

Yale Talk: Conversations with Peter Salovey

Episode 44: Leading the Way in Legal Education for 200 years

Guest: Heather Gerken, Dean and Sol & Lillian Goldman Professor of Law at Yale Law School

Description: To mark Yale Law School's bicentennial, Dean Heather K. Gerken joins President Peter Salovey for a conversation about the impact the school has had on legal education over two centuries and what comes next. Dean Gerken discusses the Yale Law School's focus on bolstering needs-based aid, increasing the number of veterans on campus, and preparing the next generation of lawyers and leaders to engage across divides in polarized times.

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FULL TRANSCRIPT

Peter: Hello everyone. I'm Peter Salovey and thank you for joining me for Yale Talk. Two-hundred years ago, Yale Law School began as a small cohort of lawyers who trained apprentices out of their offices here in New Haven. Of course, over the next two centuries, it developed into a pioneering force in legal education, and continues to lead the charge today. As the school commemorates its bicentennial, I'm so pleased to welcome its seventeenth dean, Heather Gerken. Heather, one of the country's leading experts on constitutional law and election law, is in her sixth year leading the school. In the past few years, the school has launched a remarkable series of innovative programming, among them a new leadership program to enhance the curriculum and prepare graduates for careers across every sector. A first-of-its-kind scholarship program that provides free tuition for students from low-income backgrounds, and two pipeline to law school programs to expand access to the profession. Under Heather's leadership, the school also has admitted the seven most diverse classes to date and tripled the number of veterans who are students on campus. I know she often says Yale Law School has a restless spirit that drives forward this progress. So today, I'm eager to talk with Heather about the school's rich history and her vision for its future. Heather, thank you so much for joining me on Yale Talk.

Heather: Thank you for having me, Peter, and thank you for your leadership. I have served under your leadership for the last six and a half years, and I'm deeply appreciative of all that you have done.

Peter: Well, you've been a marvelous dean, and it's been great working together. As you reflect on the school's two-hundred-year history, what would you say are the core values of Yale Law School that have remained consistent in the law school's culture, and how have they contributed to making it such a leader in the field today?

Heather: I would say there are two touchstones for the school. Guido always says excellence and humanity. Those are our traditions.

Peter: Guido Calabrese.

Heather: One of our greatest deans. I also think we have a tradition of change. My favorite quote about the law school is from Grant Gilmore, and he said, "The golden age of Yale is never

now. It is always in the past or just in the future if we can only do a few things right." And he closes that quote by saying, "Always close, always striving, never quite there except in memory and hope." And to me, that really captures that it's a remarkable institution, but it never rests on its laurels.

Peter: Interesting. It also has this incomplete nature to it. I'm reminded of the quote from Rabbi Tarfon that we're not obligated to complete the work, but nor can we desist from it. And that does seem like the spirit of the law school very much. Well, two qualities that have made it stand out, particularly from other law schools, are its intimate intellectual environment and its commitment to blending theory, legal theory, but also to practice, and a serious commitment to clinics and to educating future lawyers and future legally-trained leaders for our country and for the world.

Heather: It's amazing how small scale it is. When I became dean, I got a chart of our classes, and most of our classes come between eight and twenty-five people, which at most other law schools, that counts as a seminar. So every year I meet with every single small group, give them an hour to cold call the dean. And it really captures the intellectual intimacy. But it's paired with its extraordinary faculty. It is the most theoretically ambitious faculty in the country. They're wildly eclectic scholars, and yet we have an equally serious commitment to practice, as you say. So in law, there's always this idea there's a practice-theory divide. These are two different worlds. And the law school's just never believed that and has always resisted it. And so we have incredibly high-end academics who are doing real work in the world. A huge percentage of our faculty do that. So just to give you an example, Scott Shapiro, who is an analytic philosopher of such great note that he was offered the Dworkin Chair in England and he also runs a clinic. It's just amazing to see someone who's a polymath in that way, but that is a tradition that's repeated over and over in the school.

