

New Faculty

John Ferejohn

VISITING PROFESSOR OF LAW

JOHN FEREOHNS CAN LECTURE ON PORK-barrel politics in the afternoon and whip up a dish of pork bellies with scallops that evening. A true Renaissance man who plays jazz saxophone, runs marathons, collects wines, travels extensively and experiments with molecular gastronomy—an avant-garde cuisine that uses chemical powders to create new textures such as liquid ravioli—Ferejohn has academic interests that also span a number of disciplines.

At Stanford University, his home since 1983, Ferejohn, Carolyn S. G. Munro Professor of Political Science, has chaired the department and taught in the philosophy department and the Graduate School of Business. Currently, he is a fellow at the Hoover Institution. A non-lawyer, he nonetheless has been teaching one semester at the NYU School of Law since 1993, and will join the faculty full-time in 2009. “He does everything,” says Lewis Kornhauser, Alfred B. Engelberg Professor of Law, with whom he coaches the Colloquium on Law, Economics and Politics. “He has great curiosity, a penetrating mind, and can talk about anything that goes on in the Law School.”

Ferejohn is known for his work on voters and the responsiveness of their elected officials. He is also credited with being one of the founders of positive political thinking (PPT), a methodology that uses mathematical models, economics and game theory to analyze the workings of political institutions. “John is the great positive political theorist of his generation,” says Kenneth Shepsle, George D. Markham Professor of Government at Harvard University. “When he was starting out in the early 1970s, PPT was extremely novel. It was through a lot of John’s work that it became much more mainstream.”

Ferejohn was born on an Army base in Deming, New Mexico. His father, George, a high school dropout who once worked as a janitor at Columbia University, became a bombardier instructor in the U.S. Army Air Corps, then went on to attend Cornell University and Harvard Medical School.

He died tragically in his sleep at age 33 when Ferejohn was just seven years old. His mother, Olga Collazo, married physicist Robert Bjork and moved the family to Santa Monica.

At age 12, Ferejohn started playing the clarinet, saxophone and flute. Within a few years, he was playing at jazz clubs, intending to be a jazz musician. He married his high-school sweetheart, Sally, now a retired elementary school teacher, and worked his way through San Fernando State College doing payroll accounting for an aerospace company. Realizing soon enough that playing the sax wouldn’t pay the bills, he focused on his schoolwork and was accepted at Stanford University.

During his first year at Stanford in 1968, he “discovered that it was possible to use deductive thinking to see how politicians do things. I got interested in exploring the elegant and simple idea that complex political institutions had a simple underlying logic.” He loaded up on mathematics and economics courses, and in 1972, he earned his Ph.D. in political science. In 1974, he published his first of five books, *Pork Barrel Politics: Rivers and Harbors Legislation, 1947-1968* (Stanford University Press).

Both *Pork Barrel Politics* and his second book, *The Personal Vote: Constituency Service and Electoral Independence* (Harvard University Press, 1987), which he coauthored with Bruce Cain of the University of California, Berkeley and Morris Fiorina of Stanford, use PPT and game theory strategies, as well

as statistical modeling, to look at issues such as how politicians build support and, conversely, how constituents control politicians. “The logic of majority rule says don’t be too hard to please,” or you’ll be left out of the majority, Ferejohn says. “You better find a way to prevent politicians from playing you off against others. So essentially, to control a politician, you need to come to some sort of agreement with other voters on a single evaluative criterion, such as the liberal or conservative dimension, and then not set so high a standard that the politician will simply ignore it.”

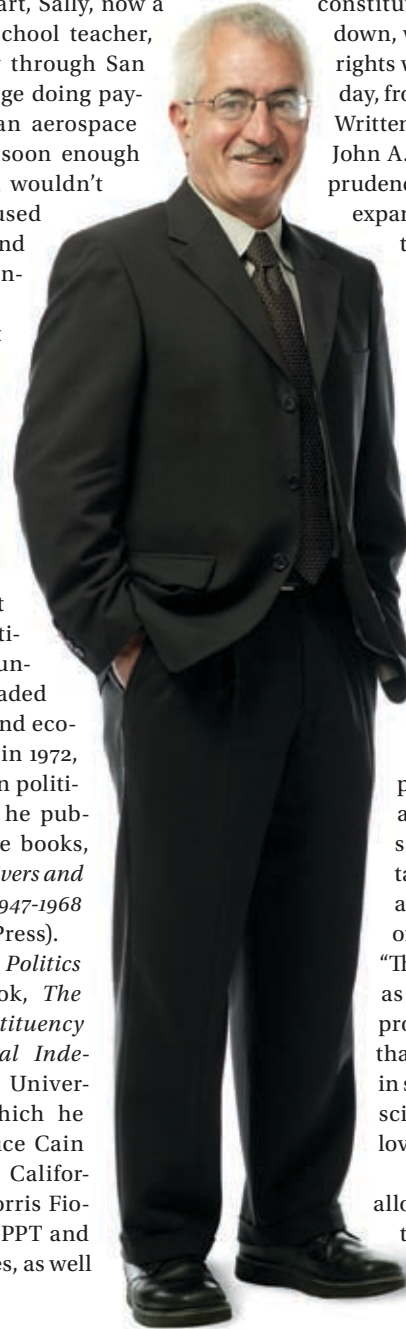
Currently, he’s coauthoring a book tentatively called *Super Statutes*, which challenges the belief that the fundamental rights enjoyed by Americans are protected by the Constitution. “Instead of doing constitutional law from the top

down, we want to look at the real rights we have and rely on day to day, from the bottom up,” he says. Written with William Eskridge Jr., John A. Garver Professor of Jurisprudence at Yale Law School, and expanded from an earlier article,

the book is due to be published by Yale University Press in 2009.

Just as he improvises jazz compositions, Ferejohn enjoys taking an “eclectic” approach to academics. In addition to using techniques of PPT, he looks forward to collaborating with NYU legal philosophers Thomas Nagel and Liam Murphy, among others. “Part of law—constitutional law in particular—is really an applied area of political and moral philosophy. And NYU is really strong in these areas,” says Ferejohn, who has taught political philosophy at both California Institute of Technology and Stanford. “The nice thing about applied as opposed to theoretical approaches to these topics is that one can see the conflicts in sharper relief, and political scientists have a congenital love for conflict.”

Joining NYU full-time will allow him to focus more on the philosophical approach to law. Plus, Ferejohn,



who has three children and three grandchildren, will be able to explore Manhattan's exciting music scene—and its mouthwatering culinary offerings. He also looks forward to performing in some of the downtown jazz clubs he's played in the past. And who knows? He may even twist foie gras ribbons into bow ties in the kitchen of the city's molecular-cooking mecca, wd~50.
—Jennifer Frey

Moshe Halbertal

GRUSS PROFESSOR OF LAW

BURT NEUBORNE CALLS MOSHE HALBERTAL “the star of the Monday meetings.” At these weekly faculty gatherings, a professor presents a working paper; it's an opportunity to receive feedback and share expertise with fellow scholars. Halbertal always stands out for not only having read the week's paper but being among the first to ask questions. “He taught me how to behave on Mondays: I time my question carefully so that I have raised my hand early but get called on after Moshe,” says Neuborne, tongue-in-cheek. “Then I say, ‘Never mind, Moshe has already asked my question.’”

Halbertal, a global visiting professor of law and Gruss Visiting Professor of Law since 2003, joins the faculty as the tenured Gruss Professor of Law this fall. He will continue his practice of spending the spring semester in Israel, where he is a professor of Jewish thought and philosophy at Hebrew University. At NYU, he teaches Jewish Law and Legal Theory and the Ethics of Obligation in Jewish Law. Though he doesn't have a J.D., he has become, through his careful readings of others' work and long philosophical discussions, “indispensable to so many of us on the faculty,” says Amy Adler, who specializes in art law. Indeed, the news that Halbertal secured a permanent position on the faculty prompted an outpouring of unusually gushy praise, with colleagues calling him “beloved,” “a dear man,” and “joyful and soulful.”

Halbertal's extraordinary dedication and generosity may be the result of lessons learned from his father. Born in Montevideo, Uruguay, he grew up trilingual. His father, Meir, spoke Yiddish, his mother, Henya, was fluent in Hebrew, and both also spoke Spanish. A Jew born in Poland, Meir survived the Holocaust by fleeing to Russia. While much of his family perished, he spent time in a Siberian gulag and an orphanage, and escaped pogroms by joining distant relatives in Uruguay. There he met and married Henya, an elementary school

teacher. They had two sons, Moshe and Dov, and moved to Jerusalem when Moshe was eight years old. Halbertal remembers his father, the educational director of a high school who died in his early 70s in 2001, as an optimistic person who taught him the power of gratitude and giving. “When I asked him how he came from there without being broken,” says Halbertal, “he said, ‘Whenever I was in distress, I saw someone in far more distress and gave help to him.’” Both parents also instilled a deep respect for education. “My father's formative years were all about survival,” Halbertal says. “He wanted his children to have the gift of what he missed, the gift to study and grow, so in some ways, we were the children who fulfilled whatever he hadn't had.”

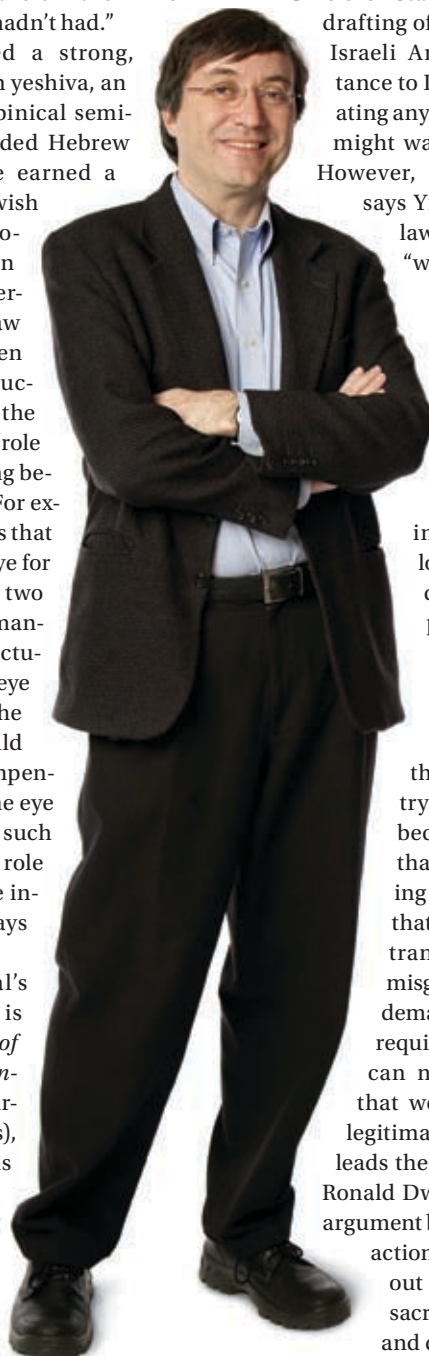
Halbertal received a strong, Talmudic education in yeshiva, an Orthodox Jewish rabbinical seminary, and then attended Hebrew University, where he earned a B.A. and a Ph.D. in Jewish thought and philosophy. His work began to focus on the intersection of Jewish law and philosophy when he noticed a “constructive tension,” namely the question, “What is the role of value in adjudicating between possibilities?” For example, Halbertal notes that a saying such as “an eye for an eye” can be read in two plausible ways: the semantic, where one would actually demand an actual eye in retribution, and the moral, where one would accept monetary compensation and consider the eye a metaphor. Through such analysis, “you see the role that values play in the interpretive process,” says Halbertal.

