

Oona Hathaway & Dean Heather Gerken

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This is Inside Yale Law School, the podcast series designed to give you a peek inside to the scholars, the thinkers, the teachers, and the game changers of Yale Law School. I'm Heather Gerken, the dean, here to open a little window into the world of this remarkable place.

There's lots of things that I didn't know a thing about a year ago that now I feel like I deeply, and that's part of the joy of this job is being able to drop everything, and do Ukraine for a year, and really put your heart and soul into that and by not being stuck in the law as it is but finding ways to innovate but innovation deeply grounded in the law, not just making it up as you're going along, and being able to make the argument.

I have with me on Oona Hathaway, the Gerard C. And Bernice Latrobe Smith Professor of International Law here at Yale Law School. Thank you so much for being here, Oona.

Thank you so much for having me.

So it's wonderful to have you here, and this feels very special to me because you have served an enormous leadership role in the school, including serving as my senior advisor. So I feel like talking about that first because that's what I am most grateful for. But of course, everyone else in the universe knows you best for your extraordinary scholarship.

So I wonder if we could just talk a little bit about some of the things that you've been up to because we can't possibly cover it all in a single podcast. But I know you've been involved with all things Ukraine lately and played a key role in helping to create a special tribunal to prosecute the crime of aggression against Russia. So can you talk a little bit about what you've been up to?

Yeah, sure. Well, it's still a project that's underway, but obviously, one of the questions that has come up with the war in Ukraine is, what kind of legal accountability is there going to be for the illegal war, for the atrocities that are taking place? And the International Criminal Court, as people have probably seen, has already issued an indictment against Putin, and it will be investigating crimes against humanity, genocide, and war crimes.

But there's one big crime that is left out of the ICC jurisdiction. For various reasons it's actually in the statute that creates the ICC, but it can't be prosecuted against Russia and, therefore, against Putin because Russia is not a party to the Rome Statute that creates the court. And that is a crime of aggression. And the crime of aggression is, really, the crime of starting this war in the first place.

And without the crime of aggression, none of these other crimes would happen. Without the crime of aggression, you wouldn't have the war crimes. You wouldn't have crimes against humanity. And you wouldn't potentially have genocide. And so the project I've been working on is, how do we create accountability for that crime given that it's not within the jurisdiction of the International Criminal Court?

So one of the things that's been sort of extraordinary to watch as this has unfolded is watching in real time your theory the one that you worked on with Scott Shapiro play out in the real world precisely the way you predicted it would be. So I wonder if you could just take us a little bit back to talk about your work on out casting with Scott. And how did that idea originate? What is it-- just tell people what it talks about, and then maybe we can talk about how it applies to Ukraine.

Yeah, so the book that Scott Shapiro and I wrote, *The Internationalists*, makes the argument that the foundational principle of the international legal order is the prohibition on war. And we show this transformation that took place. We argue, beginning in 1928, the Kellogg-Briand Pact, where before that, war was perfectly legal and legitimate. States could go to war for basically any reason.

They could go to war to collect debts. They could go to war because of interference with their trade relations. They could go to war for wife stealing. There's all kinds of reasons that they could and did go to war with one another.

And part of what we show is both what the world looked like when that was true and then how did that change. So we argue that the key transformation began in 1928 with the [INAUDIBLE] war and the Kellogg-Briand Pact, and that was reaffirmed in the United Nations charter in 1945. And in the book, what we try to do is not only describe and explain that transformation but also show all the kind of legal pieces of the puzzle that had to be put together for that transformation to take place.

So part of what we argue is that one of the problems with the 1928 Kellogg-Briand Pact was they outlawed war but they didn't really think about what all the consequences were going to be and actually what pieces had to be put in place to make that actually work. And they began to figure it out over the course of the time from 1928 to '45. They put in these various pieces.

And one of the pieces was outcasting, what we call outcasting. And the idea there was, OK, if you're not going to have war anymore to enforce your legal rights, you're not going to be able to use war, for instance, to enforce treaties or international law at all, how are you going to enforce the rules? So when Japan invades Manchuria, everyone's kind of perplexed about how they respond.

They can't respond with war because they just outlawed war. But how are they going to respond? Because they don't want to do no response. There should be some response.

