The Record: What can the HLS community take away from the exhibition?

Perelman: One of the marvelous things about Justice Ginsburg is her capacity to have deep relationships with people of all political persuasions. Her fundamental desire to expand freedom in this nation seem to me to be one of, if not the, hallmark of her legal career, and something the Harvard Law community can take away from the exhibit.

The Record: How have you explored the impediments Justice Ginsburg faced as a woman?

Perelman: The exhibition is based on the book “Notorious RBG.” It's authors, and therefore the exhibition, highlight a number of the barriers that RBG faced along her career, most principally barriers related to being a woman.

She faced these barriers when she came to law school despite the fact that she was an extremely high achiever and one of only two women to make the Harvard Law Review. After entering law school, RBG

attended a dinner with the law school dean, Erwin Griswold. One of his first questions to the women seated in the room was how they could justify taking the place of a man in law school. In many ways, this speaks for the attitude at Harvard at that time and the attitude of society at that moment in our history.

Later, her husband, Marty, was diagnosed with testicular cancer. She spent time taking care of him, and once he recovered and she was returning to her legal training, she wanted to finish her degree at Harvard but take her last few classes as Columbia. Dean Griswold did not allow this, and she actually graduated from Columbia University.

The gender discrimination she experienced at Harvard reoccurred throughout her career. After she graduated from law school it was extremely difficult for her to find a job. She eventually found a professional home, initially at the ACLU, and her advocacy on behalf of woman's rights was an uphill battle at the time. Her own experienced with gender discrimination and the pressures that she faced as a woman seeking to achieve in largely male world would be incredibly influential on the choices that she would make as a lawyer, as a judge, and now as a Justice.

The Record: What lessons do you think we can draw from Justice Ginsburg's journey?

Perelman: Times have certainly changed, and Harvard is a very different place now than it was in



CREDIT: NOTORIOUS RBG BOOK COVER
ILLUSTRATION BY ADAM JOHNSON. COURTESY OF HARPERCOLLINS. PHOTOGRAPHS: CROWN © BY HURST PHOTO/SHUTTERSTOCK; RUTH BADER GINSBURG, COLLECTION OF THE SUPREME COURT OF THE UNITED STATES.”

the mid-1950s. But unfortunately, Justice Ginsburg's principle focus, gender discrimination, remains a pervasive issue in our society. Some fifty years after RBG's time at Harvard, gender discrimination is taking on new meanings that we need to confront.

The Record: Is there anything else you would like to tell the HLS community?

Perelman: First of all, the Harvard community should come and visit the museum and see the exhibition! Second, for those who are interested in American legal history or are specifically interested in RBG, I think the uniqueness of the material in the exhibition and the ability to explore RBG's world from the inside out is unique. For lawyers in training at Harvard, understanding the legal history that RBG represents is critical.

More information about the exhibit can be found at www.nmajh.org/exhibitions/rbg/

DisOrientation: A Call For Self-Preservation

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that perpetuate, and are sometimes explicitly rooted in, racism, white supremacy, xenophobia, ableism, and social inequality. Our legal system carries a legacy of genocide and codifying forced displacement of Native Americans, abuse and claimed ownership of black and brown bodies, and institutionalized injustice. Law school is a political institution and, to the extent that it replicates a sys-

answers for. By failing to make these substantive changes, HLS, and tenured faculty members who serve in leadership capacities, reproduce the oppressive social hierarchies and contribute to the justice gap. That is, while over 80% of HLS graduates work in big law, over 86% of low-income people in the U.S. do not have their legal needs met annually and 71% of low-income households experience at least one civil legal problem, according to a 2017 report from the Legal Services Corporation, an independent government nonprofit.

continue this fight. Groups on campus are calling for gender equity at HLS, ending harassment and discrimination in the legal profession, a graduate student union and labor protections, better financial aid policies, ending racism on campus, establishing an HLS diversity & inclusion committee, CRT and diverse faculty, reparations, divestment from the Prison Industrial Complex, establishing a movement lawyering clinic, and ending the US-backed Israeli settler-occupation in Palestine. In 2019, students organized the first Critical

adequate legal aid. They're not here because too often brilliance is only acknowledged when it accompanies a certain race or zip code or pedigree or socioeconomic status or gender presentation. They are not here due to the plunder and exploitation that elite big law firms facilitate, and because those intergenerationally at the margins lack basic access to legal aid and services.