One of Halbertal's most notable works is the 1997 book *People of the Book: Canon, Meaning and Authority* (Harvard University Press), in which he applied his deep knowledge of religious thought to modern questions. “Part of Halbertal's gift is that he manages to reveal how

much the struggles within Jewish thought resonate with ongoing struggles in law, literature and politics today,” says Richard Pildes, Sudler Family Professor of Constitutional Law. Pildes cites current debates over the role of the Constitution in American law and culture, the proper methods of constitutional interpretation or the legitimate space for dissent from rulings of the Supreme Court as subject to illumination through Halbertal's exposure of the centuries-long turmoil over surprisingly similar issues within the traditions of Jewish religious thought.

In 2001, Halbertal was appointed by a committee established by the Israeli Joint Chiefs of Staff to contribute to the drafting of the ethics code for the Israeli Army. Given the importance to Israel of its military, creating any restrictions on military might was a delicate operation. However, the ultimate product, says Yishai Beer, professor of law at Hebrew University, “was a masterpiece.”

More recently, Halbertal was the guest at the Colloquium in Legal, Political and Social Philosophy—known for convening some of the most incisive, even ruthless, intellectuals and philosophers for a thorough dissection of papers-in-process. Halbertal's paper, “Self-Transcendence, Violence and the Political Order,” examines the suicide bomber and the terrorist who doesn't try to escape punishment because he wants to prove that the aim was worth risking his life. Halbertal claims that this kind of sacrificial transcendence is morally misguided. Legitimate moral demands may, in some cases, require sacrifice, but sacrifice can never legitimize action that would not otherwise be legitimate. Thomas Nagel, who leads the colloquium along with Ronald Dworkin, says Halbertal's argument boils down to, “If violent action is right, it's right without sacrifice. If it's wrong, sacrifice won't make it right” and described the paper as a



“lucid and original discussion of self-transcendence and its pathologies.”

Living and teaching across an ocean and a continent can take its toll. But true to form, Halbertal, who is divorced and the father of three daughters, focuses on the positive. Living in two nations, he says, is “a gift” that confers the ability to be comfortable among different people and in different situations, and he is especially grateful to share that with his children. “We have a sense of the world not being a small place, which is a good thing,” Halbertal says. “There is empowerment in exploring and seeing and contributing.”

Robert Howse

LLOYD C. NELSON PROFESSOR
OF INTERNATIONAL LAW

ASKED WHO WAS MOST INFLUENTIAL IN shaping his illustrious academic career, Professor Robert Howse ran down a list of people before answering with a “thing”—the typewriter.

Howse had difficulty reading and writing until about age nine, when he learned how to form words on a typewriter based on the spatial organization of the keyboard. “All of a sudden there was this great sense of liberation,” says Howse, who has since learned he is dyslexic. “The sense of empowerment from overcoming that kind of obstacle may have put me into overdrive.”

An understatement indeed.

Soon Howse was a voracious reader, tackling serious literature. Though he still suffers from aspects of dyslexia—he can’t drive a car—he now reads Plato in the original Greek (albeit slowly), writes extensively on 20th-century political philosophers Leo Strauss and Alexandre Kojève, is an expert in international trade law, and has shaped public policy in issues ranging from human rights to global warming. “He’s a rare combination of somebody who knows international trade and investment law in detail, yet he’s got a broad-ranging and creative intellectual outlook,” says Richard Stewart, the John Edward Sexton Professor of Law.

Howse joined the faculty in June from the University of Michigan Law School, where he taught international law and legal and political philosophy. A full-time academic, he also has a high profile in public policy circles—he writes prolifically and has advised government agencies and international organizations, such as the Organisation for Economic Co-operation and Development, and the United Nations Office of the High Commissioner for Human Rights.

“Rob fully understands the policy and political context in which trade decisions are made, and this sets him apart from many academics in the international trade area,” says Susan Esserman, chair of the international department at D.C.-based Steptoe & Johnson and a former deputy U.S. trade representative. “He has a great eye for emerging issues in the field, and he is endlessly creative,” says Esserman, who has written with Howse for the Council on Foreign Relations’ *Foreign Affairs* magazine and *The Financial Times*.

He’s best known for cowriting *The Regulation of International Trade* (Routledge, 1995), a comprehensive look at the evolution of international trade theory and policy, which included analysis of the General Agreement on Tariffs and Trade and the World Trade Organization.

Currently, he’s juggling a number of projects. Having been the principal trade expert for the Renewable Energy and International Law Project (a consortium with Baker & McKenzie and Yale University), he recently attended the first high-level policy meeting exclusively focused on climate change and trade, organized by the Danish Ministry of Foreign Affairs. He is collaborating with Ruti Teitel, Ernst C. Stiefel Professor of Comparative Law at New York Law School, on a series of projects that analyze the debate on globalization in relation to the human rights revolution in international law. He’s writing a book tentatively called *Rehearing the Case of Leo Strauss*. In 2004, he self-published *Mozart: A Novel*, and he’s currently writing another piece of fiction.

Raised non-religious by parents of Protestant origin, mainly in a predominantly Orthodox Jewish neighborhood of Toronto, he became fascinated with philosophy. “I had a sense of wonderment

about the different ways of leading our lives that came from this experience of otherness around me,” he says.

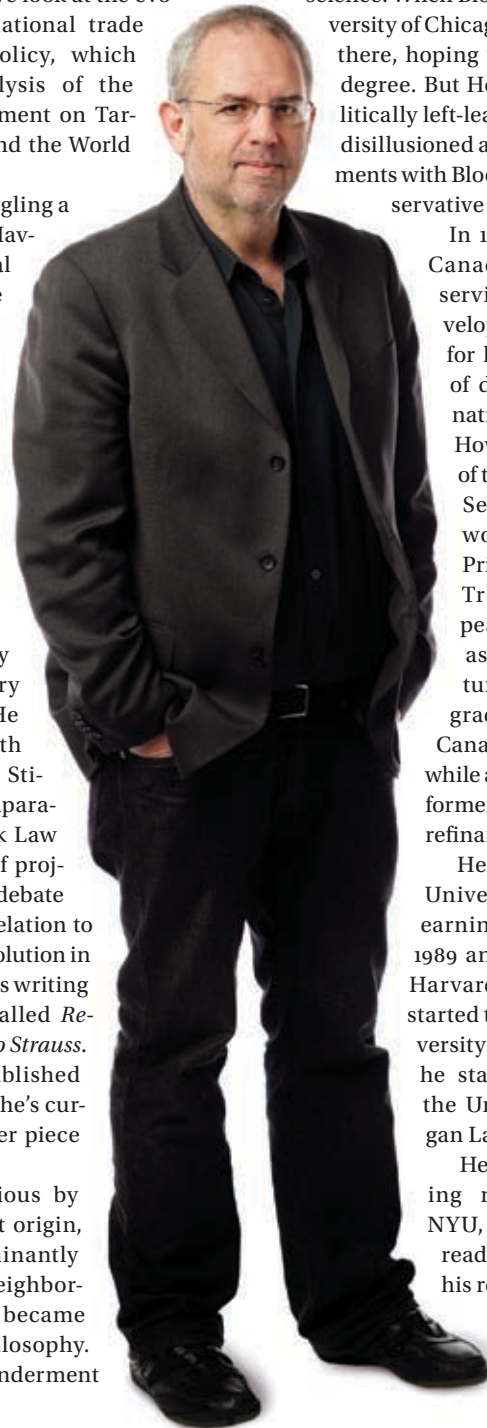
In 11th grade, after being removed from his history class for misbehavior, he was put into an independent study. “I used this chance to study the themes that interested me, including the religious versus the secular life,” he says. He came upon Strauss, one of many figures who influenced his career.

Howse entered the University of Toronto to study Straussian thought under the philosopher (and soon to be best-selling author) Allan Bloom. He graduated in 1980 with a B.A. in philosophy and political science. When Bloom left for the University of Chicago, Howse enrolled there, hoping to earn a master’s degree. But Howse, who was politically left-leaning, left Chicago disillusioned after a few disagreements with Bloom and his neoconservative followers.

In 1982, he joined the Canadian diplomatic service. “[There] I developed a fascination for law as a discourse of diplomacy in international politics,” says Howse. As a member of the Policy Planning Secretariat, Howse worked on then-Prime Minister Pierre Trudeau’s global peace initiative. And as the Canadian Cultural attaché in Belgrade, he promoted Canadian rock-and-roll while also working on the former Yugoslavia’s debt refinancing negotiations.

He returned to the University of Toronto, earning a law degree in 1989 and a master’s from Harvard in 1990. Howse started teaching at the University of Toronto, where he stayed until joining the University of Michigan Law School in 1999.

He’s had a long-standing relationship with NYU, which Howse is ready to formalize. As his research has moved increasingly in the direction of foundational



and conceptual questions in international law, “NYU has seemed the logical center,” he says, citing his interest in the history and theory of international law program. Moreover, his recent focus on climate change and trade is an excellent fit with the Global Administrative Law Project. On leave for the fall, he’ll teach international investment law and the history and theory of international law in the spring.

Howse is undergoing a divorce, and has no children. In keeping with his public policy positions, he leads a consciously responsible lifestyle—biking and walking whenever possible and buying organic. “I know from my research there are trade-offs,” he says, “but overall, I think that the result is greener than otherwise.”—J.F.

Mitchell Kane

PROFESSOR OF LAW

EVEN DUTIFUL STUDENTS TEND TO APPROACH introductory tax law like they would a bitter medicine: hoping to get done with the distasteful task as fast as possible. But when students of then-Visiting Professor Mitchell Kane’s class last fall swallowed their first dose, they asked for more, following him after class to a conference room where he held court on the tax ramifications of stock options.

Kane sees this general enthusiasm for the subject as natural. “This is a body of law that tells you who’s going to pay for what. That goes to the core of what a lot of people care about,” he says.

Previously in private practice specializing in international tax law, Kane joins the faculty this fall from the University of Virginia School of Law, where he has taught since 2003. “He’s one of the best junior tax scholars in the country, and clearly the best in international tax, leaving aside a handful of people who are considerably more senior,” says Daniel Shaviro, Wayne Perry Professor of Taxation. “Mitchell is thus positioned to be an important leader in the field for decades to come, and I’m delighted that he’ll be here.”

Kane is best known for his 2004 piece, “Strategy and Cooperation in National Responses to International Tax Arbitrage,” published in the *Emory Law Journal*. International tax arbitrage refers to instances where taxpayers intentionally structure transactions to take advantage of variations in the tax laws across jurisdictions. The academic debate about such arbitrage had generally centered on the question of whether such tax planning activity is prob-

lematic. “My key contribution was to suggest that one could best understand arbitrage transactions not as planning opportunities for taxpayers, but rather as opportunities for governments, in their responses to the transactions, to behave strategically in the battle to attract global capital flows,” he says.