And we describe the process of legal innovation that leads to this idea of economic sanctions and outcasting. And in that case, they just refused to recognize this new entity, the puppet state that China created, Manchukuo. And that was the first use of sanctions, this nonrecognition and sort of completely cutting off this region from any kind of economic trade as a mechanism of enforcement of international law.

And so that's the story we begin to tell, and then we have argued in our work, generally, the outcasting is now the main way in which international law is enforced in the modern legal order. And we've written a large article and we talk about in our book the various ways in which outcasting, one of the key forms about outcasting, is economic sanctions are used to enforce the prohibition of war among other international legal principles.

And you see that in the Russia-Ukraine War, of course, with the enforcement of the prohibition on war through massive sanctions that have been put in place by more than 40 states, who've agreed voluntarily to put in place their own sanctions, as well as other forms of outcasting-- kicking Russia out of the Council of Europe and other kinds of international organizations. So we're kind of seeing that play out in real time in this war.

It must be very gratifying to be right in the middle of one of the most important conflicts on the planet and to be able to actually do something about it because I think a lot of people feel very helpless and have it all be connected to the work you've done before.

Well, I think what's been interesting for me and gratifying is I think we have-- the theory that we developed in our scholarship kind of gives us a way of understanding what's happening in this war and also what the

stakes are. And so the view that we developed in *The Internationalist* is that the prohibition on war isn't just one rule among many. Article 2 (4) of the United Nations charter, which prohibits states from resorting to use of force, isn't just one provision. It's the foundational principle on which the rest of the international legal order is grounded.

And that then gives clarity about how important the response to this war is because this is the first major ground war in Europe since World War II. It's an unequivocal violation of the prohibition on war. And the stakes are not just Ukraine. The stakes are the global league order.

And so when you see it that way, then you're willing to pull out all the stops to do everything you can to respond. And it's been part of the reason that I've been gratified to have a chance to be involved in some of these efforts, like creating the special tribunal to try the crime of aggression, which is still a project that's underway.

So we are-- it is a constant process of trying to build support for this idea. And that's been a learning process too, working with the UN and representatives at the UN. But also, understanding what role sanctions are playing and the importance of sanctions and thinking about the role of various kinds of financial sanctions that would also then go to rebuilding Ukraine and the importance of that.

So I think it helps you see the picture in a broader, deeper way, and not just see this as one event that really just matters for Ukraine, but as an event that when viewed in historical context and over the course of centuries, has a potential to be an epic-shaping conflict. And how states respond to that will make a huge difference for what the world looks like for the next 100 years. And so when you see it that way, I think it helps frame the importance of the response.

One thing that I love the most about your work is just how wide ranging it is because *The Internationalist* is a book that is driven by a theory and covers an enormous range of history and requires a huge amount of peripheral vision and knowledge. And then some of your work, you dig really deep. You dig into a problem. You get the information that you need and then show something that also, that no one has seen before.

So I'm thinking, for example, just one example, of the piece you did in 2020 in *The Harvard Law Review*, with Curt Bradley and Jack Goldsmith, which is a roadmap about transparency for binding executive agreements. And so keeping in mind that not everyone knows what that means, could you talk a little bit about it because I know this work has actually been translated directly into policy. And I wonder if you could just first start with what you found, and then maybe we can just fill in the gaps about where it's gone from there.

Yeah, so this has been a project that I worked on with Curt Bradley, now of Chicago, and Jack Goldsmith of Harvard. And what we were interested in doing was really digging into deeply understanding these executive agreements. So what are executive agreements? These are agreements that are made by the United States. They're binding international agreements that are made by the United States with its various international partners.

And it's not done through the process people think of when they think of international treaties. So they think of the constitutional process under Article 2, where there's advice and consent of 2/3 of the senators. That's not what these are. These are agreements that have the same legal weight internationally, importantly. So they're treaties under international law. And the US can be held responsible for violating them under international law.

But under US law, they're treated very differently. All that the president has to do is either determine that-- if he determines that he can make the agreement under his own constitutional authority, he can just make them. And if he needs prior statutory authority, he can also still make them as long as he can point to some prior statute.

Under a law that was passed in the '70s, called the CASE Act, the only requirements is a transparency requirement. And that is that they have to report these to Congress. And so what we did is, we looked to see, do they actually do that? Do they actually report these to Congress and how well are they reported and then also, what proportion of these are actually published so that the public can see them, not just Congress.