We invite all law students to engage in an act of self-preservation and political warfare by preserving the many energies, ancestral stories, visions, struggles, peoples, and communities which inspired you to come to law school and fight for justice. By hosting DisOrientation, we refuse to continue to endure the burden of neutrality and colorblindness placed upon students of color at this institution. We refuse to accept that HLS is a neutral force in the world and reject the legal fiction of objectivity and liberalism that HLS uses to stifle and suppress our demands. We acknowledge that the HLS curriculum is inadequate to address the violent experiences of people globally. By continuing this movement of resistance, and by bringing DisOrientation to Belinda Hall each year, we not only challenge the acts of silencing that this institution seeks to impose, but we do so through the power of coalition-building, ancestral memory, and by producing our own knowledge and unabashed pride for our lived truths that have made us who we are today. This institution will not make us water down who we are in order to exist in its walls; rather, our self-preservation is the most powerful act of resistance we bring to this space. Today, and every day, we call upon our peers and communities to remain endlessly aware, endlessly critical.

We invite the law school faculty, HLS students, and the community to engage with us.

Signed,

A Collective of DisOrientation Student Organizers

¹ See Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *Women's Rights Rts. L. Rep.* 7 (1989).

² 77.5% of HLS students are from families that make more than \$95,000/year and have more than \$175,000 in wealth holdings.

³ See also, Ben W. Heineman, Jr. William F. Lee, and David B. Wilkins, “Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century,” Center on the Legal Profession at Harvard Law School. http://www.law.harvard.edu/programs/corp_gov/articles/Heineman-HLS-CLP-11-20-14.pdf (Discussing how the for-profit companies and law firms establish the norms, required skills, and market that law schools should adhere to in developing its programs, curriculum, and skill, and curriculum.

Why I'm Running for the Board of Overseers

By THEA SEBASTIAN

As a student at HLS, I watched the University struggle to navigate its educational, ethical, and fiduciary responsibilities. I was a student when a grand jury chose not to indict in the Michael brown case, triggering a wave of protests demanding structural change. I sat in the WCC lounge, called “Belinda Hall” then, as student organizers recounted meetings with administrators. And, through these experiences, I realized something important: Students need a seat at the table.



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Harvard routinely makes decisions that affect students and recent alumni deeply. The University invests what could be billions in fossil fuels, though it's our future at stake, and maintains millions in a prison-industrial complex that's tearing families apart. Meanwhile, administrators are constantly navigating questions around sexual assault, institutional racism, resources for public interest, and other issues that directly affect students and recent students. It's wonderful when administrators consult students on these vital topics. But, as any burgeoning lawyer knows, institutional design matters: Real impact requires real power.

Our five-person Harvard Forward slate, composed entirely of recent graduates, wants climate justice and a new framework for ethical investing. Above all, though, we want to take your voices — and the voices of recent alumni — and give your concerns real force.



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tem in which resources and privileges are allocated in an irrational or unfair way, it is an instrument of oppression.

It is a political choice that HLS does not offer a curriculum that could help law students build a more just, equitable, and free world. Yet HLS, like other law schools, continues to place high structural barriers in the way of our ability to pursue public interest work sustainably by, for example, burying us in piles of debt and structurally handicuffing us. For those of us from first-generation, low-income, or immigrant households (who must financially provide for our families while in law school), there are almost no roads to pursue social justice work as a career, despite HLS' \$1.7B endowment. For students of color, the racial disparity in the amount, repayment, and impact of student loan debt compared to white students is stark and places additional burdens. Yet, when we advocate for equitable financial aid policies, we are largely denied. But why? This is one of the many questions we are still waiting for

HLS is complicit in making it structurally difficult for us to actually serve those most in need in society by funneling us to the highest corporate bidder.