Peter: Well, let's stay with the faculty for a moment. I always say there's no great university that doesn't have a great faculty. It's the necessary condition. It might be the only necessary condition. For generations, Yale Law School has been home to some of the most prolific and accomplished scholars in the field. But you're also refreshing and rebuilding the faculty. Maybe you could tell us a little bit about that project.

Heather: Absolutely. The faculty is remarkable, and in part because we have a very different philosophy of hiring. Again, the great Dean Guido Calabrese once said to me, behind every single door is an idea that has changed a field. And so if you want to damn someone with faint praise on the faculty floor, you say someone is the best person in the field. That just simply isn't good enough. We want them to change the field and to have ideas that cross a variety of disciplines. So that's the philosophy and it makes it hard to hire. We hire carefully and rarely. We deliberate for six full hours.

Peter: The whole faculty meets?

Heather: The whole faculty. Everyone reads. There's no deference to the committee. No deference to the dean, no deference to experts. It's really the most remarkable deliberative process you can imagine. But we have been engaged in rejuvenating the faculty and have done a bunch of new hires, including in private law, which, as you know, has always been one of our great strengths. And so we have this new generation of young private law scholars coming into the school. It's been wonderful.

Peter: That's great. Is there a new hire that you're particularly excited about?

Heather: Well, I'm very excited about the arrival of Keith Whittington. So Keith Whittington is the first public law conservative to walk the halls of the law school in about forty years. And Keith is a remarkable scholar. He is an expert on free speech and academic freedom and originalism and the separation of powers. And he is going to come to the law school and run a center on free speech and academic freedom, really making the law school the center of that discussion.

Peter: Certainly couldn't be better time than what's playing out in our world and in the world of universities in particular this year.

Heather: Yeah, could not be better timed and could not be more important.

Peter: So there are a number of new programs that have been launched under your deanship, and many of them are designed to expand access to legal education, to bolster financial assistance, but also to enhance the curriculum. Tell us a little bit about some of those new programs.

Heather: Sure. They fit together in I think a clear way. When people ask me, what's the purpose of the law school? I say, this is a generation that's inheriting impossible problems to solve, and our job is to teach them to solve them. And that requires you to bring the best talent in the country to the law school and make sure everyone has access to it, and then train them to be change makers. So one of the biggest programs that we've launched in our history is the Hurst Horizon Scholarship Program. So we have the finest financial aid program of any law school. Seventy-five percent of our students are on financial aid. But one of the things we discovered as we diversified our class, particularly bringing in a lot of first-gen-ers, is our model, which was everyone gets aid based on need, but everyone leaves with roughly the same debt load. And that really works for middle class kids, because they'll go in the private sector and easily pay it off, or they'll go into the public sector and we will pay off all of their loans. But you know this, because you've been bringing in so many students into the college, for students who come from families just below or above the poverty line, they experience debt really differently. They don't experience it like a middle-class kid as an investment. They experience it as a load on their family.

Peter: A burden, a burden,

Heather: A huge burden. And so I remember before I became dean, during one of the very first meetings of the first-generation professionals, it was in my house, and the students asked me questions that most students don't ask: Should I buy my textbooks? Should I pay the fifty bucks a year to print out my cases? These students weren't flying home, even though it was built into their financial aid package, at Thanksgiving, because they weren't going to put another dollar of debt on their family's shoulders, they were sending oftentimes money home. So these were students without a safety net. In fact, they were the safety net for their own family. And so we were the first law school in the country not just to keep on with needs-based aid, which I'm proud to say, only Harvard and Yale law schools have full needs-based aid. Everyone else gives out scholarships based outside of need, on merit. And so we sent an email out one early winter morning that said, next year is on us, to about fifty of the students who come from families below the poverty line. I will just say I did wonder, and Peter, you know this too: Would they read the email? Students never read the email. And then last year we expanded the program. So now we have about seventy-five students walking the halls with full tuition scholarships. It's fifteen percent of the first-year class. And just a baseline how much the law school has changed, we know the numbers for at least one of our peers about the same size. Their number's eleven. It's not eleven percent, it's eleven students. And so it has been transformational not just for the lives of those students, but for us leading the way in legal education and creating a new model, very much modeled on Yale College, for thinking about the problem of economic equity.

