Fordham University School of Law’s International Law Journal presents

The Judicial Power and US Foreign Affairs

Friday, February 21, 2020
10:45 a.m. - 4:45 p.m.

Fordham Law School
Costantino Room | Second Floor
AGENDA

10:20 – 10:45 a.m.  Check in and Coffee

10:45 – 10:50 a.m.  Dean’s Welcome Remarks
Matthew Diller, Dean and Paul Fuller Professor of Law,
Fordham Law School

10:50 a.m. – 12:10 p.m. Scholarly Debate: Proper Role of the Supreme Court in Foreign Affairs
(1.5 Professional Practice)
Z. Payvand Ahdout, Academic Fellow, Columbia Law School
Kevin D. Benish, Research Fellow, Center for Transnational Litigation, Arbitration, and Commercial Law, NYU Law
Robin Effron, Professor of Law; Co-Director, Dennis J. Block Center for the Study of International Business Law, Brooklyn Law School
Martin S. Flaherty, Leitner Family Professor; Co-Director, Leitner Center for International Law and Justice, Fordham University School of Law
David Rudenstine, Sheldon H. Solow Professor of Law, Benjamin N. Cardozo School of Law
Ryan C. Williams, Assistant Professor of Law, Boston College Law School
Moderator: Pamela Bookman, Associate Professor of Law, Fordham University School of Law

12:10 – 1:30 p.m.  Lunch

1:30 – 2:50 p.m.  Evolving Judicial Intervention on US Foreign Policy
(1.5 Professional Practice)
Kevin Arlyck, Associate Professor of Law, Georgetown University Law Center
Elena Chachko, Lecturer on Law, Harvard Law School; Postdoctoral Fellow, Perry World House, University of Pennsylvania
Margaret E. McGuinness, Professor of Law; Co-Director, Center for International and Comparative Law, St. John’s University School of Law
Beth Stephens, Distinguished Professor of Law, Rutgers Law School
Moderator: Martin S. Flaherty, Leitner Family Professor; Co-Director, Leitner Center for International Law and Justice, Fordham University School of Law

2:50 – 3 p.m.  Break

3 – 4:30 p.m.  How Modern International Relations Impact the Supreme Court: Trends and Prospects
(1.5 Professional Practice)
Julian G. Ku, Senior Associate Dean for Academic Affairs and Maurice A. Deane Distinguished Professor of Constitutional Law, Maurice A. Deane School of Law, Hofstra University
Thomas H. Lee, Leitner Family Professor of International Law, Fordham University School of Law; Special Counsel to the General Counsel of the U.S. Department of Defense
Deborah Pearlstein, Professor of Law; Co-Director, Floersheimer Center for Constitutional Democracy, Benjamin N. Cardozo School of Law
David P. Stewart, Professor from Practice; Co-Director, Global Law Scholars Program; Director, Center on Transnational Business and the Law, Georgetown University Law Center
Moderator: Julian Arato, Professor of Law, Brooklyn Law School

4:30 – 4:45 p.m.  Closing Remarks

4:45 p.m  Cocktail Reception
Z. Payvand Ahdout  
Academic Fellow  
Columbia Law School
Payvand Ahdout is an Academic Fellow at Columbia Law School. Her research is primarily focused on the ways governing institutions use and shape the federal courts and how that informs public law development.

Prior to joining Columbia, Payvand served as a law clerk to Justice Ruth Bader Ginsburg on the U.S. Supreme Court and to Judge Debra Ann Livingston on the U.S. Court of Appeals for the Second Circuit. She also served as a Bristow Fellow in the Office of the Solicitor General of the United States. She has previously held a fellowship at NYU Law. Most recently, she was an appellate litigator at Kirkland & Ellis, LLP.

Payvand received her J.D. from Columbia Law School, where she was a James Kent Scholar and a recipient of the Ruth Bader Ginsburg Prize. She received a B.A. with highest distinction from the University of Virginia, where she was a Jefferson Scholar.