HLS has always been a deeply politically contentious environment. Recently, HLS, through the Dean of Students Office, has tried to surveil and attempt to squash our voices, often by isolating students and threatening disciplinary actions. However, we are reminded that historically students from marginalized communities — namely folx of color, LGBTQ folx, womxn, and disabled folx — have always fought (and even sued) the school to ensure that they could be here. Our existence, voices, and ideas are always points of contention and resistance on campus. For decades, students, often supported by faculty, have continued the tradition of not only fighting for space but for deep structural change. Students have fought to reclaim our space and create new critical pedagogies that center the voices of marginalized people and view the law as a tool for structural social change. Today, we

Race Theory Conference in an effort to increase CRT faculty, unite student efforts, and produce radical scholarship and new legal frameworks. As has been demonstrated, when we organize, we win!

DisOrientation is meant to reclaim our history of struggle and to organize our own production of knowledge to create radical localized knowledge, so that we may develop our own decolonized praxis and not use the master's tools to dismantle the master's house. DisOrientation critically acknowledges the native Massachusetts people whose land we stand on and which was taken by the Commonwealth of Massachusetts via a mass genocide. We also recognize Belinda who, in 1783, sued the man who enslaved her, Isaac Royall — the same man whose slave trade wealth established HLS — for unpaid compensation and won, securing an annual pension of 15 pounds, 12 shillings. We also recognize all those who cannot attend because they are behind the prison walls or deported by a society that criminalizes and cages with impunity but who lack

What Every Harvard Law Student Should Know About Blockchain

BY JOEL WEIGHT



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What it is: Blockchain is a shared ledger that uses cryptography to ensure the validity of each transaction on a distributed network.

1. Blockchain holds the promise of democratizing capital, eliminating middle men, and re-humanizing commerce.

2. Blockchain enables true value ownership. There's no super user or central administrator that can move value, only the owner can transfer that value to another.

3. Blockchain is to value as the internet is to information. Because

of true value ownership, we can now securely transfer value without having to establish trust in the counterparty. No more fraudulent e-tickets. No fraudulent checks from Nigerian princes. The value is transferred and settles near instantly. No need for trust intermediaries to enable exchange.

4. Blockchain will affect most industries including identity, land titling, money, capital markets, supply chain and voting. Where there's a ledger there's a possibility (though not always a need) for blockchain. Information about value can be shared instantly helping remove friction in current processes.

5. Blockchain isn't inherently good or bad, nor is it magic. Blockchain is a new combination of existing technologies.

6. When you stop hearing about blockchain you'll know that it's gone mainstream. You don't hear about how an application is "database enabled." Blockchain will be one more tool in the IT toolbox.

Joel Weight is the Chief Operations Officer of Medici Ventures, a globally-leading blockchain accelerator.



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The purpose of regulating any profession is to assure competent practitioners, particularly where its absence can cause irreparable harm. Regulatory "licensing" ideally achieves such assurance, while at the same time avoiding unnecessary supply constriction. The latter can mean much higher prices and an inadequate number of practitioners. Regrettably, the universal delegation to attorneys of the power to regulate themselves has led to a lose/lose system lacking protection from incompetent practice while also diminishing needed supply. The problem is manifest in four regulatory flaws:

First, state bars—in combination with the American Bar Association—require four years of largely irrelevant higher education for law school entry. Most of this coursework commonly has nothing to do with law.

Second, and related, these seven-years of mandatory higher education (that only the United States requires for attorney licensure) impose extraordinary costs. Those costs now reach from \$190,000 to \$380,000 in tuition and room and board per student—driven by shocking tuition levels lacking competitive check.