Peter: I think one of the things people don't realize is, I often say Yale is debt free, but when I say that I really am meaning Yale College is debt free, and it essentially is now. And that's a wonderful, wonderful thing. But debt in the professional schools can still be quite high. If you're working toward a PhD, you're going to get a nice stipend. And we just signed a contract for a raise in those stipends. Those students are well taken care of. But in the professional schools, there's quite a lot of variability. The largest debt with respect to compensation after you've graduated are felt by nurses and by public health professionals. But in a field like law, where you could work in a highly compensated sector of the legal profession, the issue is, do you want to be compelled to take such a job if that's not your mission in life? And it sounds like what you're really doing is giving people choice, giving your graduates choice.

Heather: And it's not just choice, Peter. It's also about how they experience law school. So lifting the burden from their shoulders while they're in law school enables them to stop worrying. So Soledad Hurst, who's the lead donor on this program, she was one of those students when she was here. She told me that she couldn't afford a U-Haul to go to her first job. And whenever she talks about this, she gets choked up. And it's not just because of the extraordinarily moving stories of our current students and the change it's affecting for them. It's about the memories of how much of a weight that put on her shoulders, and so the ability to lift that weight from the students and let themselves throw themselves into law school, not worry about sending money home, not worry about their parents' debts, not worry about adding debt to their families. That has been transformational even for the time that they're in the law school.

Peter: Hmm talk a little bit about the kinds of roles that those students play when they do leave, because they do all kinds of things that aren't what immediately comes to mind when you think, lawyer.

Heather: You asked me about how we're thinking about our programs. The other biggest program that we've launched in our history in the last couple of years is The Tsai Leadership Program. And The Tsai Leadership Program really is about changing the law school in order to keep up with its best traditions. We graduate a wildly eclectic set of students, many of whom practice law in the traditional sense. We also graduate a lot of lawyers writ large. And so if you look, for example, ten years out, one out of five of our graduates is in the private sector, but not practicing law in the traditional sense. They're running a hedge fund or they have started their own company. And you see roughly the same thing on the public side. So just to think about how many Yale law graduates are doing policy work, there's a great chart that Bloomberg did, noticing that, in the Biden administration, there were a lot of lawyers doing policy work. And the chart said: one-third lawyers, one-third non-lawyers, one-third Yale Law lawyers.

Peter: Wow.

Heather: And so as we sat down and thought about what these graduates need for the future, we realized that it was things outside of traditional law. So every leader, regardless of what they're going to do, being a lawyer-lawyer or a lawyer writ-large, need to be numerate and not just literate. They need to be savvy about technology. They need to know not just about legal ethics in the traditional sense, but ethics writ large. And so, thanks to this extraordinarily generous gift from Joe Tsai and many others, we now have a leadership program that embeds into the bones of the curriculum non-traditional law courses. We're trying to build a mini-university inside the law school, to train the kind of wide-ranging thinkers that have always been part of our tradition, but really, I think, are even more needed as we move forward.

Peter: So that curriculum sounds fascinating, but it also sounds like a set of courses that are not typically taught in a law school. So do your faculty teach them, or do you bring it people in from the outside? Who actually teaches all those leadership skills?

Heather: It's actually both. It used to be if the deputy dean came to me and said, Heather, we need to buy out some faculty time to bring someone in to teach. It better be civil procedure or some course that we absolutely need because, as you know, law professors are expensive. And so now, we have the ability to bring in the best professors from all across the country in any field. At some point when we were thinking about a statistics course, we were looking to someone who actually won the Nobel Prize. So we're keeping our standards high.

Peter: That's good, that's good. And do they do full courses or workshops?