Elena Chachko  
Lecturer on Law, Harvard Law School;  
Postdoctoral Fellow, Perry World House  
University of Pennsylvania
Eleina Chachko is an SJD candidate at Harvard Law School and a Global Order Postdoctoral Fellow at Perry World House, University of Pennsylvania. Her research focuses on the intersection of administrative law, foreign relations law, national security law, public international law, and empirical approaches.
to public law. Elena’s work has been published in the Yale Journal of International Law and the American Journal of International Law Unbound, among other publications. She was previously an International Security Program Fellow at the Harvard Kennedy School Belfer Center for Science and International Affairs, a Graduate Student Associate at the Harvard Weatherhead Center for International Affairs, and a teaching fellow in Public International Law at Harvard Law School, where she was also the coordinator of the Harvard Empirical Legal Studies Series.

Prior to her doctoral studies, Elena clerked for Chief Justice Asher D. Grunis on the Supreme Court of Israel. She has also worked at the United Nations Office of Counterterrorism and the Israeli Ministry of Foreign Affairs, where she focused on arms control and non-proliferation of weapons of mass destruction. In addition, Elena previously served as an intelligence analysis officer at the Israel Defense Intelligence Research Unit. Elena earned an LL.B in Law and International Relations (magna cum laude) from the Hebrew University of Jerusalem, and completed the LLM program at Harvard Law School as a Fulbright scholar.

Robin Effron
Professor of Law; Co-Director
Dennis J. Block Center for the Study of International Business Law
Brooklyn Law School

Professor Effron teaches civil procedure, litigation, and international business law courses. Her articles on procedure and federal courts have appeared in the Georgetown Law Journal, the Alabama Law Review, the William & Mary Law Review, the Wake Forest Law Review, and the Boston University Law Review, and has been cited by several state and federal courts. She is a regular presenter and commentator at civil procedure and litigation conferences and symposia, and her work has been selected for presentation at national events such as the AALS Annual Meeting (Civil Procedure Section), the Annual Civil Procedure Workshop, and Vanderbilt Law School’s Branstetter Workshop.

Conversant in German, she spent an academic year in Germany as a fellow in the D.A.A.D. Program for International Lawyers and worked with attorneys in the legal department of a large investment bank to research questions of German and U.S. law. At Brooklyn Law School, she serves as Co-Director for the Dennis J. Block Center for the Study of International Business Law. She is an avid writer, penning op-eds for various publications. Professor Effron also edits the Civil Procedure and Federal Courts Blog for the Law Professors Blog Network.

Prior to joining Brooklyn Law School’s faculty, Professor Effron served as a Bigelow Fellow and Lecturer in Law at the University of Chicago Law School. She also served as a law clerk to Judge Alvin K. Hellerstein of the U.S. District Court for the Southern District of New York. In law school, she was articles editor on the NYU Law Review.

Martin S. Flaherty
Leitner Family Professor; Co-Director, Leitner Center for International Law and Justice
Fordham University School of Law

Martin S. Flaherty is Leitner Family Professor of Law and Founding Co-Director of the Leitner Center for International Law and Justice at Fordham Law School. He is also a Visiting Professor at the Woodrow Wilson School of Public and International Affairs, where he was Fellow in the Program in Law and Public Affairs and a Visiting Professor at the New School in New York. Professor Flaherty has taught at China University of Political Science and Law and the National Judges College in Beijing, and co-founded the Rule of Law in Asia Program at the Leitner Center as well as the Committee to Support Chinese Lawyers, an independent NGO on which he serves as Vice Chair. He has also taught at Sungkyunkwan University in Seoul, Queen’s University Belfast, Columbia Law School, Cardozo School of Law, St. John’s University School of Law, and the New School. Previously Professor Flaherty served as a law clerk for Justice Byron R. White of the U.S. Supreme Court and Chief Judge John Gibbons of the U.S. Court of Appeals for the Third Circuit.