Recently, Kane has cultivated an interest in the role of tax policy in promoting capital flows to the developing world. In a working paper called “Bootstraps, Poverty Traps, and Poverty Pits: Tax Treaties as Novel Tools for Development Finance,” Kane proposes a financing technique that he says offers significant improvements over common sovereign debt arrangements. Typically, countries that attract foreign investors to build a plant or another business have the primary ability to tax any profits. These tax revenues are used to repay foreign creditors, as well as for other purposes. Rather than waiting for a payment from a country that might already be in debt, Kane proposes that developed nations negotiate treaties in which they transfer capital now in exchange for the primary right to tax income streams in the future. Critics contend “they’re trading back a piece of their sovereignty,” says Kane. But he argues, “It’s a sovereign decision to raise money more effectively. By world standards, our tax and compliance system is a pretty good machine.” So why not leave the taxing up to us?

Kane and his two siblings were raised in Norfolk, Virginia, by their parents Peter, 70, and Claudia, 64. An engineer by training, Peter now owns a family bar/restaurant; Claudia, who also owns a deli, was a food broker. A self-professed loner and nerd for most of his youth—in sixth grade he tackled Fyodor Dostoevsky’s *The Brothers Karamazov*—he came out of his shell in 11th grade when he joined the school’s golf team.



Kane entered Yale University interested in computer science, but soon became enamored with philosophy. By sophomore year, he was a philosophy major with a focus on the philosophy of law—having read Ronald Dworkin’s work—as well as the philosophy of criminal law.

Graduating from Yale in 1993, he enrolled in a joint degree program at the University of Virginia, earning his J.D. in 1996, and an M.A. in philosophy in 1997. That same year he started practice at the D.C. office of Covington & Burling, splitting his time between tax and litigation. Two weeks into his first litigation case, he was given boxes of documents to review. “After the first two boxes, I begged to be put full-time into the tax group,” he recalls, finding the mental gymnastics required to puzzle through the tax code far more compelling than “plowing through mounds of paper looking for a needle in a haystack.”

Out to lunch one day with his tax colleagues in 1999, he learned that his firm wanted to bring an associate to London. He raced back to his office to call his wife, Jessica. “We adored living abroad,” says Kane, whose practice morphed into international tax law during his three years in London.

In 2002, after Kane returned to the U.S., a mentor invited him to take a fellowship at the University of Virginia. He was offered a teaching position the following year. “I was 32 when I started, and the students didn’t look much younger than I did. It was incredibly intimidating,” recalls Kane, who spent two months preparing his first three lectures.

In addition to visiting in Fall 2007, Kane has attended NYU’s annual Colloquium on Tax Policy and Public Finance. “The energy of the place is incredible,” he says. “There’s something about NYU where I always feel like there’s 30 things going on that I want to be doing. That kind of richness of faculty dialogue is very appealing.”

Aside from working with his tax colleagues, he hopes to rekindle his interest in philosophy by attending and presenting the Colloquium in Legal, Political and Social Philosophy, run by Professors Dworkin, Liam Murphy and Thomas Nagel.

Having been a visiting professor at several universities in the past two years, including Harvard and Columbia, Kane is eager to settle down with Jessica and their children: Olivia, five, and Simon, two. Kane, who inherited recipes from his Alsatian mother, does the cooking at home. "I'm the master of the one-pot, stick-to-your-ribs, French country recipes," he says.—J.F.

Samuel Rascoff

ASSISTANT PROFESSOR OF LAW

SAMUEL RASCOFF IS PROBABLY THE ONLY badge-carrying member of the New York City Police Department to leave that gritty world for NYU Law. The director of the NYPD's 25-person intelligence analysis unit for the last two years, he had the heady responsibility of assessing the terrorist threat to the city, on call 24/7 whenever a threat emerged.

A dedicated public servant who previously worked for Ambassador Paul Bremer in setting up a transitional government in Iraq, Rascoff nonetheless sees joining NYU in June as a professor and faculty codirector at the Center on Law and Security as a logical move. "I firmly believe that shaping the American response to terrorism and creating a new architecture for counter-terrorism law is as much an act of public service as providing day-to-day assessments of terrorist threats," says Rascoff.

Rascoff's specialty is national security law, with an emphasis on counter-terrorism law—a burgeoning field that examines the sources, allocation and limits of government authority in protecting its citizens from terrorist attacks. While elements of national security law are relatively well-established in the law school curriculum, counter-terrorism law is still in its infancy. "We see ourselves as a leader in this new area of law. Having him join our faculty will be important as we move forward in that project," says Dean Richard Revesz, who first glimpsed Rascoff's scholarly abilities when the two collaborated on a law review article about risk regulation in the fall of 2001. "Even as a recent law school graduate, he had the ability, maturity and creativity of a seasoned academic."

One of three siblings, Rascoff was raised in New Rochelle by his dad, Joel, a retired

kidney specialist, and his mom, Barbara, a homemaker and perennial volunteer. An independent thinker, fluent in Arabic and Hebrew, he specialized in Islamic studies at Harvard. During college, he spent one summer working on the Pentagon's Middle East desk, another at the State Department. After graduating in 1996, he received a Marshall Scholarship to do a second bachelor's degree at Oxford University where he studied philosophy, politics and economics. Viewing the legal profession as "the priesthood of American public servants," he attended Yale Law, graduating in 2001.

Outgoing and charismatic, with flaming red hair and a flair for dramatic outfits, Rascoff always stood out, recalls college and law school buddy Professor Jedediah Purdy of Duke University. "He does orange and pink well, and can carry off a bow tie," he says.

In spring 2003, in between clerkships that included a year with Supreme Court Justice David H. Souter, Rascoff assisted Ambassador Bremer in Baghdad. Sleeping with 25 other people on cots covered with mosquito netting in the auxiliary kitchen of Saddam Hussein's Republican Palace, he spent his days meeting with Iraqi officials and crisscrossing the country, talking with everyday Iraqis. "Sam was one of a tiny number of advisors who spoke Arabic and understood the political context," says Professor Noah Feldman of Harvard Law, who was in Baghdad with him.

One day Feldman, Rascoff and a couple of other advisors drove without an escort into the Shiite areas south of Baghdad to talk to Iraqi citizens. "A couple of weeks later, Muhammad Baqir al-Hakim was killed by a car bomb in the same spot where we had just stood," recalls Feldman. Rascoff describes his time there succinctly: "I had a front row seat when consequential decisions were being made."

After Rascoff spent two years practicing litigation at Wachtell, Lipton, Rosen & Katz, NYPD Commissioner Raymond Kelly recruited him to set up the intelligence analysis unit. "We relied on Sam Rascoff's superb legal training, combined with his extraordinary knowledge and command of geopolitics, to create an intelligence analyst program that has earned worldwide acclaim," says Kelly. "He was personally responsible for recruiting top notch talent into the NYPD and did so with remarkable success." Much of what Rascoff did there remains confidential, but he is willing to say that his job ran the gamut, from monitoring cyberspace chat rooms to participating in operational activities.

Rascoff is currently working on an article entitled "National Security Federalism," in which he argues that state and local entities should play a larger role in setting national security policy, especially with regard to counter-terrorism. "National security so far has been relatively impervious to analysis through the lens of federalism," he says. "But with counter-terrorism figuring prominently in the security agenda, we've come to appreciate that local government agencies, such as police departments, will inevitably shoulder more responsibility in combating today's threats."

Those who know Rascoff predict he will make an easy adjustment to academia. "A lot of young associates are fairly invisible. That never happened with Sam. Everybody knew who he was," says Meyer Koplrow, executive partner at Wachtell, Lipton, Rosen & Katz, adding, "He's going to make a great professor because he's just so approachable."

Rascoff and his wife Lauren, 29, a resident in obstetrics and gynecology, live in the city. They both frequent the opera, and occasionally Rascoff finds time to



play golf. Rascoff, a cantor in his synagogue, also attends daily services and enjoys having coffee afterward with two congregants, one in his 70s; the other in his 80s. "I always hit it off with the older set," he says.—J.F.

Kenji Yoshino

CHIEF JUSTICE EARL WARREN PROFESSOR OF CONSTITUTIONAL LAW

WHEN KENJI YOSHINO STARTED TEACHING at Yale Law School, he recalls a well-meaning colleague who offered him this advice: "You'll have an easier chance at getting tenure if you're a homosexual professional than if you're a professional homosexual." In other words, it was okay to be gay; just don't flaunt it.

That counsel, which Yoshino eventually rejected, helped inspire his award-winning work. *Covering: The Hidden Assault On Our Civil Rights* (Random House, 2006) is a memoir that blends his personal identity struggles as a gay, Japanese American with legal arguments in order to question whether assimilation is always beneficial. "We have a deep-seated belief as Americans that we all should melt into the pot," says Yoshino, a visiting professor for two years who joined NYU Law in July. "But if the demand for conformity is itself illegitimate, then assimilation is a symptom of discrimination rather than an escape from it."

In *Covering*, Yoshino discusses three stages of coming out: "conversion," "passing" and "covering." The latter two terms are adopted from the work of sociologist Erving Goffman. Conversion is the period in which a gay individual longs to become straight. Passing is the phase in which a gay individual has accepted his homosexuality, but hides it from society. And covering is a more subtle demand for assimilation, in which the individual is openly gay but feels pressured not to "flaunt." Covering is as much an assault on a gay individual's civil rights as the 1981 case in which an African-American woman was fired by American Airlines for wearing her hair in cornrows, Yoshino says. "His work gave us new categories for thinking about the types of discrimination that are relatively invisible to most people," says David Golove, Hiller Family Foundation Professor of Law. "He's had a major impact within constitutional and discrimination law." In fact, Supreme Court Justice John Paul Stevens used Yoshino's arguments, in part, to fashion a dissent from the Court's 2000 majority ruling that the Boy Scouts of America

could exclude gays. Yoshino also coauthored a key amicus brief in *Lawrence v. Texas*, the 2003 case that struck down sodomy statutes across the country. "He is a superb lawyer who has reshaped anti-discrimination law by making us understand how forcing people to 'cover' diminishes their authenticity and personhood," says Yale Law School Dean Harold Hongju Koh.

Yoshino also discloses in his book his own identity struggles. As a first-generation American, Yoshino felt uncomfortable assimilating while growing up. His father, a professor at Harvard Business School, and his mother, a homemaker, raised Yoshino and his older sister in a suburb of Boston. Yoshino attended Phillips Exeter Academy, and he and his sister spent summers in Japan attending public school "to inhabit a Japanese body—to rise, to straighten, and to bow: to sit ramrod straight in my high collared uniform," he writes.

His parents would tell Yoshino and his sister to be "100 percent American in America, and 100 percent Japanese in Japan." He says his sister, who now lives in Tokyo, as do his parents, perfected these independent cultural identities in a way he never could. "I think in many ways my exposure to an extremely conformist culture in Japan fueled my understanding of assimilation long before I had any consciousness of being gay," Yoshino explains.