And to find that out, we had that idea of putting a FOIA to the State Department to get copies of these cover letters that they add to these agreements when they send it over to Congress, with what's called CASE act reporting. So whenever these agreements are made, they're supposed to report it to Congress within 60 days.

So we FOIA'd it. They didn't respond. And so with the help of the Media Freedom of Information Access Clinic, here at Yale, we sued them. And so we sued the State Department. And under a settlement agreement with the State Department, they eventually gave us over 5,000 of these cover letters. And the cover letters are really important because they tell you what agreements were made. But importantly, they have a line where they say what the legal basis is for the agreement.

So then we collated all of that with the help of a ton of amazing YLS research assistants. We looked at every one of these laws that they were citing, and looked at, do those laws actually authorize the president to enter into international agreements or not?

The end result of all of this was the Harvard Law Review article, that basically showed that first of all, the executive branch is not observing all of its transparency requirements under the CASE Act, and second of all, that a lot of the laws that it relies on for entering into these international agreements are not particularly strong sources of legal authority for these agreements. And that has a whole host of other implications.

And in part, as a result of that article, there was a change to the CASE act. There are amendments in the last National Defense Authorization Act that basically made all the recommendations we made in that article. So almost all of them were entered into effect as well as some recommendations we are making in a forthcoming article, that hasn't yet been published, on another kind of agreements called nonbinding international agreements, that we're still in the middle of working on.

So I want to talk about that first. And then I want to circle back to what it was like to work with, I take it, the Senate Foreign Relations Committee.

Yeah.

So let's talk a little bit about the non-binding agreements. It's amazing that you haven't even published the piece and it's already affecting policy. But can you just give us a primer on those?

Yeah, so when we finish this article in the Harvard Law Review, we thought, that was great. But then in the process of doing it, we realized, in talking to a lot of people, look, one of the downsides of increasing transparency for executive agreements is that it might drive more-- the executive to rely more on non-binding international agreements.

So what are non-binding international agreements? These are basically agreements that look almost exactly like executive agreements. They just are supposed to avoid a few words. Instead of shall, they say endeavor to. Instead of will, they're supposed to say might or may or will aim to.

And we had known that these existed. And scholarship has observed the fact of the existence of these non-binding agreements. But nobody's really been able to get a handle on what's actually going on because there are literally no reporting requirements. Or there have been literally no reporting requirements for non bindings.

And so you might catch snippets of them here and there. So for instance, the Joint Comprehensive Plan of Action, otherwise known as the Iran Nuclear Deal, was done is a non-binding international agreement. The Paris Agreement on Climate Change, much of it was done as a non-binding agreement. So some of these very big-deal agreements, in the last few years, have been done as non-bindings, in part to avoid the Senate and the advice and consent requirement, which is impossible to overcome.

And so we got the idea, after coming off of this success of FOIAing the State Department, why don't we FOIA 24 additional agencies to try to find all their not binding. So--

Thank god for Mafia.

Yeah, thank god for Mafia. I really have been like a full employment act for Mafia. And they've been amazing. So--

They're the best-named clinic in addition to being an excellent one on its own.

Exactly. So they were so game. And this is not an easy thing because with each FOIA request, you have to investigate each agency's separate rules and figure out who you have to send it to and what statutory requirements they have. So they very gamely helped us FOIA 24 agencies.

And then we sued 3, State Department, Department of Defense, and Department of Homeland Security because they were really dragging their feet. And we ended up with settlement agreements with State and DOD. And DHS, we're still in the midst of fighting with. And they've been producing tons of these non bindings.

And the argument we're making there-- and I think we've, for the first time, created a database of non-bindings. Nobody's really seeing more than a handful of these before. Very few of them are public. Congress doesn't even see them. There's no reporting requirements. Even State Department has no idea what's going on. It has no idea what DOD is doing or DHS is doing or what any of the other agencies are doing because there's no requirement.

That's amazing.

Yeah, what's amazing to me is the vast majority of our diplomacy and international agreement making is happening without the Department of State having any idea what's going on.

So DOD is our foreign policy ambassador.

DOD is the face of US foreign policy abroad. In fact, when we sued them, they had to disclose how many agreements they thought would be responsive. And they said 6,000-- 6,000 just for DOD, just for this 30-year period that we were looking at.

Now they haven't actually given us 6,000, so we're in the process of working with our lawyers to try and find out why have they only-- they've given us about 600 now, over the course of almost a year. I think that the answer is going to be that the rest are classified and that's why they haven't been handing them to us. But we're trying to find that out.