Flaherty received a BA summa cum laude from Princeton, an MA and MPhil from Yale (in history) and a JD from Columbia Law School, where he was Book Reviews and Articles Editor of the Columbia Law Review. For the Leitner Center, Human Rights First, and the New York City Bar Association, he has led or participated in human rights missions to Northern Ireland, Turkey, Hong Kong, Mexico, Malaysia, Kenya, Romania and China. He is also a member of the Council on Foreign Relations. He is currently the Chair of the Council on International Affairs of the New York City Bar Association, where he was formerly Chair of the Committee on International Human Rights, and is a life member of the Council on Foreign Relations.

Flaherty’s publications focus upon constitutional law and history, foreign affairs, and international human rights and appear in such journals as the Columbia Law Review, the Yale Law Journal, the Michigan Law Review, the University of Chicago Law Review, Constitutional Commentary, the Harvard journal of Law and Policy, the Harvard Human Rights Journal, and Ethics & International Affairs.

Julian G. Ku
Senior Associate Dean for Academic Affairs and Maurice A. Deane Distinguished Professor of Constitutional Law
Maurice A. Deane School of Law, Hofstra University

Professor Ku’s primary research interest is the relationship of international law to constitutional law. He has also conducted academic research on a wide range of topics including international dispute resolution, international criminal law, and China’s relationship with international law. He teaches courses such as U.S. constitutional law, U.S. foreign affairs law, transnational law, and international trade and business law. Since 2014, he has served as the faculty director of international programs, overseeing Hofstra Law’s study abroad, exchange and LL.M. programs. He has also been selected as the John DeVitt Gregory Research Scholar and as a Hofstra Law Research Fellow. He is a member of the American Law Institute.

He co-founded the leading international law blog Opinio Juris, which is read daily by thousands worldwide. He is also a contributing editor to Lawfare, a leading blog analyzing national security issues. His essays and op-eds have been published in major news publications such as The Wall Street Journal, the Los Angeles Times and NYTtimes.com. He has been frequently interviewed for television news programs and quoted in print and electronic media. He has also signed or submitted amicus briefs to national and
international courts and served as an expert witness in both domestic and international proceedings.

Before joining the Hofstra Law faculty, Professor Ku served as a law clerk to the Honorable Jerry E. Smith of the U.S. Court of Appeals for the Fifth Circuit and as an Olin Fellow and Lecturer in Law at the University of Virginia Law School. Professor Ku also practiced as an associate at the New York City law firm of Debevoise & Plimpton, specializing in litigation and arbitration arising out of international disputes. He has been a visiting professor at the College of William & Mary Marshall-Wythe School of Law in Williamsburg; a Fulbright Distinguished Lecturer in Law at East China University of Political Science and Law in Shanghai; and a Taiwan Fellow at National Taiwan University in Taipei. He is a member of the New York Bar and a graduate of Yale College and Yale Law School.

Thomas H. Lee
Leitner Family Professor of International Law
Fordham University School of Law; Special Counsel to the General Counsel U.S. Department of Defense

Thomas H. Lee is on leave to serve as Special Counsel to the General Counsel of the U.S. Department of Defense. He joined the faculty in July 2002, was Director of Graduate and International Studies from 2006 to 2019, and has been the Leitner Family Professor of International Law since 2009. He has also been a Visiting Professor at Columbia Law School, Harvard Law School, and the University of Virginia School of Law; an Adjunct Professor at New York University School of Law; and Adviser to the Constitutional Court of Korea (2006-11). He has published many articles and book chapters on international law, the laws of war, international arbitration, U.S. constitutional law, and the U.S. federal courts. His forthcoming book, Justifying War (Oxford University Press, 2020), examines the modern history of legal grounds for war and their connection to moral justifications and policy decisions.