Heather: All of those things. Depending on what it is they're teaching, we do both full courses and we do smaller courses, which are called reading groups, which are a little bit looser, not

graded in the same way. But I've been teaching one on the ethics of leadership, and it has been phenomenal. So last year, Tim Geithner came and talked about leading in crisis. Post-2008, Deval Patrick did something on the Boston Marathon bombing. Fatima Goss Graves, head of the National Women's Law Center, talked about what happens when the bottom falls out of your organization because it changes fundamentally after the Dobbs decision. So those were amazing courses for the students and really important for their development.

Peter: This conversation is reminding me, you're the Yale Law School. When you issue an invitation, people show up. They want to be there. They want to teach those students. They want to be in that wonderful intellectual environment.

Heather: It is such an intellectual feast, I think is the phrase that is often used to describe it, and it makes it so easy to recruit people. Most times, you know, when you're recruiting someone, you come say, come talk to our great faculty, but our students are endlessly interesting. And so the intellectualism of our students is also really a selling point when I recruit others.

Peter: Well, at the beginning of this podcast, I said, you can't have a wonderful university, in this case, a top-notch law school without a top-notch faculty. That's the necessary condition. But it is also the case that you can't attract a wonderful faculty if they don't get the opportunity to teach terrific students. And that's part of the equation, too.

Heather: It really is. It's also just the freedom. We are teaching wide-ranging thinkers. And so we're not bound by a particularly narrow conception of what it is. When I was on the road my first year as dean, an alum took me aside and said, Heather, you're going to keep Yale weird, right? We are the only school that has taught the book of Job with enormous seriousness. In some ways, it's a humanities-based approach. It's like a liberal arts education. The aim is to teach people to think and to be critical, and thoughtful, and analytic, and ethical. And those values can be taught in lots of different ways.

Peter: The book of Job, is that on the bar exam?

Heather: It is not. Yet. But nonetheless we will defend to the death the importance of taking courses like that.

Peter: That's great. So one of the other things I really wanted to get to with you is veterans. We are seeing a big uptick in veterans at Yale University generally, but probably no place has focused more effort on recruiting veterans to its student body than Yale Law School. And I bet that was intentional. And maybe you can tell us a little bit about it.

Heather: It's been the work of my heart. We now have, in our first-year class, seven percent of the students are veterans, which is an astounding number. We have so many veterans that we have veterans who come from Space Force and the Coast Guard, which Peter, I know you know, that's a little bit on the rare side. So it's a really wonderful community. And we did it by working

on scholarship support. That has been really important, working on building the community, and then providing them the education that they're going to need for their futures. And one of the great attractions has been our Veterans Services Clinic, which does astounding work. So veterans are able to bring class actions, like every other American citizen, because of our students. When that clinic started a few years ago, the students looked around and said, howcome vets can't bring class actions? And someone told them, well, it's because that's how it's always been. And you know, my students: if you want to tick off a Yale law student, that's a good answer. So the students mapped out the strategy, wrote every brief, argued every case, did every press release, and a victory that was termed seismic by one of the members of the court. They won the right for veterans to bring class actions. And right now, they are in the midst of just extraordinary work on behalf of veterans who were not honorably discharged because of PTSD and the like. And so they have been lawyers for nationwide class actions for every major service branch, bringing extraordinary settlements to ensure that veterans get the benefits that they're entitled to.

Peter: It seems like there are also some side benefits to having so many veterans in your student body. So, for example, they're older, typically, than the average student. At least I expect they are and have a lot of life experience that may be different than those who have pretty much stayed on an academic track. Politically, I suspect there's a lot of diversity among the veterans. Is all of that true?

Heather: It is all true. And they bring a sense of perspective that I think is extraordinarily important. It's easy, I think, for younger students to kind of get roiled by what's going on. But I remember talking to one of our veterans who had been three tours in Afghanistan, and I asked him how things were going, and he said cheerfully, "no one's shooting at me." And it was a joke, but it actually really captures something about their steadiness, their leadership, their maturity.

Peter: Their perspective.