But if that number is even vaguely right, the rest of the agreements we have-- right now we have 3,000 in our database. And 600 of those are DOD agreements. So if that 6,000 number is right or even close to right, then DOD swamps everybody else, including the State Department.

Amazing.

It is amazing. And what's also amazing is that if you look at the graph-- and one of the things we do here is we graph the binding agreements, executive agreements, against non bindings. And executive agreements are just falling off. And meanwhile, non bindings are rising. So we call it the rise of non-binding agreements because it is really taking over binding agreements and becoming the key way in which the US and the rest of the world, frankly, is making its international agreements. And other countries are doing the same thing for the same reason, which is to avoid their own political and legal oversight processes.

So we're also holding a set of conferences. Curt Bradley is running a conference that is centering around this work. in Paris, in the fall. So we're trying to bring it on the road to also get scholars around the world asking the same questions in their own countries.

What I love about this, Oona, is that when you think about how international law is traditionally taught in the classroom, what it looks like in a traditional casebook, it looks nothing like this. You're completely uncovering what international law really is, but not from the sources that we typically look to.

Yeah, and what I love about this project is when you look at a typical international law casebook, a lot of it is-- or a Foreign Relations law casebook-- a lot of the focus is on these article II treaties, the big treaties, the human rights treaties. And there's lots of good reason to work on that.

And I spent a lot of my life working on human rights treaties. But really, that's not where the action is these days. That is not where international law is now. The guts of international law today are these executive agreements and increasingly, these non-binding agreements. And international lawyers have basically zero visibility into that. They have no idea what's going on.

And the left hand doesn't know what the right hand is doing within the US government either. So there's lots of reasons to think that digging into this is going to change our view of what international law looks like. It raises a lot of really deep and interesting questions too, that we don't attempt to answer in the article, like what does it mean that these quote, unquote "non bindings" are the new face of international law but they claim not to actually create law?

And what does it mean that they're displacing these binding agreements? What does that mean about the value of law? What does that mean about the ways in which law is enforced or not enforced? What does it mean about the face of international law going forward?

And these are-- I hope we open those questions up. One article can't answer all of those. But the hope is we're going to put all this on Dataverse. We're going to put all of these agreements up online. And my hope is that scholars will dig into this and see this as an invitation to reorient the field around this set of questions.

One of the things also, that is just so interesting, is that through line from your work is transparency in two senses, transparent in the sense that you've made things transparent, but going back to treaty's end, you've been thinking about the political and power dynamics of transparency and the way that it works.

So way back in 2008?

Yeah.

Just when we first met each other, I think.

Yeah, that's right. I think the through line, for me, is both just curiosity about how international law actually works, but also my view has long been that international law deserves to be treated with the seriousness that domestic law is treated, but if we're going to ask for that, that we have to hold ourselves to that own, same standard.

And so it has to meet the same standards of democratic legitimacy and inter-branch cooperation and collaboration and transparency to the public. And those are standards that shouldn't just apply to domestic laws. Those should apply to international law as well.

And so to me, it comes out of a deep belief in the value of international law, but also in the sense that international law shouldn't hide behind this veil of, oh, we're just international law, it's foreign Relations law, it's something different and it can play by different rules. I actually think-- because I think it's so important and because I think it's so central and because I think it deserves to be treated with such seriousness is exactly why I want to hold it to the same standards that I think we ought to hold domestic law as well.

So maybe I could talk a little bit about the way you combine two roles, which is, one is pure scholar and the other is public intellectual and pushing forward policy and so on. And those things aren't always-- those don't always involve the same skill set. And I wonder how you think about those two roles. And which feels the most comfortable to inhabit?

Yeah, I think that first and foremost, I think of myself as a scholar. But I think in the modern age, if you want your work to have an impact and you're going to labor on these things for years, you want you want people to actually read them. You want the ideas to have some influence.

And so part of-- I think of my job as idea generation but also teaching and teaching here within the law school and teaching the public at large. And so when I write scholarship, I try to think about, how do we get these ideas out into the world? And so there are a number of outlets that allow for that. One that has been an important one for me, the last few years, is I'm an executive editor for this online blog called Just Security.