Professor Lee holds A.B. (summa cum laude), A.M. (Regional Studies—East Asia), and J.D. degrees from Harvard, where he was Articles Chair of the Harvard Law Review and a Ph.D. candidate (ABD) in Government. Before his academic career, he clerked for Chief Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit and for Associate Justice David Souter of the U.S. Supreme Court, and worked at Munger, Tolles & Olson and Wachtell, Lipton, Rosen & Katz. From 1991 to 1995, he served as a U.S. naval cryptology officer aboard warships and submarines in the Western Pacific and Indian Oceans, and ashore in Korea and Japan and with the National Security Agency. He is Of Counsel at Hughes, Hubbard & Reed, and a Member of the Panel of Conciliators of the International Centre for Settlement of Investment Disputes (ICSID) and of the American Law Institute (ALI).

Professor Lee also maintains an active Supreme Court practice in matters of public interest implicating constitutional rights, data privacy, federal courts and jurisdiction, and U.S. foreign relations and national security.

Margaret E. McGuinness
Professor of Law; Co-Director
Floersheimer Center for Constitutional Democracy
St. John’s University School of Law

Professor McGuinness joined the St. John’s faculty in 2010. Her researches and teaches in the areas of international law and international human rights law, and she has published widely on the subjects of international human rights law, international security and the resolution of armed conflict, and the role and influence of international law in the United States. Her current course offerings include International Law, International Human Rights, and the Transnational Legal Practice for LL.Ms.

Professor McGuinness previously taught at the University of Missouri School of Law. She has also been a visiting professor at the University of Georgia and Temple University, and a visiting scholar at the Johns Hopkins School of Advanced International Studies.

Professor McGuinness serves on the Council on International Affairs of the New York City Bar and the Executive Committee of the International Section of the New York State Bar Association, where she is also co-chair of the Public International Law Committee. She is an active member of the American Society of the International Law, where she served on the Executive Council, and the International Law Association, where she serves on the Committee on Recognition/Non-Recognition, and the International Section of the American Bar Association. She co-founded Opinio Juris, the leading international law blog.

Professor McGuinness graduated with distinction from Stanford Law School, where she was an articles editor for the Stanford Law Review and a graduate fellow at the Stanford Center on Conflict and Negotiation. Afterwards, she clerked for Judge Colleen McMahon in the Southern District of New York and worked as a litigator for Paul, Weiss, Rifkind, Wharton & Garrison LLP. Her career in the law follows an early career as a Foreign Service Officer with the State Department, which included service in Germany, Pakistan and Canada, and as a Special Assistant to Secretary of State Warren Christopher.

Deborah Pearlstein
Professor of Law; Co-Director
Floersheimer Center for Constitutional Democracy
Benjamin N. Cardozo School of Law

Deborah Pearlstein is a professor of constitutional and international law. Her work on national security and the separation of powers has appeared widely in law journals and the popular press, including the University of Pennsylvania Law Review, the University of Michigan Law Review, the University of Texas Law Review, and the Georgetown Law Journal, as well as in Slate, Foreign Policy, the Washington Post, and the New York Times. Before joining Cardozo, she was a research scholar in the Law and Public Affairs Program at the Woodrow Wilson School for Public and International Affairs at Princeton University, and held visiting appointments at the University of Pennsylvania Law School and Georgetown University Law Center. Professor Pearlstein is a leading national voice on law and counterterrorism. She has repeatedly testified before Congress on topics from military commissions to detainee treatment. She has held appointments as Chair of the AALS National Security Law Section, on the ABA’s Advisory Committee on Law and National Security, and today serves on the editorial board of the peer-reviewed Journal of National Security Law and Policy. Professor Pearlstein is a magna cum laude graduate of
Harvard Law School, she clerked for Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit, then for Justice John Paul Stevens of the U.S. Supreme Court. Following her clerkships, she practiced at the law firm of Munger, Tolles & Olson in San Francisco, earning the Voting Rights Award from the ACLU of Southern California for her litigation work on voting systems reform following the 2000 presidential election.