Until he was a young adult, he says he was stuck in the "conversion" stage. After graduating summa cum laude with a degree in English literature from Harvard in 1991, he earned a Master of Science in management studies at Oxford in 1993, on a Rhodes Scholarship. While at Oxford, though, he says, "I routinely went to the college chapel and prayed to the god I didn't believe in to be straight." At 22, he came out to his parents, but when he attended Yale Law, he continued to "pass" as straight to

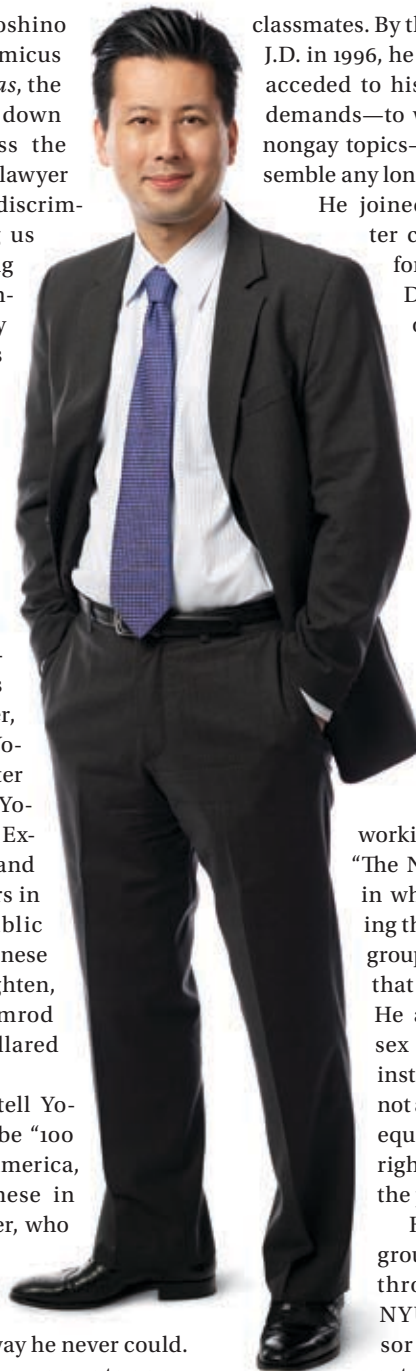
classmates. By the time he received his J.D. in 1996, he was openly gay, yet he acceded to his colleague's covering demands—to write about and teach nongay topics—until he couldn't dissemble any longer.

He joined the Yale faculty after clerking for judge and former Yale Law School Dean Guido Calabresi of the U.S. Court of Appeals for the Second Circuit. (He earned tenure at Yale in 2003 and became the inaugural Guido Calabresi Professor of Law in 2006.) Also a deputy dean for intellectual life, he coordinated the non-curricular academic life of the law school, such as scheduling workshops and student fellowships.

Currently, Yoshino is working on an article called "The New Equal Protection," in which he proposes shifting the legal paradigm from group-based equality to one that protects liberty for all. He argues that the same-sex marriage debate, for instance, should be framed not as the right of gays to be equal to straights but as the right of all people to marry the person they love.

His English lit background continues to shine through Yoshino's work. NYU University Professor Carol Gilligan, who cotaught a Shakespeare seminar with Yoshino, says: "You can't read [*Covering*] without being stunned by the sheer poetry of his writing." Drawing on his seminar with Gilligan, Yoshino is writing a book tentatively called *Shakespeare's Law*, in which he pairs five sets of Shakespeare's plays to show how the Bard argues both sides of fundamental questions of justice.

Yoshino, meanwhile, is eager to settle in at NYU. "It's important for people at some point to get away from their teachers, in the same way that you break from your parents," says Yoshino. "I came for the city, then I stayed for the school. I really fell in love with this institution."—J.F.



Revesz's Recruits: A Professorial Pop Quiz

BY JENNIFER FREY

1 Scott Turow based a character on this Emmy winner who had his own TV show and left Harvard Law for NYU after 35 years.

2 Who recently flew to Amsterdam to see Leonard Cohen in concert? Hint: Barack Obama used his textbook to teach his class at the University of Chicago.

3 What Argentinean turned her passion for virtual buying into research, and her passion for chocolate into what is destined to become a popular annual tasting for students?

4 He's shy (but loves teaching), is an expert in international tax arbitrage, and once slept right through his stop on an Italian train, waking up in Verona.

5 She avoids Chilean sea bass because it's endangered, read in French before English, and studied under Dean Revesz at Yale.

6 What Arabic- and Hebrew-speaking Marshall Scholar helped set up a transitional government in Iraq and ran an intelligence analysis unit of the NYPD?

7 This "walking encyclopedia" once grew a 1 1/2-pound tomato, studied chemical engineering, and switched to law after hearing Supreme Court Justice Antonin Scalia speak.

8 Who edited his college newspaper and considered pursuing a journalism career before becoming a legal historian?

9 Who once lived on a commune in Woodstock, NY, was on the *Harvard Crimson*, and worked as a reporter before earning her J.D. and a Ph.D. in economics?

10 What Guggenheim and NEH fellow ran a program at UC Berkeley modeled after NYU's law and philosophy colloquium, and is a witty roast master to boot?

11 Once a rebellious punker, this RTK scholar clerked at the International Court of Justice, speaks Kreyol and brought students to Yemen to investigate human rights abuses.

12 Who won funding to put his course online, dreamed of becoming a scientist in his teens, and got his J.D. when his peers were still toiling as mere undergrads?

13 Who earned four advanced degrees after his J.D., lawyered for the Israeli army, and publishes about three articles yearly?

14 What Rhodes Scholar (who came to NYU from Columbia Law) played goalie and became captain of the Yale Varsity lacrosse team, winning MVP twice?

15 Who was admitted to practice in New Zealand's Supreme Court, turned down two Oxford chairs and left Columbia Law for NYU Law?

16 Who sang opera wearing a black gown, a purple feather mask and stilettos last spring? Hint: This former Supreme Court clerk is an expert in labor law.

17 What Guggenheim Fellow helped found positive political thinking and worked his way through college as an accountant by day, and a sax player by night?

18 Who drafted an ethics code for the Israeli army, is an expert in Jewish philosophical thought and is equally comfortable in Israel and the United States?

19 Already a U Thant Scholar as a high schooler, she won a human rights award from India's Supreme Court for her tireless efforts to improve conditions for Dalits.

20 What Rhodes Scholar and language rights expert clerked for the Supreme Court, and auctioneered at the Public Service Auction? Hint: She also talks fast in class.

21 Whose award-winning book is required reading at two Southern universities, and was once referenced by Supreme Court Justice John Paul Stevens?

22 Who was a former clerk for conservatives Judge Laurence Silberman and Supreme Court Justice Antonin Scalia, and worked on John Kerry's and Barack Obama's presidential campaigns?

23 What international economic lawyer, novelist and former Canadian diplomat barged uninvited into University of Chicago seminars as a philosophy student, determined to hear Saul Bellow lecture?

24 Who banned laptops in her class, sings to her students, testified on the Hill, just quit playing softball at age 50 and came to NYU Law from its uptown rival?

25 What one-time biochemistry major has over 40 published articles and wrote the first casebook to include a hypothetical based on Martha Stewart's legal troubles?

26 Who broke up fights in a soup kitchen as a social worker, managed a state senator's reelection campaign and left a tax practice at Skadden, Arps for NYU?

27 Who ate in the White House kitchen during his childhood, and, before coming to NYU, had to find a new home for Reflector, his horse, as well as a brood of chickens?

NEW HIRES (2002-08)



Jennifer Arlen



Oren Bar-Gill



Rachel Barkow



Lily Batchelder



Stephen Choi



Kevin Davis



Cynthia Estlund



John Ferejohn



Moshe Halbertal



Roderick Hills Jr.



Robert Howse



Daniel Hulsebosch



Samuel Issacharoff



Mitchell Kane



Deborah Malamud



Florencia Marotta-Wurgler



Troy McKenzie



Arthur Miller



Smita Narula



Samuel Rascoff



Cristina Rodriguez



Margaret Satterthwaite



Samuel Scheffler



Catherine Sharkey



Jeremy Waldron



Katrina Wyman



Kenji Yoshino

- 1 Arthur Miller 2 Samuel Issacharoff 3 Florencia Marotta-Wurgler '01 4 Mitchell Kane 5 Katrina Wyman 6 Samuel Rascoff 7 Troy McKenzie '00
8 Daniel Hulsebosch 9 Jennifer Arlen '86 10 Samuel Scheffler 11 Margaret Satterthwaite '99 12 Kevin Davis 13 Oren Bar-Gill 14 Catherine Sharkey
15 Jeremy Waldron 16 Deborah Malamud 17 John Ferejohn 18 Moshe Halbertal 19 Moshe Halbertal 19 Moshe Halbertal 20 Cristina Rodriguez 21 Kenji Yoshino
22 Rachel Barkow 23 Robert Howse 24 Cynthia Estlund 25 Stephen Choi 26 Lily Batchelder 27 Roderick Hills Jr.

Visiting Faculty

ALBERT ALSCHULER

Albert Alschuler will teach criminal law during his Spring 2009 visit from Northwestern University School of Law. He also plans to work on two articles. The first, "The Exclusionary Rule and Causation," concerns the uncovering of evidence through unlawful searches, while "The Miranda Disaster" concerns the failure of Miranda rights to halt police interrogation abuses and recommends that the courts revisit the underlying issues that gave rise to Miranda rights in the first place. Alschuler will also engage in a long-term project concerning two common fallacies in legal thought that lawyers should guard against, and which argues that both empirical and moral knowledge hinge on perceived patterns in sensory experience.



Alschuler will also engage in a long-term project concerning two common fallacies in legal thought that lawyers should guard against, and which argues that both empirical and moral knowledge hinge on perceived patterns in sensory experience.

The author of *Law Without Values: The Life, Work and Legacy of Justice Holmes* (2000) and the coauthor of *The Privilege Against Self-Incrimination: Its Origins and Development* (1997), Alschuler has published articles in journals including the *Columbia Law Review*, the *Harvard Law Review*, the *Michigan Law Review*, the *Stanford Law Review* and the *Yale Law Journal*. He was the Julius Kreeger Professor of Law and Criminology at the University of Chicago, and has also taught at the University of Colorado Law School, the University of Pennsylvania Law School and the University of Texas School of Law.

Alschuler earned a J.D. from Harvard Law School, where he was case editor of the *Harvard Law Review*. He subsequently clerked for Justice Walter V. Schaefer of the Illinois Supreme Court, worked as special assistant to the assistant attorney general of the U.S. Department of Justice's Criminal Division, and was a Guggenheim Fellow. Alschuler has taught criminal law, criminal procedure, constitutional law, feminist legal theory and professional responsibility, among other subjects.

JOSÉ ALVAREZ

The Hamilton Fish Professor of International Law and Diplomacy as well as founder and executive director of the Center on Global Legal Problems at Columbia Law School, José Alvarez will teach Foreign Investment: Law and Policy and The United Nations and Other International Organizations while visiting NYU in Fall 2008.

The author of *International Organizations as Law-Makers* (2005), Alvarez has been published in journals including the *Columbia Law Review*, the *Duke Law Journal*, the *Michigan Law Review*, the *New York*



University Journal of International Law and Politics and the *Yale Journal of International Law*. Much of Alvarez's scholarship and teaching focuses on the post-World War II

turn to international institutions. He previously taught at the University of Michigan Law School, where he directed the Center for International and Comparative Law, and George Washington University Law School.