And the thing I love about Just Security is, whenever I write a 100-page Law Review article, I write two-page blog post. And it's a way of getting the essential ideas into the system. There's lots of foreign-policy people who read that, lots of people in the US government who read it.

And it's a way to get the ideas into the bloodstream people who are working on these things. And then if they want to go read the 100-page article, they can. But most of them probably won't. But they'll at least get the basic ideas. And so that's a way to take work, like what Jack and Curt and I did, in writing this very serious Law Review article, that took us-- it was a lot of data work and lots of research-assistant hours and all the work from Mafia and all this work to generate this Law Review article.

But how do you translate that into actually making those recommendations have some impact in the world? Well, if you're just leaving it in the pages of The Law Review, it's less likely to have that impact than if you also are doing some of this writing on the side.

And frankly, that kind of writing is fun. It's exercising a different muscle. Law Review writing is-- it takes a very long time frame, and same with the books, very long time frame. You're working on something for years. And then you submit it. And The Law Review picks it up. And then it's another year before it actually comes out, or in some cases, two years.

And the nice thing about these more immediate kinds of writing, like Just Security, or doing op eds, or things for Foreign Affairs, which I've been doing a fair bit of, is you write it and it's out the next day or the

next week. And that's very satisfying. It's very nice to have your ideas get out into the world much more quickly and then also, the way, again, of drawing people, hopefully, into your more serious work. And so it's a way of getting those ideas out there. But it's also a way of being in conversation, I think, with people who-- ultimately, when we're writing these things, we want the world to change in a certain way. Most of these Law Review articles do end with recommendations, which are aimed at a public-policy audience.

And if you're not reaching them where they are, then those proposals don't have a whole lot of chance of actually resulting in anything. And so you have to take that work and figure out where they are, where are they going to read it, and how do you get it into that bloodstream. So that's been-- I see that as part and parcel of the work that I'm doing.

Well, One of the reasons I think you're so successful is because you're known to be a straight shooter. You have your own commitments. But you also call them as you see them. And it's actually been really fun to watch you do a lot of this work with Jack and Curt, who I think that if we mapped you all on the political spectrum, you'd be on very different spots. But you've found this incredible working relationship together. I don't know if you'd want to say a few more--

Yeah, they're great fun to work with because they're very serious scholars. And they want to get it right. And we have rewritten-- we've rewritten the non-bindings piece from top to bottom several times. And that was after it was accepted by the Chicago Law Review. So it was not because we were looking for a better placement but because all of us want it to be as good as it can be.

And working with them is great. They care about the ideas. We have really shared views about the importance of democratic legitimacy of international law-- and that's a place where we meet-- and a curiosity about how these things work and what's actually going on in the world, and interest and mapping that and understanding that, and then translating it out into the world.

And so yeah, I started my career, really, as a critic of their work, and in many ways in opposition to a lot of things I've done. And a lot of that I've written has been at some odds with some of their work. But what's so great about them is none of us takes that personally. We work together on the things that we care deeply about together. And we also are all open to being persuaded.

And so occasionally, there would be points where we're in disagreement on something when we're writing. But we're always able to either write around it or find a way to persuade one another about the right way forward. And that's been really great and a lot of fun. It's always interesting and fun to work with somebody who cares about ideas and who wants to get it right and who's willing to listen and be persuaded, but also smart enough to persuade you that they're right when you disagree.

Well, it's nice to see you modeling the habits of lawyers and scholars in a world that makes it really hard to do that.

Yeah, no, it's been great. And I think this is something that academia, ideally, does, give us an opportunity to do and caring deeply about these ideas. And working together's been a lot of fun.

Can we talk a little bit about teaching because you're a beloved teacher. And one of the things I love the most about your teaching is that one of your teaching strategies is to go out and ask people, who are doing real policy work, what the impossible question is, and then answer it. And so I wonder if you'd just talk a little bit. It's a really different teaching model.

Yeah, well, when I came back to Yale-- I left Yale. I went to Berkeley for a year. And when I came back, I thought, what do I want to do? How do I want to innovate with my teaching? And there's a lot of exciting

things happening in Washington. And I thought, our students are so brilliant and so capable. Maybe what we could do is work on projects that are actually-- bridge this academic, real-world divide by working on projects in the classroom that are of real interest to people in the real world.

And so I went to a few friends and said, what are some interesting, hard questions that you're working on? And I'd served on the Advisory Committee at the State Department. So I went to the State Department Legal Advisor's office, which I, at that point, had been working with for about five years, and invited them to give me some projects.