Third, attorney training focuses almost entirely on a few traditional subjects, with little attention paid

Cartel Control of Attorney Licensure and the Public Interest

BY ROBERT C. FELLMETH, BRIDGET FOGARTY GRAMME AND C. CHRISTOPHER HAYES

to the development of useful skills in most of the 24 disparate areas of actual practice (e.g., administrative, bankruptcy, corporate, criminal, family, taxation, et al.). And schools often pay scant attention to legislation, administrative proceedings, or the distinct areas of law that will be relevant to a student's future practice.

Fourth, state bars rely on supply-constricting bar examinations of questionable connection to competence assurance. In the largest state of California, the bar examination

malpractice to recover from "client security funds";

d) Do not require post-licensure "legal education" in the area of an attorney's practice;

e) Do not test attorneys in the area of practice relied upon by consumers—ever; and

f) Respond to cost-effective, technology-centric solutions to legal problems not by regulation to assure consumer benefit, but by attempts to categorically foreclose them in favor of total reliance on often unavailable/expensive counsel.

No area of state regulation has more openly violated federal antitrust law than has the legal profession. The United States Supreme Court held in 2015 that any state body controlled by "active market participants" in a profession regulated is not a sovereign entity for antitrust purposes without "active state supervision." Yet four years later, attorneys continue to regulate themselves without such supervision, overlooking the threat of criminal felony and civil treble damage liability.

Robert C. Fellmeth (HLS '70) is a consumer advocate and former state and federal antitrust prosecutor. Bridget Fogarty Gramme is the Administrative Director of the Center for Public Interest Law and adjunct professor at the University of San Diego School of Law. C. Christopher Hayes is a practicing attorney in San Diego, California. This summary was reprinted in The Record with permission from Robert C. Fellmeth. The full version of this article may be found in the British Journal of American Law Studies.

The universal delegation to attorneys of the power to regulate themselves has led to a lose/lose system.

fails about 2/3 of its examinees. This system has fostered an opportunistic cottage industry of increasingly expensive preparatory courses that further raise the cost of becoming an attorney—even after 7 years of higher education.

Meanwhile, the bars regulating attorneys in the respective states:

a) Do not treat negligent acts as a normal basis for discipline (outside of extreme incapacity);

b) Do not require malpractice insurance—effectively denying consumer remedies for negligence;

c) Do not allow clients injured by

Complicity

BY M. KELLY TILLERY

Human chattel slavery existed first without prohibition by and later with affirmative sanction of law in the colonies that would become and then in this country, for 246 years and 4 months, from August 20, 1619 (first African slaves at Point Comfort, VA) to December 6, 1865 (ratification of 13th Amendment). From the moment those first "20 and odd" Africans were deposited on Virginia soil, their "owners" "rights" in and to them were defined and protected first by colonial, then state courts, by analogy to English common law of property, even though English law itself did not recognize slavery.

Lawyers created and enforced those laws for 2 1/2 centuries. Scholarship covering the essential and extensive involvement of our profession in this nation's greatest

bankers, manufacturers, railroads, shipping companies, wholesalers, insurance companies – almost every business and profession was to some degree involved in, benefited by, or at least consumed products created by slave labor. Cotton, rice, sugar, and other staples were exported from slave states to free states and overseas, not to mention that the economies of the free states depended upon sales of their manufactured goods to the slave states. 393,975 Americans (out of 31,182,582 – 1.26%) owned other humans in 1860. Most of those owners had lawyers who assisted them in maintaining and expanding this vile enterprise.

Lawyers represented the companies that insured slaves, plantations, and the products of unpaid labor, the banks that financed the slave economy, the mills that depended upon slave-produced cotton, and the shipping and trading companies which shipped the slaves themselves. Recent scholarship supports the theory that slavery actually laid the foundation for modern American capitalism, such as the creation of new financial instruments such as bonds using slaves as collateral. The un-secret but seldom highlighted feature of the antebellum U.S. economy is that it was completely dependent upon the active and extensive participation of, and monetary benefit to, a wide variety of professions, companies and individuals in the free states – including our profession.