From 2003-2007, Professor Pearlstein served as the founding director of the Law and Security Program at Human Rights First, where she led the organization's efforts in research, litigation and advocacy surrounding U.S. detention and interrogation operations, and served on the first team of independent military commission monitors to visit the U.S. Naval Base at Guantanamo Bay in 2004. In addition to developing impact litigation strategies and preparing multiple briefs amicus curiae to the U.S. Supreme Court, Pearlstein co-authored a series of reports on the human rights impact of U.S. national security policy, including Command’s Responsibility, which provided the first comprehensive accounting of detainee deaths in U.S. military custody and received extensive media attention worldwide. Throughout her tenure, Professor Pearlstein worked closely with members of the defense and intelligence communities, including in helping to bring together retired military leaders to address key policy challenges in U.S. counterterrorism operations.

Before embarking on a career in law, Pearlstein served in the White House from 1993 to 1995 as a Senior Editor and Speechwriter for President Clinton.

David P. Stewart
Professor from Practice; Co-Director, Global Law Scholars Program; Director, Center on Transnational Business and the Law
Georgetown University Law Center
Professor Stewart joined the GULC faculty following his retirement from the career Senior Executive Service at the U. S. Department of State, where he worked for over three decades in the Office of the Legal Adviser. His last position was Assistant Legal Adviser for Private International Law; previously he served as Assistant Legal Adviser for Diplomatic Law and Litigation, for African Affairs, for Human Rights and Refugees, for Law Enforcement and Intelligence, and for International Claims and Investment Disputes, as well as Special Assistant to the Legal Adviser. Before joining the government, he was in private practice with Donovan Leisure Newton & Irvine in commercial and antitrust litigation. He was Adjunct Professor at Georgetown for over 25 years and received the Law Center's Charles Fahy award for distinguished adjunct faculty teaching in 2003-2004. In 2019 he received

David Rudenstine
Sheldon H. Solow Professor of Law, Benjamin N. Cardozo School of Law

David Rudenstine served as Dean of the Cardozo School of Law from 2001-09, and is currently the Sheldon H. Solow Professor of Law at Cardozo, where he has taught constitutional law since 1979. The first dean appointed from the ranks of the Cardozo faculty, Professor Rudenstine is an American legal scholar respected for his work on free press, free speech, and national security issues. He is the author of The Day the Presses Stopped: A History of the Pentagon Papers Case, which was nominated for a Pulitzer Prize, and he is currently writing a book on the role of courts in national security cases. In recent years, he has organized and participated in legal panels on subjects such as the disclosures made by Edward Snowden and Wikileaks, the NSA Surveillance Programs, and the ACLU in American Life. In 2000-01, he was an inaugural fellow in Princeton University’s Program in Law and Public Affairs.

Prior to his teaching career, Professor Rudenstine served as Acting Executive Director of the New York Civil Liberties Union, Counsel to the National News Council, a staff attorney in the New York City legal services program, and Director of the Citizen’s Inquiry on Parole and Criminal Justice, Inc. During the 1970s, Professor Rudenstine litigated extensively in federal and state courts in the 1970s, and throughout the 1990s, he frequently served as a labor arbitrator and a court-appointed mediator and referee. For three years he served as Chair of the Labor and Employment Law Committee of the Association of the Bar of the City of New York. In the summer of 1962, Professor Rudenstine taught African American children in Prince Edward County, Virginia, the only county in the United States to close its public schools rather than comply with a judicial order requiring integration. From 1964-1966, he was a Peace Corps Volunteer teaching in Uganda. He was a Field Fellow in the Arthur Garfield Hays Civil Liberties, while attending New York University School of Law. While he was the Cardozo Dean, The Kathryn O. and Alan C. Greenberg Center for Student Life was given in his honor, and in 2012, Susan Halpern funded the establishment of the David Rudenstine Fellowship Program in Public Service.