So I a bunch of projects. And the students started working on them. And the aim was to produce white papers. And we did. And then after looking at them, I realized with one of them-- I think one of the earliest ones that we did this with, one of them was a question that I got from someone, actually, in Congress, which was, what is a law that regulates cyber attacks? Should we be doing something different around this? Should we have a new treaty?

And so I began. I was like, oh, that's a really interesting question, what's the law that regulates cyber internationally, and began investigating that. And when we wrote the white paper on that, I looked at it. And I realized nobody's actually written about this in the scholarship. And maybe we could try submitting it as a Law Review article. Let's see.

And I don't think at that point, many people had done multi-author large articles. That, at least, wasn't typical, and particularly with students. But I thought, let's give it a shot. Who knows? Somebody might pick it up.

So we submitted it. And lo and behold, California Law Review was interested in it and picked it up. And so I think I have four student co-authors on that piece. And it was one of the first pieces on the law-- international law applying to cyber-- in legal scholarship.

And one of my co-authors on that, Rebecca Crootof is now teaching at Richmond Law School and is a leading Law and Tech scholar. And so yeah, we have amazing students with such creativity and genius and brilliance, that we can-- and we have so many resources here. The libraries are amazing. Just everything that we have here is just above and beyond what anybody, frankly, in the federal government, really has.

I know this from having spent a year at the Department of Defense. The library was nothing compared to Yale Law School's library. And so we actually can offer some value add in trying to understand a problem and then doing our best to try and figure out a way to solve it.

Do we get it right every time? No. But it's always a lot of fun too because we're working collaboratively. It's a great way both for me to work closely with a bunch of students, but also for them to work with one another. And I think in many of their careers, most lawyers don't toil alone in their rooms by themselves. Typically you're working on collaborative projects and you're working in teams. And you're having to share ideas. And sometimes you're going to disagree about how something should be done. And you have to figure out how to work around that disagreement.

And so part of what I also enjoy about it is that that's a different kind of learning process for them. And it's also always a challenge for me because how do I how do I take what I think about this? How do I learn from their teaching me? How do we find a way forward, together, that we can agree on when we might be coming at it from very different directions?

And so every year, it's a new challenge, not just because we have new problems and we have new students, but because the world is changing. And so it's always incredibly gratifying. And I think the

students tend to really enjoy it because they're working on something where somebody at a federal agency, they know, is going to read it because they're interested in it. And then we may also turn it into something that's published and out in the world.

And I know it's also not the only way that you put people out into the Academy because before I became dean, every faculty member sits on prize committees. And we evaluate papers. And almost inevitably, I would find that no matter what prize committee I was on, there was someone who had been mentored by you because you're so rigorous about teaching students to get from 0 to 60 for their papers. And you have a system for doing it. And you really teach them scholarly habits. And so unsurprisingly, so many of the papers that you helped mentor into existence are in the Prize Committee's list, which is really amazing.

I appreciate your saying that. And that's part of the joy of teaching here is, students have these bright ideas. Sometimes they don't always know how to get from point A to point B. And that's part of our job, is to help them figure that out.

And I think one thing is that people might think that writing is easy. And writing is never easy. It's always a bit of a struggle. And so what you want to encourage students to realize is, when they run into trouble, that's just part of the process. That's normal. That's a sign you're on to something good, if you're not quite sure how to proceed.

And so how do you make your way through that uncertainty? And how do you find your way forward? And how do you find a good question? But then how do you find-- how do you figure out what you think about the issue? And how do you think of writing as a process of discovery, and then translating, in your writing, what it is you've discovered and how you've thought about that problem?

And I also-- I think one thing that I really have enjoyed doing, and I think the students enjoy is, used in feedback on one another's work. So a lot of these projects that-- Foreign Relations International Law and Practice course that I do, and then when I supervise student papers, often, what I'm interested in doing is getting students to get genuine feedback from one another.

And then part of that is also talking about how do you provide feedback to other people in a way that they can hear it. And how do you don't always pull your punches, but how do you provide critical feedback in a way that people can hear it? And how providing-- just telling people what they're doing is great is not actually doing them a huge favor.

What you want to do is provide critical feedback because it helps them improve. But you have to know how to provide that feedback in a way that actually allows them to hear it and know the right way forward. And so I think that's all part of the learning process. And it's part of what I enjoy doing. And I think it's part of what helps the students develop their best work.