Heather: Right. They have served our country and they have led. And those things matter enormously, not just for their intellectual experience, but for their peers to learn from them. So I can't tell you how great it has been to be the dean who helped make this happen, because it's one of the things I'm proudest of.

Peter: It's a great accomplishment. I feel the same way about our welcoming back ROTC to campus and having Navy and Air Force ROTC students. They are the same age as their fellow students, but they're all so different in the way they think about the future and think about the world.

Heather: I'm not always a fan of rankings, but the one ranking that I am totally willing to endorse is that Yale is actually the best place for veterans in the country, and having my veterans be welcomed into a larger community.

Peter: I'm with you on rankings. I'm not a huge fan, but I will say I let people know when we were ranked the best campus in the country for veterans, I was proud.

Heather: It's a wonderful community.

Peter: That's great. Let's stay with the real world here for a moment. It's almost a cliché to talk about how polarized thought is in our country, really throughout the world, but let's stay with U.S. For a moment. The left has become a harder left. The right has become a harder right. The sensible center hasn't held. How does the law school, in these deeply polarized times, try to model a different kind of discourse, a different way of understanding the world?

Heather: It used to be that all we needed to do was throw people together, and they became deep and close friends, and that was just our model, that intimate environment. And what we've realized in the last few years is we need to do a lot more. We have pursued every single route I can think of to be clear about our values and to live our values. Some of those things are hiring, bringing Keith Whittington in, and having him start a center on free speech and academic freedom. We have a wonderful new program, the Ronnie F. Heyman '72 Crossing Divides Program, which is designed to show the students what I believe about our profession, and the law school, which is our tradition isn't just to have conversations across lines, but friendships across lines. We've already had two events under this program. They've been wildly oversubscribed and really modeled it. But the other thing we really do with our students is we talk to them about it all the time. I start the orientation by telling the students, it is not enough just to respect free speech. That is a bare minimum. What we expect from you is to engage with others, to acknowledge and respect their good faith, to change your mind. You can't be a lawyer, and in my view, you cannot be a citizen, if you don't understand what is most honorable about the commitments of the other side. And also know deep in your heart what's weak about your own position. And that's a value of lawyering. And to my mind, that's a value of being in a scholarly environment. Every year, I asked the faculty to begin the year by talking about these values. On the first day of class, I sent out a note to all of our students: these are our values handed down from generation to generation, and it is up to you to preserve them. So we have been crystal clear about the importance of this, not just for being a lawyer, but for existing in this world. You are not going to change anything by jeering from the sidelines. You have to be able to compromise and to get things done.

Peter: That sounds exactly right. I try to reinforce that message, particularly when I talk to undergraduates--the importance of listening, the importance of intellectual humility, the willingness to change your mind. I always said, why would you come to Yale if you already know everything, if your positions on every issue are solidified, what possible impact could we have in providing you an education, if you're that certain? And to just get people to think about a time in their lives when they might have changed their minds, and to bring that willingness, that flexibility, to college as well.

Heather: Well, I remember an event that you hosted with one of our graduates, Marc Allen. And Marc said, a great education should make you humble. And I think that's what we really aim for.

Peter: Coming out of school, and knowing what you don't know, not just knowing what you know, I think is very important. As we come to the end of our broadcast, let me focus a little bit more on you, Heather. You're still teaching. Even as a dean, you run a clinic. Tell us a little bit about what you do. I don't mean as dean, obviously, that's what we focused on. I mean, as an educator.

Heather: I wanted to keep my hand in teaching. So I teach a clinic. In most law schools, clinics can be places where you learn to lawyer, you learn to file a brief, you learn to represent a client. Clinics at Yale Law School are different. They are of a scope and ambition that I think is unknown at most other places. So our students do work that's sort of the work of a lifetime. So just to name some of the things my students have done, they got to work on the same sex marriage case. At trial, their first case made the cover of Business Week. They do consumer protection work and all kinds of really wonderful things. The most recent litigation in the opioids case came through our clinic, which was really fantastic. So we work with the city of San Francisco to do affirmative litigation. It's a chance for students to see what it means to be a government lawyer. The reason I love it is that you get a chance to watch students put their superhero capes on. They get a chance to be lawyers and to watch that development. Over time, it just fills up the gas tank. So that's why I do it. I also think it's important, given the practice-theory divide, that the dean of Yale Law School, widely known as the most theoretically ambitious law school in the country, also teaches a clinic. Our profession believes in service, and we are training a generation to serve.