Alvarez earned a J.D. from Harvard Law School, where he was topics editor of the *Harvard International Law Journal*. He subsequently clerked for the late Judge Thomas Gibbs Gee of the U.S. Court of Appeals for the Fifth Circuit, and was an attorney at Shea & Gardner with an appellate litigation and administrative law practice before serving as an attorney adviser in the U.S. Department of State's Office of the Legal Adviser. Alvarez is currently president of the American Society of International Law, with which he has a longstanding involvement, and a member of the Council on Foreign Relations and the U.S. Department of State's Advisory Committee on Public International Law. He founded two public speaker series at Columbia Law School, one on public international law and the other on challenges in global governance, and has served on numerous boards and committees, including the advisory board of Columbia Law School's Human Rights Institute.

SARA SUN BEALE

Sara Sun Beale will teach Criminal Law when she visits NYU in Spring 2009 from Duke University, where she is the Charles L.B. Lowndes Professor of Law. Her scholarship encompasses the federal criminal justice system, federal procedural law, corporate criminal liability and the political and psychological forces influencing criminal justice policymaking.

Beale is the coauthor of *Federal Criminal Law and Its Enforcement* (2006, fourth edition), *Federal Criminal Law and Related Civil Actions: Forfeitures, the False Claim Act, and RICO* (1998) and *Grand Jury Law and Practice* (1997, second edition). She



has published articles in the *Columbia Law Review*, the *Duke Law Journal*, the *Fordham Law Review*, the *Michigan Law Review* and the *Texas Law Review*. Beale is the

reporter for the Judicial Conference Advisory Committee on Criminal Rules, and was also reporter for the Three Branch Working Group on the Principles to Govern the Federalization of Criminal Law, convened by then-Attorney General Janet Reno.

After earning her J.D. from the University of Michigan, Beale was an associate at Dykema, Gossett, Spencer, Goodnow & Trigg in Detroit. She subsequently clerked for Judge Wade H. McCree Jr. of the U.S. Court of Appeals for the Sixth Circuit, worked as an attorney adviser in the U.S. Department of Justice's Office of Legal Counsel and served as assistant to the Justice Department's solicitor general. Beale is past senior associate dean for academic affairs at Duke University School of Law.

BARTON BEEBE

A professor at Yeshiva University's Benjamin N. Cardozo School of Law, Barton Beebe will teach trademark law and the seminar Intellectual Property Law and Globalization during his Fall 2008 visit to NYU. He will also research copyright fair-use case law, write an essay on intellectual property law understood as a form of sumptuary law and study the concept of similarity in intellectual property law. Of the latter topic, Beebe says, "So much of intellectual property law turns on judges' assessments



of the latter topic, Beebe says, "So much of intellectual property law turns on judges' assessments

of similarity—is the defendant’s trademark or copyrighted work unduly similar to the plaintiff’s?—but the doctrine itself offers very little guidance on how judges should go about making these assessments.”

Beebe has been published in the *California Law Review*, the *Michigan Law Review*, the *Pennsylvania Law Review*, the *UCLA Law Review* and the *Yale Law Journal*. He has a Ph.D. in English from Princeton University and a J.D. from Yale Law School, where he was senior editor of the *Yale Law Journal*. After law school, Beebe clerked for Judge Denise Cote of the U.S. District Court of the Southern District of New York. He was a special master in the trademark case *Louis Vuitton Malletier v. Dooney & Bourke, Inc.* (2006). Beebe has taught trademark law and copyright law in addition to intellectual property and globalization.

ADAM COX

Adam Cox, an assistant professor at the University of Chicago Law School, will teach Immigration Law and the Rights of Non-citizens in Fall 2008. He will also work on a number of projects, including an empirical paper about the transformation of voting rights litigation as well as papers on the organizing principles of immigration law, immigrant voting rights and the institutional design of immigration law, and the role of the president in immigration law.

Cox has been published in the *California Law Review*, the *Columbia Law Review*, the *New York University Law Review*, the *Stanford Law Review*, the *University of Chicago Law Review* and the *Virginia Law Review*. After earning a J.D. from the University of Michigan Law School, where he graduated first in his class and was articles editor of the *Michigan Law Review*, Cox clerked for Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit. He was subsequently a Karparkin Civil Rights Fellow at the American Civil Liberties Union Foundation and an associate at Wilmer, Cutler & Pickering in New York.

MIHIR DESAI

Mihir Desai, professor at Harvard Business School, will research corporate taxation and governance, particularly the concept of recentering the corporate tax on public financial statements, while visiting NYU in Spring 2009. He will also be in residence in Fall 2008.

Desai is the author of *International Finance: A Casebook* (2006), and has published articles in the *Brookings Papers on Economic Activity*, the *Journal of Finance*, the *National Tax Journal*, the *Quarterly Journal of Economics* and the *Review of Financial Studies*, along with the *Financial Times*, the *Harvard Business Review* and the *Times of India*.

Desai is a research associate at the National Bureau of Economic Research, a nonprofit research organization, where he codirects the India Working Group. He was a financial analyst at CS First Boston.



He has testified before the U.S. Senate’s Committee on Homeland Security and Governmental Affairs, the U.S. House Committee

on Ways and Means, and the President’s Advisory Panel on Federal Tax Reform on the issues of tax treatment of stock options, the corporate tax, and taxation and global competitiveness. In his House testimony, Desai pointed out problems with the corporate taxation reporting system.

“While individuals are not faced with this perplexing choice of how to characterize their income depending on the audience,” he said, “corporations do find themselves in this curious situation. Dual books for accounting and tax purposes are standard in corporate America and, judging from recent analysis, are the province of much creative decision-making.”

Desai received an M.B.A. and a Ph.D. in political economy from Harvard University, and was a Fulbright Scholar in India.

RISA GOLUBOFF

While visiting NYU in Fall 2008, Risa Goluboff, a professor of law and history at the University of Virginia, will teach Constitutional Law and work on scholarship pertaining to the Supreme Court, vagrancy law and social movements in the 1950s, ’60s and ’70s. In addition to constitutional law, she teaches civil rights litigation and legal history.



The coeditor of *Civil Rights Stories* (2008) and the author of *The Lost Promise of Civil Rights* (2007), Goluboff has published articles in the *Duke Law Journal*, the *UCLA Law Review*, the *University of Pennsylvania Law Review* and the *University of Toledo*

Law Review. She clerked for Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit, and for Justice Stephen Breyer of the U.S. Supreme Court.

Goluboff received a J.D. from Yale Law School, where she was senior editor of the *Yale Law Journal*, and earned both an M.A. and a Ph.D. in history from Princeton University. As a Fulbright Scholar, she lectured in sociology at the University of Cape Town in South Africa, and won the Amy Biehl Fulbright Award as the highest-ranked Fulbright Scholar in Africa. In a 2007 article in the *Virginia Journal*, Goluboff said, “Teaching law students about constitutional law and civil rights gives me an opportunity to shape their understanding not only of the law but also of the relationship between the law and larger political and social questions.”

KRISTIN HENNING

Kristin Henning is an associate professor and deputy director of the Juvenile Justice Clinic at Georgetown University Law Center. When she visits NYU in Spring 2009, she will coteach the Juvenile Defender Clinic with Professor Randy Hertz, and Civil Litigation with Professor Paula Galowitz.

Henning was previously the lead attorney of the Public Defender Service for the District of Columbia’s Juvenile Unit. She serves on the oversight and advisory committees of the D.C. Department of Youth Rehabilitation Services, as well as the boards and committees of several family and juvenile law organizations. She has published articles in the *California Law Review*, the *Nevada Law Journal*, the *New York University Law Review* and the *Notre Dame Law Review*.

The recipient of the 2008 Shanara Gilbert Award from the Association of American Law Schools’ Section on Clinical Legal Education, which honors emerging clinicians, Henning traveled to Liberia in 2006 and 2007 in coordination with the American Bar Association and the United Nations Children’s Fund on a juvenile justice reform mission. Henning earned a J.D. from Yale Law School and an LL.M. from Georgetown. “In my work, I have met many wonderful young people who make poor decisions in response to very challenging life circumstances,” says Henning. “Few—if any—of these children are hardened criminals who cannot be rehabilitated. I hope to make a difference in the lives of many of these youth.”



MICHAEL PINARD

A professor at the University of Maryland School of Law, Michael Pinard '94 will teach the Offender Reentry Clinic when he visits NYU during the 2008-09 academic year. He will also work on an article comparing the collateral consequences of criminal convictions and the reentry of formerly incarcerated individuals in the United States to the experience of former prisoners in England, Canada and South Africa. Another article-in-progress argues that judges should consider the effects of sentences on a defendant's family and community.

Pinard has published articles in the *Arizona Law Review*, the *Boston University Law Review*, the *Connecticut Law Review*, the *Nevada Law Journal* and the *New York University Review of Law & Social Change*. He is coeditor-in-chief of the *Clinical Law Review*



and president of the Clinical Legal Education Association. Pinard was a Robert M. Cover Clinical Teaching Fellow at Yale Law School, taught at St. John's University School of

Law, and worked as a staff attorney at the Office of the Appellate Defender and the Neighborhood Defender Service of Harlem, both in New York City.

Pinard serves on the executive committee of the Public Justice Center in Baltimore, the advisory committees of John Jay College of Criminal Justice's Prisoner Reentry Institute in New York City and the Maryland Reentry Partnership in Baltimore, and the board of directors of the Jobs Opportunities Task Force in Baltimore. He earned a J.D. from the NYU School of Law, and received the Shanara Gilbert Award for emerging clinicians in 2006 from the Association of American Law Schools' Section on Clinical Legal Education.

ERIC POSNER

Eric Posner, the Kirkland & Ellis Professor of Law at the University of Chicago, will teach Contracts during his Fall 2008 visit, and also work on a book concerning the legal ramifications of climate change, an empirical project on state judiciary quality in collaboration with Professor Stephen Choi, and a project on evolving constitutional law.

Posner is the author of *The Recurrent Illusion: Global Legalism and International Relations* (2009, forthcoming) and *Law and Social Norms* (2000); coauthor of *Climate Change Justice* (2009, forthcoming),

Terror in the Balance: Security, Liberty and the Courts (2007), *New Foundations of Cost-Benefit Analysis* (2006) and *The Limits of International Law* (2005); editor of *Social Norms, Non-legal Sanctions, and the Law* (2007) and *Chicago Lectures in Law and Economics* (2000), and coeditor of *Cost-Benefit Analysis: Legal, Philosophical, and Economic Perspectives* (2001). He has been published in the *Columbia Law Review*, the *Harvard Law Review*, the *Michigan Law Review*, the *Stanford Law Review* and the *Yale Law Journal*. He also is the editor of the *Journal of Legal Studies*.



After earning a J.D. from Harvard Law School and an M.A. in philosophy from Yale University, Posner clerked for Judge Stephen F. Williams of the U.S. Court of Appeals for the District of Columbia Circuit. He subsequently served as an attorney adviser in the U.S. Department of Justice's Office of Legal Counsel and taught at the University of Pennsylvania Law School. Posner testified before the U.S. House of Representatives' Committee on the Judiciary concerning the Bankruptcy Reform Act of 1999.

R. ANTHONY REESE

R. Anthony Reese, the Arnold, White & Durkee Centennial Professor of Law at the University of Texas at Austin, will visit the NYU School of Law in Spring 2009 to teach Copyright Law.