Beth Stephens
Distinguished Professor of Law
Rutgers Law School

Professor Stephens has published a variety of articles on the relationship between international and domestic law, focusing on the enforcement of international human rights norms through domestic courts and the incorporation of international law into U.S. law. Professor Stephens was an Advisor to the American Law Institute's Restatement (Fourth) of the Foreign Relations Law of the United States and served as a legal consultant to a network of human rights groups formulating proposals for a new treaty on business and human rights.

As a cooperating attorney with the Center for Constitutional Rights, Professor Stephens continues to litigate pro bono human rights cases, including cases filed against U.S.-based corporations alleging responsibility for human rights violations committed in the course of their activities abroad.

Professor Stephens graduated magna cum laude from Harvard University, received her J.D. degree from Berkeley Law School, and clerked for Chief Justice Rose Bird of the California Supreme Court. From 1990-1995, she was in charge of the international human rights docket at the Center for Constitutional Rights in New York, where she litigated cases addressing human rights violations in countries around the world and received the Trial Lawyer of the Year Award from Trial Lawyers for Public Justice in recognition of that work. She spent six years studying the changing legal system in Nicaragua in the 1980s.

David P. Stewart
Professor from Practice; Co-Director, Global Law Scholars Program; Director, Center on Transnational Business and the Law
Georgetown University Law Center
Professor Stewart joined the GULC faculty following his retirement from the career Senior Executive Service at the U. S. Department of State, where he worked for over three decades in the Office of the Legal Adviser. His last position was Assistant Legal Adviser for Private International Law; previously he served as Assistant Legal Adviser for Diplomatic Law and Litigation, for African Affairs, for Human Rights and Refugees, for Law Enforcement and Intelligence, and for International Claims and Investment Disputes, as well as Special Assistant to the Legal Adviser. Before joining the government, he was in private practice with Donovan Leisure Newton & Irvine in commercial and antitrust litigation. He was Adjunct Professor at Georgetown for over 25 years and received the Law Center's Charles Fahy award for distinguished adjunct faculty teaching in 2003-2004. In 2019 he received
the Law Center’s Faculty of the Year award. Professor Stewart is past President of the American Branch of the International Law Association and a member of the Board of Editors of the American Journal of International Law as well as the Secretary of State’s Advisory Committee on Private International Law. The American Law Institute selected him to serve as one of the Reporters working on the Restatement (Fourth), Foreign Relations Law of the United States. He previously served on the Executive Council of the ABA’s Section of International Law and the Executive Council of the American Society of International Law. From 2008-2016 he was a member of the Inter-American Juridical Committee, which advises the Organization of American States on juridical matters of an international nature and promotes the progressive development and codification of international law.

Professor Stewart co-directs the Global Law Scholars Program, directs the Center on Transnational Business and the Law, advises the Georgetown Journal of International Law, and teaches courses in public and private international law, foreign relations law, international immunities, international criminal law and international law in domestic courts. He served to Major, U.S. Army Reserves in military intelligence.

Ryan C. Williams
Assistant Professor of Law,
Boston College Law School
Ryan Williams joined the Boston College Law faculty as an Assistant Professor of Law in 2016. He teaches and writes in the areas of constitutional law, civil procedure, and federal courts. His research has included works focusing on the original meanings of the Fifth, Ninth, and Fourteenth Amendments as well as works exploring the intersection of constitutional rules and the civil litigation process. His prior publications have appeared or are forthcoming in the Yale Law Journal, the Columbia Law Review, the Stanford Law Review, the Notre Dame Law Review, and the Virginia Law Review.

After graduating from Columbia Law School, Williams worked as a litigation associate in the New York office of Sullivan & Cromwell, LLP where his practice focused primarily on class actions and other complex commercial litigation. After leaving practice, he was a Sharswood Fellow at the University of Pennsylvania Law School (2011-2013) and an Associate-in-Law at Columbia (2013-2016).

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