Peter: There's a certain down to earth aspect of that that must help when you're thinking about theory.

Heather: Exactly. Theory informs practice, and practice informs theory. And one of the real differences between us and other places is the clinics aren't hived off as a small part of the school, so students go back and forth between them. Faculty go back and forth between them. We really model the idea that the deep intellectualism of the place is completely synergistic with the practical impact that our graduates have when they leave here.

Peter: It's a wonderful philosophy, and it does bridge a divide that you see in so many fields. The whole idea of theory is to provide generalized guidance for practice, and the whole idea of practice in a law school is not just to have a positive impact on the world, although that certainly is true, but also as a feedback loop so that your theory changes, right?

Heather: Yep. Exactly right. We never set out to create this, but our academic faculty found their way into the world. And so a huge number of them are doing work in the world and finding it as stimulating as the work that they do just behind their desks.

Peter: You know, there's an old joke, and I think economists are the one who tell it, about some new idea that has had a wonderful impact. And they'll say, well, it clearly works in practice, but does it work in theory? And, you know, I think that's a self-awareness that it's important that theory reflect utility in actual application. All right. The Yale Law School's bicentennial is an important moment to reflect on the history of the school, but it's also a time to think about the future. How do you think of the third century of Yale Law School?

Heather: It is our 200th, which is an exciting moment. But you are right. We have our eye on the next century. Often times when I talk about the leadership program, I say we're building the curriculum for the next hundred years. We're training our students for their last job, not just their first. And so when we look out over the future, we see a couple of things. But one of them is that we need to double down on our legacy of creating extraordinarily wide-ranging thinkers, because the problems facing this generation become increasingly complex, because the job of a lawyer is really the job of a problem solver. And so we're really thinking hard about not just a traditional law curriculum, but a curriculum that looks more like a college. And that's what we are going to need to prepare our students. This is also a chance for us to lead. So creating the leadership program, creating the Hurst Horizon Scholarship Program. We don't just want to change the law school. We want to change legal education. And so this is an opportunity for us now that we have built these programs inside the school to push things forward outside of it.

Peter: Yale should always be a leader and a model for others. And there is no doubt that Yale Law School is just that. And so, Heather, thank you. When I think about the value of the university and what we hope to accomplish, the education of students who will lead and serve, the law school provides us with an extraordinary example and a high bar. As we mark its bicentennial, I'm grateful to those who have contributed immensely to the school, including, of course, my guest today. Heather has championed the remarkable legacy of Yale Law School graduates who are leading across many different sectors of society. And I'm confident that the law school will continue to benefit tremendously from her vision, talent, and energy in the years ahead. Heather, you have my heartfelt appreciation.

Heather: Well, thank you, Peter. And I just want to say not a single thing that I just described would have been possible were it not for one Yale. And being part of an extraordinary university has meant everything to the law school.

Peter: You have helped make us a much more unified and accessible campus, no doubt about it.

To friends and members of the community, thank you for joining me for Yale Talk. Until our next conversation, best wishes and take care. The theme music Butterflies and Bees is composed by Yale professor of music and director of university bands Thomas C. Duffy and is performed by the Yale Concert Band.

LINKS:

[Yale Law School bicentennial website](https://law.yale.edu/yale-law-school-200) (https://law.yale.edu/yale-law-school-200)

[Bicentennial video](https://law.yale.edu/yls-today/yale-law-school-videos/yale-law-school-200-pioneering-force-legal-education) (<https://law.yale.edu/yls-today/yale-law-school-videos/yale-law-school-200-pioneering-force-legal-education>)