Legal academics published treatises on the "law of slavery," an oxymoron to be sure – Jacob D. Sheeler, A Practical Treatise on the Law of Slavery (1837), John C. Hurd, Law of Freedom and Bondage in the United States (1858), and T.R.R. Cobb, Law of Negro Slavery in the United States (1858). A cursory review of just the index of any of these is enough to

make one physically ill – "Of Title To Slaves," "Of Mortgage of Slaves," etc. Reading the cases is even worse. Frederick Douglass often read slave statutes to his stunned lecture audiences as stark evidence of the astounding inhumanity and complicity of judges, legislators, and lawyers.

There were, of course, many notable lawyer exceptions. William Wilberforce, one of the handful of abolitionists who brought slavery to an end in the British Empire, was a lawyer. In 1781, Theodore Sedgwick, a slaveholding lawyer, filed a freedom

One has to wonder in what injustice we today may, in a century or two, be viewed as complicit?

suit for his client, a slave known only as "Murbet," resulting in, perhaps to his surprise, the judicial abolition of slavery in Massachusetts. In 1777, Vermont lawyers made it the first state to legally abolish slavery, stating unequivocally in its Constitution that slavery is a violation of "natural, inherent and unalienable rights." Many abolitionist organizations employed volunteer lawyers who assisted slaves in freedom suits and actions against abusive masters.

Yet for every such noble member of the Bar, there was an equal and opposite other in the South and in the North, willing to represent slave owners, overseers, and those with commercial interests in slavery – to enforce the Fugitive Slave Laws and to prosecute those who opposed the Slave Power. For money, power, prestige – greed.

The American legal system initially treated slaves as it did the most analogous personal property – livestock. Just as the issue of a cow was legally the property of the cow's owner, so was the issue of a slave woman also a slave, belonging to her owner. The property analogy broke down, however, when the law had to consider non-bovine elements – some black people were not slaves, and all were thinking property. How the legal profession dealt with these anomalies is as creative as it was reprehensible. Lawyers and judges made it up as they went along in order to ensure the sanctity and stability of this bizarre world.

Slaves were treated better than livestock in only a few respects – a master, in extreme cases, could be held criminally liable for cruelty to or murder of a slave. Unlike livestock, slaves could testify in court, though not against the interests of any white person, and they were subject to all criminal laws which covered white people, plus many that applied only to them. Yet like livestock, slaves had no civil rights or privileges, and were not citizens. Judges were all too often willing to use their legal legerdemain to achieve outcomes and create new rules that would maintain or even strengthen the chains of human bondage.

Needless to say, sadly, many in our profession continued, even long after the legal demise of slavery and for the following 153 years, to create, support, and expand laws designed to maintain what Frederick Douglass called the "invisible chains of slavery" – Black Codes, Jim Crow, "separate but equal," voter suppression, etc.

You may say that slavery was sui generis and there is nothing today with which our profession is as complicit. Are you so sure?



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Seth Thomas was the antebellum go-to lawyer in Boston for slave owners seeking to recover their runaway slaves – their "property" whom fellow Massachusetts lawyer Richard Henry Dana called a "pimp." Thomas replied that he was "just representing a client in professional fashion and they were entitled to representation under law." True, but was that a sufficient defense to Dana's charge?

One has to wonder in what injustice we today may, in a century or two, be viewed as complicit? Climate disruption, economic inequality, authoritarianism? Will future generations look back on us, as we look back on those who assisted slavery, and conclude that we were complicit, when we should have taken a stronger and earlier stand? While none of us will be here in 2119, we should be concerned about the legacy of our profession.

M. Kelly Tillery is a Partner in the Intellectual Property Group of the law firm of Pepper Hamilton, LLP in the Philadelphia office. He is the author of numerous articles on a variety of historical and legal topics. His first book, Sidebar – Reflections of a Philadelphia Lawyer (CreateSpace, 2018) will soon be followed by Sidebar, Too – More Reflections of a Philadelphia Lawyer (KDP, 2019).

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Editor-in-chief

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