Reese has published articles in the *Journal of World Intellectual Property*, the *Stanford Law Review* and the *Texas Law Review*, among other publications. He is the coauthor, with Paul Goldstein, of the new edition of *Copyright, Patent, Trademark and Related State Doctrines* (2008, sixth edition), and coauthor as well of the casebook *Internet Commerce: The Emerging Legal Framework* (2006). He has recently joined Jane Ginsburg and Robert Gorman as coauthor of their casebook *Copyright* (2007, seventh edition).

Before law school, Reese taught English for the Yale-China Association in Tianjin and Hunan. He earned his J.D. from Stanford Law School and clerked for Judge Betty B. Fletcher of the U.S. Court of Appeals for the Ninth Circuit. He also worked as an



associate at Morrison & Foerster in San Francisco, and continues to serve as special counsel to the firm.

RICHARD SCHRAGGER

When he visits NYU in Fall 2008, Richard Schragger, the Class of 1948 Professor in Scholarly Research in Law at the University



of Virginia School of Law, will teach Property and work on projects concerning federalism, urban economic development and the constitutional and economic status of cities—including a paper on municipal efforts to control, regulate and redistribute mobile capital.

Schragger has published articles in the *Harvard Law Review*, the *Journal of Law & Politics*, the *Michigan Law Review*, the *Virginia Law Review* and the *Yale Law Journal*. He was an associate at Miller, Cassidy, Larroca & Lewin in Washington, D.C. Schragger earned an M.A. in legal and political theory from University College London. After receiving a J.D. from Harvard Law School, where he was supervising editor of the *Harvard Law Review*, Schragger clerked for Chief Judge Dolores Sloviter of the U.S. Court of Appeals for the Third Circuit. His teaching interests include local government law, land use, urban law and policy, constitutional law and church and state.

CHRISTOPHER SERKIN

Christopher Serkin will teach a course on land use and coteach the Colloquium on the Law, Economics and Politics of Urban Affairs when he visits the NYU School of Law in Spring 2009 from Brooklyn Law School, where he is an associate professor. He also plans to work on a number of articles as part of a project concerning the constitutional protection of private property, including the question of why current uses of property receive stronger protections than potential future uses as well as the effect of those protections on the investment incentives of property owners.

Serkin has been published in the *Columbia Law Review*, the *Indiana Law Review*, the *Michigan Law Review*, the *Michigan State Law Review*, the *New York University Law Review* and the *Northwestern University*



Law Review. He worked as a litigation associate at Davis Polk & Wardwell in New York, and was subsequently an acting assistant professor in the NYU School of Law's Lawyering Program.

After receiving a J.D. magna cum laude from the University of Michigan Law School, where he was articles editor of the *Michigan Law Review*, Serkin clerked for Judge J. Garvan Murtha of the U.S. District Court for the District of Vermont, and Judge John M. Walker Jr. of the U.S. Court of Appeals for the Second Circuit. At Brooklyn Law School he has taught in the areas of property, land use, and trusts and estates.

HOWARD SHELANSKI

During his Spring 2009 visit to the NYU School of Law, Howard Shelanski, a professor and associate dean at the University of California, Berkeley, School of Law and an affiliated faculty member of Berkeley's Haas School of Business, will teach antitrust law and a seminar on antitrust in high technology markets. Shelanski, who is codirector of the Berkeley Center for Law and Technology, also plans to spend time working on a book concerning the current debate over how merger enforcement should proceed in industries that are characterized by rapid technological change, and an article on the relationship between antitrust enforcement and industrial regulation.



Shelanski is the coauthor of *Antitrust Law, Policy, and Procedure: Cases, Materials, Problems* (2008, sixth edition, forthcoming) and coeditor of *Antitrust and Regulation in the EU and US* (2008, forthcoming). He has also published articles in the *Berkeley Technology Law Journal*, the *California Law Review*, the *Columbia Law Review*, the *University of Chicago Law Review* and the *Yale Journal on Regulation*, among other publications.

Shelanski has served as chief economist at the Federal Communications Commission and senior economist on the President's Council of Economic Advisers. He was previously working as an associate with a telecommunications, antitrust and general litigation practice at Kellogg, Huber, Hansen, Todd & Evans in Washington, D.C. After receiving an M.A. and Ph.D. in economics and a J.D. from the University of California, Berkeley, Shelanski clerked for Judge Stephen F. Williams of the U.S. Court of Appeals for the District of Columbia

Circuit, Judge Louis H. Pollak of the U.S. District Court for the Eastern District of Pennsylvania, and Justice Antonin Scalia of the U.S. Supreme Court.

PHILIP WEISER

Philip Weiser '94 will teach Telecommunications Law and Policy as well as the Law and Innovation seminar when he visits in Fall 2008. At the University of Colorado Law School, Weiser is associate dean for research, and founder and executive director of Silicon Flatirons Center for Law, Technology, and Entrepreneurship, which focuses on technology policy issues



and technology law. He specializes in antitrust law, constitutional law, intellectual property, Internet law and telecommunications law. While at NYU, Weiser plans to work on a scholarly project tentatively titled "Ending the Reign of Lawlessness and Disorder at the FCC," examining alternative institutional strategies for telecommunications regulation in the Internet age. "The project will focus on the defects in the Federal Communications Commission's current management of its notice and comment rulemaking processes," says Weiser, "highlighting both how it undermines rule of law values and is ill suited to regulating an increasingly dynamic technological environment." He will also serve as interim director of NYU's Information Law Institute.

Weiser is the coauthor of *Telecommunications Law and Policy* (2006, second edition) and *Digital Crossroads: American Telecommunications Policy in the Internet Age* (2005). He has published articles in journals such as the *Columbia Law Review*, the *Fordham Law Review*, the *Michigan Law Review*, the *New York University Law Review* and the *Texas Law Review*.

He has been senior counsel to the assistant attorney general of the U.S. Department of Justice's Antitrust Division, and testified before the U.S. Senate Committee on Commerce, Science and Transportation; the Federal Trade Commission; and the U.S. House of Representatives Committee on Energy and Commerce. He also served as special master to the Colorado Public Utilities Commission.

Weiser received a J.D. from NYU Law, and subsequently clerked for U.S. Supreme Court justices Byron R. White and Ruth Bader Ginsburg.

Multi-year Returning Faculty

ALAN AUERBACH

Alan Auerbach is the Robert D. Burch Professor of Economics and Law at the University of California, Berkeley, where he directs the Burch Center for Tax Policy and Public Finance. He will coteach the Tax Policy Colloquium with Professor Daniel Shaviro when he visits the NYU School of Law in Spring 2009, and also plans to continue his research in corporate taxation, budget rules and their design, capital gains taxation and unfunded social security systems.

Auerbach is a research associate at the National Bureau of Economic Research, and was deputy chief of staff of the U.S. Joint Committee on Taxation. He has taught economics at Harvard University and at the University of Pennsylvania, where he chaired the economics department; he also chaired that department at Berkeley.

A former member of the U.S. Congressional Budget Office's Panel of Economic Advisors and the U.S. Joint Committee on Taxation's Blue Ribbon Advisory Panel on Dynamic Scoring, Auerbach currently serves on the International Tax Policy Forum's Board of Academic Advisors and the Advisory Committee of the U.S. Department of Commerce's Bureau of Economic Analysis. He was editor of the *Journal of Economic Perspectives* and now edits the *American Economic Journal: Economic Policy*, both publications of the American Economic Association, of which he has been vice president.

Auerbach has edited, coedited and coauthored numerous books, including *Institutional Foundations of Public Finance: Economic and Legal Perspectives* (2009, forthcoming), *Taxing Corporate Income in the 21st Century* (2007) and *Macroeconomics: An Integrated Approach* (1998, second edition). He has published articles in the *American Economic Review*, the *Brookings Papers on Economic Activity*, the *Harvard Business Review*, the *Harvard Law Review* and the *National Tax Journal*.

A Ph.D. graduate in economics from Harvard University, Auerbach has consulted for the Congressional Budget Office, the International Monetary Fund, the New Zealand Treasury, the Organisation for



Economic Co-operation and Development, the Ministry of Finance, the U.S. Treasury, the World Bank and other organizations.

SIR JOHN BAKER

A leading authority on the development of English legal institutions, Sir John Baker will teach a course on the legal history of England in Fall 2008. He is the Downing Professor of the Laws of England at Cambridge University.



In addition to his appointment as a Senior Golieb Fellow at the Law School, Sir John has also been a Hauser Global Law professor, a fellow of the British Academy and a fellow of St. Catharine's College, Cambridge University.

The author of more than 25 books and 100 articles, Sir John is the general editor of the *Oxford History of the Laws of England* and the *Cambridge Studies in English Legal History*. He has held positions at Yale and Harvard law schools, the Huntington Library, the University of Oxford and the European University Institute in Florence. He was knighted in June 2003 for his significant contributions to the study of English legal history. Sir John holds an LL.B. and Ph.D. from University College London, and an M.A. and LL.D. from Cambridge.

CHARLES CAMERON

Charles Cameron, a prize-winning scholar of American politics, returns to the NYU School of Law from Princeton University, where he is a professor of politics and public affairs. Cameron will visit the Law School during the 2008-09 academic year; in Spring 2009 he will teach Political Environment of the Law.

Cameron's research focuses on political institutions and policymaking, and his writing has appeared in journals of political science, economics and law. His recent work includes game theoretic models of bargaining on collegial courts and a formal theory of judicial federalism, as well as empirical analyses of the "macropolitics" of the U.S. Supreme Court; the effects of race and gender diversity on decision-making in the U.S. Courts of Appeals; and lower-court compliance with Supreme Court decisions.



He is also writing a book on the politics of Supreme Court nominations.

Before joining the Princeton faculty, Cameron served as director of the M.P.A. program at Columbia University's School of International and Public Affairs, where he was a tenured professor in the Department of Political Science. Cameron holds an M.P.A. and a Ph.D. from Princeton's Woodrow Wilson School of Public and International Affairs.

RICHARD EPSTEIN

Richard Epstein, who will make his fourth visit to campus in Fall 2008, is known for his research and writings on a broad range of constitutional, economic, historical and philosophical subjects. At the University of Chicago Law School, where he is the James Parker Hall Distinguished Service Professor of Law, he has taught antitrust, communications, constitutional, criminal, health, labor and Roman law; contracts; jurisprudence; patents; property, and torts, to name a few subjects. He will teach Torts during his visit to the Law School.



Epstein is the Peter and Kirstin Bedford Senior Fellow at Stanford University's Hoover Institution on War, Revolution and Peace. A former editor of the *Journal of Law and Economics* and the *Journal of Legal Studies*, he now directs Chicago's John M. Olin Program in Law and Economics. Among his books are *Overdose: How Excessive Government Regulation Stifles Pharmaceutical Innovation* (2006), *How Progressives Rewrote the Constitution* (2006) and *Supreme Neglect: How to Revive Constitutional Protection for Private Property* (2008). Epstein earned an LL.B. from Yale University.

DANIEL RUBINFELD

Daniel Rubinfeld, the Robert L. Bridges Professor of Law and Professor of Economics at the University of California, Berkeley, will return in Fall 2008 for his seventh visit to NYU. Rubinfeld will be teaching Quantitative Methods and Antitrust Law and Economics.