I love like jumping on these new ideas and new problems and being fed by what's happening in the world. All this stuff I've been doing on Ukraine the last year, for instance, has been completely different from anything I've done before. And I'm learning a lot about how the UN works and about international criminal law, and how do you create a special court to try the crime of aggression, and what are the limits on the General Assembly's powers, and all these things that I had no idea. What are all the questions around personal immunity in that law?

There's lots of things that I didn't know about, a year ago, that now I feel like I deeply. And that's part of the joy of this job, is being able to drop everything and do Ukraine for a year, and to really put your heart and soul into that. And that's part of my teaching as well.

And this Foreign Relations, International and Practical course that we're doing, some of the questions we're working on are related to Ukraine, like what are the legal paths to reparations for Ukraine, for instance. There's a set of questions people are asking. And so we've been writing about that. How does countermeasures theory give you a space to do something new?

And all of this is innovating. All this is legal innovation, but innovating from a deep foundation. And I'm a big believer in finding ways forward to solve new problems by not being stuck in the law as it is, but finding ways to innovate, but innovation deeply grounded in the law, not just making it up as you're going along, and being able to make the argument, OK, yes, the General Assembly has not exactly established a tribunal to try the crime of aggression before. But there's lots of really good precedents.

And if you read the UN Charter and you read these previous decisions, the ICJ, and you look at things that it has done in the past, there's a really good, firm foundation to suggest that this is not a major leap, and that it's consistent with the legal authority of the General Assembly.

And being able to make that in a really textured, deep, solid way, I think of as the mark of the work that we do, which is really grounding it. And I think there are some people that are willing to either dismiss it out of hand or assume that oh, it's easy. Of course, the General Assembly can do this.

And what I tell my students is, we're the ones that are going to do the hard work. We're going to write the 20-page memo that goes through, in excruciating detail, the charter, and the provisions of the charter, and all the things that allow us to do this. And if at the end, we conclude that the answer is no, then that's the answer. We have to be prepared to come up with an answer that we don't want to hear because that's the only way to be a really good lawyer is, you're not going to force the results. You're going to get to the result that the law takes you to.

So I sometimes joke that when I'm done with this job, I'm going to write skits for The Law Review are-- our in-school parody. And one of the skits that I have in my head is Yale Law school's closed. And everyone has to go get a different job. I have no doubts about your ability to go get a different job. You can run any organization you want and do anything that you want.

And the reason I know that is because you have served as a senior advisor for the first five years of my deanship. And the only reason that you aren't a senior advisor is because every year, you told me, you should rotate someone else in. And should rotate me off. And I refused to say yes until you finally took a 2 by 4 and hit me really hard and refused to allow me to keep you there.

But it's been-- I can't even describe the debt that I owe you for being part of that, things like-- we were talking about the Leadership program. And you were the person who said, our students need to there are many paths. And that just stuck with me and really helped frame out what we did with the Leadership program, to getting us through COVID, when we had to basically reinvent ourselves in what were really hard and difficult times.

And it's just been extraordinary to have you inside and giving wise advice from beginning to end. So I just want to say, it's just amazing that you do all of these things so well. But I think that part is probably invisible to most of the place.

But I see it and feel it deeply because it is very rare to have someone who's a wise, decent, filled-with-integrity advisor, who never once puts their own interest in front of the school, who always gives candid advice, who says no when the dean needs to hear no. And I just want to just end by thanking you. It has been one of the greatest joys of the deanship, is getting the chance to work with you as a senior advisor.

Thank you so much, Heather. And honestly, it was a joy to be able to do that. I've learned a lot from watching your leadership. And we've dealt with a lot of challenges over those five years. And it was really a great learning experience to see how you handled that and built a team and found our way through some challenging times. COVID, of course, was a challenge nobody anticipated. So I'm really grateful for the opportunity to have had a chance to be a part of that. And you see the best of the place, often, in my experience.

Sometimes you don't always see the best of the place. Sometimes you see some of the more challenging aspects. But it's also-- at the end, you realize what a special place Yale Law School is, how lucky we are all to be here, and what an amazing group of colleagues we have in students. And I was really grateful to have the opportunity to work with you on that. So thank you.

Thank you very much, Oona.

Thanks for having me.

[SOFT MUSIC]