A leading law and economics scholar, Rubinfeld has written articles on antitrust and competition policy, law and economics, and the political economy of federalism. He has also cowritten two economics textbooks with M.I.T. professor Robert Pindyck, *Microeconomics* (2008, seventh edition)

and *Econometric Models and Economic Forecasts* (2000, fourth edition). Rubinfeld is a former deputy assistant attorney for the



Antitrust Division of the U.S. Department of Justice, a past president of the American Law and Economics Association, and a fellow of the American Academy of Arts and Sciences and the National Bureau of Economic Research. He has both an M.S. and a Ph.D. in economics from M.I.T.

PETER SCHUCK

During his Spring 2009 visit to NYU, Peter Schuck (LL.M. '66) will teach advanced torts and the seminar Groups, Diversity and Law. He will also conduct research on topics including student suspensions from the New York City school system and the law and politics of inefficiency.

The Simeon E. Baldwin Professor of Law and former deputy dean at Yale Law School, Schuck is the author, coauthor, editor or coeditor of numerous books, including *Understanding America: The Anatomy of an Exceptional Nation* (2008), *Targeting in Social Programs: Avoiding Bad Bets, Removing Bad Apples* (2006), *Meditations of a Militant Moderate: Cool Views on Hot Topics* (2006), *Foundations of Administrative Law* (2004, second edition), *Diversity in America: Keeping Government at a Safe Distance* (2003), *Citizens, Strangers, and In-Betweens: Essays on Immigration and Citizenship* (1998), *Tort Law and the Public Interest: Competition, Innovation, and Consumer Welfare* (1991) and *Agent Orange on Trial: Mass Toxic Disasters in the Courts* (1987). He has published articles in journals including the *Columbia Law Review*, the *Fordham Law Review*, the *Michigan Law Review*, the *Stanford Law Review* and the *Yale Law Journal*.



Schuck earned a J.D. from Harvard Law School, an LL.M. from NYU and an M.A. in government from Harvard University, and has had Guggenheim and Fulbright fellowships. After practicing law privately in New York City, he served as director of Consumers Union's Washington office and as principal deputy assistant secretary for planning and evaluation in the U.S. Department of Health, Education, and Welfare.

Schuck earned a J.D. from Harvard Law School, an LL.M. from NYU and an M.A. in government from Harvard University, and has had Guggenheim and Fulbright fellowships. After practicing law privately in New York City, he served as director of Consumers Union's Washington office and as principal deputy assistant secretary for planning and evaluation in the U.S. Department of Health, Education, and Welfare.

GEOFFREY STONE

Geoffrey Stone, who will visit for the seventh time in Fall 2008, will teach First Amendment Rights of Expression and Association. Stone is the Edward H. Levi Distinguished Service Professor at the University of Chicago Law School, where he earned his J.D. After clerking for Judge J. Skelly Wright of the U.S. Court of Appeals for the District of



Columbia Circuit and Justice William J. Brennan Jr. of the U.S. Supreme Court, he returned to his alma mater as a professor before serving as dean and then provost. A preeminent First Amendment scholar, Stone wrote about the effects of war on the First Amendment in *Perilous Times* (2004), which received the *Los Angeles Times* Book Award and the Robert F. Kennedy National Book Award. His most recent books are *War and Liberty* (2007) and *Top Secret* (2007).

Alexander Fellow

ALISON NATHAN

Alison Nathan's primary research project as a 2008-09 Alexander Fellow will explore the interest in "finality" as a key procedural value in American procedural law. She will also work on an article concerning "procedural, historical, sociological and structural factors that have led to a failure of the democratic deliberative process regarding the humaneness of lethal injection as it is pervasively practiced in a majority of death penalty states."

Nathan earned a B.A. in philosophy and women's studies from Cornell University, and graduated magna cum laude from



Cornell Law School, where she was editor-in-chief of the *Cornell Law Review* and a member of Order of the Coif. She clerked for Judge Betty Binns Fletcher of the U.S. Court of Appeals for the Ninth Circuit, and for Justice John Paul Stevens of the U.S. Supreme Court. As an associate at Wilmer Cutler Pickering Hale and Dorr in Washington, D.C., she was a key member of the appellate and Supreme Court litigation groups, and represented death-row inmates in federal habeas corpus litigation in her pro bono practice. While on leave in 2004, Nathan worked as assistant national counsel to the Kerry-Edwards pres-

idential campaign, coordinating a national voter protection program and serving on the vice presidential selection vetting team.

Upon leaving private practice, Nathan was a visiting assistant professor at Fordham Law School, where she taught first-year civil procedure and a capital punishment seminar and served as faculty advisor to the Fordham Law Death Penalty Project. In that capacity, she authored an amicus brief that was cited in Chief Justice John Roberts's plurality opinion in the lethal injection case *Baze v. Rees*. Nathan recently coordinated primary voter protection programs in several states for Barack Obama's presidential campaign.

Judicial Fellow

JUDGE ALBERT ROSENBLATT

Judge Albert Rosenblatt will visit NYU as a Judicial Fellow in the 2008-09 academic year. He will be teaching the State Courts and Appellate Advocacy Seminar both semesters, and working with the Law School's Dwight D. Opperman Institute for Judicial Administration.

Now retired from the New York State Court of Appeals, Rosenblatt has had a distinguished career as a New York State Supreme Court justice; an associate justice of the New York State Supreme Court's Appellate Division, Second Department; chief administrative judge of New York State courts; and both a county judge and district attorney in Dutchess County, New York. He was also a visiting judge at the Harvard Law School Trial Advocacy Workshop, a faculty member of the New York State Judicial Training Seminars, and a course presenter in the Newly Elected Judges Education Program in New York City.

Rosenblatt's books include *The Judges of the New York Court of Appeals: A Biographical History* (2007) and *New York's New Drug Laws and Sentencing Statutes* (1973). He has been published in the *Albany Law Review*, the *Cardozo Law Review*, the *New York Law Journal* and the *Washington University Law Quarterly*, and has served five times as an issue coeditor of the *New York State Bar Journal* with New York State Chief Judge Judith S. Kaye '62.

Looking back on the many cases he has judged over the years, Rosenblatt, a Harvard Law graduate, says, "The ones I most enjoyed writing up were those in which I



had to uncover the historical underpinnings, in some instances back to common law or other historical origins that helped explain things." These cases touched on issues as diverse as organ donation, worker safety, maternal rights, duty of innkeepers to guests and termination of life support.

Rosenblatt is currently counsel at McCabe & Mack in Poughkeepsie. He is also president and a charter trustee of the Historical Society of the Courts of the State of New York, as well as a fellow of the New York Bar Foundation. He has judged moot court competitions, served on various legal committees and received numerous awards.

Global Visiting Professors of Law

BINA AGARWAL

A professor at the University of Delhi's Institute of Economic Growth, Bina Agarwal has written eight books and numerous papers on subjects ranging from land and property rights to agriculture and technological change and the political economy of gender. Her research is steeped in interdisciplinary and intercountry explorations. Agarwal has been vice president of the International Economic Association and president of the International Association for Feminist Economics, and currently



serves on the United Nations Economic and Social Council's Committee for Development Policy and the Indian Prime Minister's National Council for Land Reforms. She holds an honorary doctorate from the Institute of Social Studies at The Hague. This year she received the Padma Shri, one of the highest civilian honors conferred by the Indian government. She is now completing a book on environmental governance and gender.

EYAL BENVENISTI

Eyal Benvenisti is Anny and Paul Yanowicz Professor of Human Rights at Tel Aviv University Faculty of Law. Benvenisti's teaching and research specialties include constitutional law, international law, human rights and administrative law. He was previously director of the Cegla Center for Interdisciplinary Research at Tel Aviv University, Hersch Lauterpacht Professor of International Law at the Hebrew

University of Jerusalem Faculty of Law and director of the Minerva Center for Human Rights. A former law clerk to Justice M. Ben-Porat of the Supreme Court of Israel, Ben-



venisti received his legal training at the Hebrew University of Jerusalem and Yale Law School. He has been a visiting professor at leading law schools in the United States,

and a visiting fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany. He has written or edited eight books, and published many articles in prominent journals.

SUJIT CHOUDHRY

Sujit Choudhry holds the Scholl Chair and is associate dean at the University of Toronto's Faculty of Law. His research and teaching are focused on constitutional theory and comparative constitutional law. Choudhry has published more than 50 arti-



cles, book chapters and reports, and is currently writing a book titled *Rethinking Comparative Constitutional Law*. The editor of *Constitutional Design for Divided Soci-*

eties: Integration or Accommodation (2008) and *The Migration of Constitutional Ideas* (2007) and coeditor of *Dilemmas of Solidarity: Rethinking Redistribution in the Canadian Federation* (2006), Choudhry is also the symposium editor of the *International Journal of Constitutional Law*. Extensively involved in public policy development, Choudhry has consulted for the United Nations Development Program, the World Bank Institute and the Royal Commission on the Future of Health Care in Canada, among other organizations and government entities.

DAVID DYZENHAUS

A professor of law and philosophy as well as associate dean of Faculty of Law graduate studies at the University of Toronto, David Dyzenhaus previously taught at Queen's University Faculty of Law. He is the author of *Judging the Judges, Judging Ourselves: Truth, Reconciliation and the Apartheid Legal Order* (1998), *Legality and Legitimacy: Carl Schmitt, Hans Kelsen, and Hermann Heller in Weimar* (1997) and *Hard Cases in*

Wicked Legal Systems: South African Law in the Perspective of Legal Philosophy (1991); the editor of *Recrafting the Rule of Law:*



The Limits of Legal Order (1999) and *Law as Politics: Carl Schmitt's Critique of Liberalism* (1998), and a coeditor of *Law and Morality: Readings in Legal Philosophy* (2007,

third edition). Dyzenhaus has taught in South Africa, England and Canada, and is a fellow of the Royal Society of Canada.

ANNETTE KUR

Annette Kur is a senior member of the research staff and unit head at the Max Planck Institute for Intellectual Property, Competition and Tax Law in Munich, and an associate professor at the University of Stockholm. She serves as president of the International Association for the Advancement of Teaching and Research in Intellectual Property, and has advised the American Law Institute's project Intellectual Property: Principles Governing Juris-



diction, Choice of Law, and Judgments in Transnational Disputes. Kur has lectured on trademark law, intellectual property law and private international law at Munich

University and the Munich Intellectual Property Law Center. Kur is a member of the foreign faculty at Santa Clara University and the author of books and numerous articles in the fields of national, European and international trademark, international jurisdiction, and unfair competition and industrial design law.

YORAM MARGALIOTH

Yoram Margalioth (LL.M. '95, J.S.D. '97), a professor of law at Tel Aviv University, teaches tax, tax policy, welfare and economic growth policies, and supervises the Micro-business and Economic Justice Clinical Program. His areas of research include optimal tax and transfer systems, international taxation, tax and development, economic growth, social security and pension law, racial profiling, antidis-



crimination, affirmative action, antiterror, family taxation, fertility and childcare, environmental taxation, mandated benefits and labor economics. Margalioth holds an LL.B. from Hebrew University, and an LL.M. in taxation and a J.S.D. from NYU School of Law. He has clerked for Justice Shoshana Nethanyahu of the Supreme Court of Israel; has served as deputy director of Harvard University's International Tax Program, teaching Tax and Development; and has visited Northwestern University, teaching Tax Policy.

ZIBA MIR-HOSSEINI

Ziba Mir-Hosseini is an independent consultant, researcher and writer on Middle Eastern issues, specializing in gender, family relations, Islamic law and development. A senior research associate at the School of Oriental and African Studies' London Middle Eastern Institute at the Univer-



sity of London, she obtained her Ph.D. in social anthropology from the University of Cambridge. She has held numerous research fellowships and visiting professor-

ships. Mir-Hosseini's publications include the monographs *Marriage on Trial: A Study of Islamic Family Law in Iran and Morocco* (2001, revised edition), *Islam and Gender: The Religious Debate in Contemporary Iran* (1999), and (with Richard Tapper) *Islam and Democracy in Iran: Eshkevari and the Quest for Reform* (2006). She has also directed (with Kim Longinotto) two award-winning feature-length documentary films on contemporary issues in Iran: *Divorce Iranian Style* (1998) and *Runaway* (2001).

TUNDE OGOWEWO

A professor at King's College London, University of London, Tunde Ogowewo teaches



corporate finance law, corporate governance and mergers and acquisitions law, and is recognized as a leading expert on U.K. takeover law. Ogowewo has written three

books and numerous articles, has been coeditor of the *Journal of African Law*, and serves on the editorial boards of the *African Journal of International and Comparative Law* and the *Securities Market Journal*. He has been cited in numerous legal cases.

Ogowewo has consulted for the U.K. Prime Minister's Strategy Unit, the Presidency of Nigeria, the Queen's Proctor and the Commonwealth Secretariat. In 2003 he cochaired an international conference of legal experts in association with the U.S. Department of Commerce, leading to the adoption of the *Model Law on Investment in Africa*. Ogowewo belongs to the U.K.'s Chartered Institute of Arbitrators.

SHARON RABIN-MARGALIOTH

Sharon Rabin-Margalioth (LL.M. '96, J.S.D. '97), a top Israeli scholar in the areas of labor and employment law, teaches at the Interdisciplinary Center's Radzyner School of Law in Israel. In her scholarship, Rabin-Margalioth has examined a wide range of legal issues, including the decline of union-



ization, employment class actions, the growth of the contingent workforce and the implications of various antidiscrimination and accommodation mandates. Her

articles are frequently cited by the Israeli Supreme Court and the National Labor Court. Rabin-Margalioth, a former clerk to Justice Gabriel Bach of the Israeli Supreme Court, earned an LL.B. from Hebrew University, and an LL.M. and a J.S.D. from the NYU School of Law. She is the coeditor of *Labor, Society and Law*, a leading employment law journal in Israel.

WOLFGANG SCHÖN

Wolfgang Schön, managing director in the Max Planck Institute for Intellectual Property, Competition and Tax Law's Department of Accounting and Tax and a professor at Ludwig Maximilians University of Munich, is an expert in private law, trade and corporate law, accounting law and fiscal law. He is



chair of the German Law Professors' Working Group on Accounting Law as well as of the German Tax Law Association's Scientific Council; an international research fellow at the University of Oxford's Center for Business Taxation; a member of the French Institute for Tax Policy's Scientific Committee as well as the International Fiscal Association's Permanent Scientific Committee, and the managing editor of *Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht*,

the oldest German-language journal on commercial and corporate law. Schön has delivered the David R. Tillinghast Lecture on International Taxation at the NYU School of Law and has been the Anton Philips Professor at Tilburg University's Center for Company Law in the Netherlands.

ROGER VAN DEN BERGH

Roger Van den Bergh is the director of Erasmus University Rotterdam's Rotterdam Institute of Law and Economics (RILE).



Prior to his current position as a professor of law and economics at RILE, he held positions as an associate professor at the University of Antwerp and as a professor at the University of Hamburg and Utrecht University. Van den Bergh has been a visiting professor at many universities. From 1987 until 2001 he was the president of the European Association of Law and Economics. Since 2000 he has been the coordinator of the European Master in Law and Economics program. Van den Bergh's publications cover a wide range of topics in law and economics. He has published extensively in both books and leading journals on competition law and economics, European law and economics, tort law and insurance, and harmonization of laws. Van den Bergh is a member of the editorial board of several scientific journals, including the *Journal of Consumer Policy* and the *Review of Law & Economics*.

VINCENZO VARANO

A professor at the University of Florence Faculty of Law, where he was also a dean, Vincenzo Varano is a prominent European comparative lawyer. His main research interests include comparative methodology and comparative civil procedure, and he has written extensively on the subject of civil justice. Varano is



coauthor of *Civil Litigation in Comparative Context* (2007), and the editor of *L'altra giustizia: I metodi alternativi di soluzione delle controversie nel diritto comparato* (2007) and *The Reforms of Civil Procedure in Comparative Perspective* (2005). He has also written dozens of articles in Italian and English. A member of the editorial board of the *Rivista di diritto civile*, a former member

of the Italian Association of Comparative Law's steering committee, and director or codirector of several publication series, Varano is also the director of the University of Florence's Ph.D. program in comparative law. He has been a visiting professor at institutions including Brooklyn Law School, Cornell Law School, the European University Institute and Northwestern University School of Law.

ARMIN VON BOGDANDY

Armin von Bogdandy is the director of the Max Planck Institute for Comparative Public Law and International Law and a professor of law at the University of Heidelberg, Germany. Von Bogdandy also teaches at the University of Frankfurt. Previously, he taught at the Humboldt University in Berlin.



After completing his studies in law at the University of Freiburg and philosophy at the Free University of Berlin, von Bogdandy earned a doctorate in law from the University of Freiburg. In 2001, he was appointed to the bench of the OECD Nuclear Energy Tribunal, Paris, and became its president in 2006. Von Bogdandy served as a member of the German Science Council from 2005 to 2008, and is currently a member of the Scientific Committee of the European Union Agency for Fundamental Rights.

University of Freiburg and philosophy at the Free University of Berlin, von Bogdandy earned a doctorate in law from the University of Freiburg. In 2001, he was appointed to the bench of the OECD Nuclear Energy Tribunal, Paris, and became its president in 2006. Von Bogdandy served as a member of the German Science Council from 2005 to 2008, and is currently a member of the Scientific Committee of the European Union Agency for Fundamental Rights.

HE XIN

An assistant professor at the City University of Hong Kong's School of Law, He Xin earned his LL.B. and LL.M. from Peking University, and his J.S.M. and J.S.D. from



Stanford Law School, where he was an Asia-Pacific Scholar; he was also a Hauser Research Scholar at the NYU School of Law. He has published widely in the fields of the Chinese

legal system and law and society. Most recently his work has appeared in journals such as the *American Journal of Comparative Law* (forthcoming), the *China Quarterly*, the *International Journal of Law in Context*, the *International Journal of Law, Policy and the Family* (forthcoming) and the *Law & Society Review*. His research interests include legal enforcement, law and court, law in transition economies and property law.

The Environment and Economics Aren't at Odds

RICHARD L. REVESZ

This op-ed originally appeared June 10, 2008 on *Forbes.com*. Reprinted by permission of *Forbes.com*. © 2008 *Forbes.com*.

AS THE PRESIDENTIAL RACE continues to unfold, John McCain and Barack Obama have explained their positions on a range of environmental issues from climate change to drilling in the Arctic National Wildlife Refuge, but they have said little about one of the most hotly contested questions in environmental policy.

Should cost-benefit analysis play a role when creating environmental standards?

In a case the Supreme Court is slated to hear just after the presidential election, *Entergy Corp. v. EPA*, the New Orleans-based utility company is challenging a 2007 federal appeals court decision that struck down a set of industry-friendly water regulations adopted by the Bush Administration. Power companies support these Clean Water Act rules because they do not require the installation of expensive “closed cycle cooling” systems that would reduce the killing each year of billions of fish and other aquatic wildlife. In federal court, environmental groups, along with six northeastern states, had successfully opposed the Environmental Protection Agency’s use of cost-benefit analysis to justify the new regulations.

It’s a familiar dance, one in which I took part back in 2001, when the Supreme Court considered similar questions in *Whitman v. American Trucking Associations*. In that case, I wrote the amicus brief for the Environmental Defense Fund and dozens of other environmental organizations, arguing that the Clean Air Act prohibited the agency from considering costs when setting key air quality standards.

As before, the challenge in the *Entergy* case will rest on arcane rules of statutory construction—what exactly does the Clean Water Act say, and what did Congress intend when it passed this law in 1972? It may well be that the Supreme Court decides in the environmentalists’ favor, as it did unanimously in 2001, that cost-benefit analysis cannot be used.

But no matter what the Supreme Court rules in this case, these groups will be on

the losing side in the larger battle for a cleaner environment if they don’t adopt a new strategy outside the courtroom.

History has proved that cost-benefit analysis is not going away, even if environmental groups manage to rack up a few legal victories here and there. In most cases, cost-benefit analysis is required by Executive Orders that have been in place since 1981, with only minor modifications, under both Democratic and Republican administrations. Further, with the country in the midst of an economic slowdown, environmental groups and policymakers will find it difficult, if not impossible, to muster public support for tough environmental standards if they can’t prove these policies make economic sense.

It’s easy to understand why most environmental groups and policymakers who care about the environment have opposed cost-benefit analysis. In researching our book, my co-author Michael Livermore and I spent three years studying how cost-benefit analysis has been used—and abused—in environmental law. We found that the methodologies used to count the costs and benefits of environmental policies have been largely shaped by anti-regulatory academics and interest groups representing industrial polluters and are thus systematically biased against good regulation.

The problem is that environmentalists have fought to end, rather than mend, cost-benefit analysis and in the process have lost valuable opportunities for reform.

During the Clinton years, I served on an Environmental Protection Agency advisory committee that was helping to write the rules for how cost-benefit analysis should be conducted. I saw first-hand how effective industry groups were at making their voices heard—and how environmental groups were absent from these discussions. Reluctant to be seen as endorsing cost-benefit analysis, they essentially boycotted the process and lost the ability to influence policy at a time when there was a sympathetic ear in the White House.

The result: methodologies for conducting cost-benefit analysis that are inconsistent with economic theory and empirical evidence—and inherently biased against regulation.

Even if the Supreme Court decides in environmentalists’ favor in the *Entergy* case, it’s clear that now is the time for environmentalists to drop their blanket rejection of cost-benefit analysis. Without cost-benefit analysis, we are essentially regulating in the dark, a bad idea when thousands of lives and billions of dollars might be at stake.

This summer, New York University School of Law is launching the Institute for the Study of Regulation to reform cost-benefit analysis and show that smart regulation is economically justified. By showing that even-handed economic analysis justifies strong environmental regulation—including controls on greenhouse gases—environmentalists can short-circuit industry attacks and build a broad political coalition that favors a strong regulatory agenda.

With a new administration taking office in January 2009, environmental groups will have an opportunity to participate in the federal policymaking apparatus. For too long, they have allowed cost-benefit analysis to be the tool of their enemy, and



over time that tool has taken on the shape of its master’s hand. They will face the daunting challenge of convincing the next president and Congress to take significant steps to reduce greenhouse gas emissions. To do so, they must show the American public that they are not zealots on a fool’s errand, but rather responsible voices working to address very real threats with real economic consequences.

Richard L. Revesz, dean of New York University School of Law, is the author, with Michael A. Livermore, of Retaking Rationality: How Cost-Benefit Analysis Can Better Protect the Environment and Our Health, published in May by Oxford University Press.