

Georgia Law Review Symposium focuses on evolution of financial regulation

The recent financial crisis has shaped financial regulation in several ways, according to two speakers present this spring at a *Georgia Law Review* symposium titled “Financial Regulation: Reflections and Projections.”

The symposium’s two keynote presentations were given by Dennis P. Lockhart, the president and chief executive officer of the Federal Reserve Bank of Atlanta, and 1979 Georgia Law alumnus Luis A. Aguilar, a commissioner with the U.S. Securities and Exchange Commission.

Lockhart spoke about his views of the prudential regulation of financial firms and contrasted the regulation of banks and nonbank financial firms, also known as “shadow banks.”

“Banks have long been among the more heavily regulated firms. However, post-crisis regulatory oversight has been taken to another level for all sizes of banks,” he said. “... It has to be noted, though, that in the United States, banks represent only a part of the financial system.”

While other countries are “bank-centric,” the United States’ financial evolution has allowed for a “shadow banking system of considerable scale and institutional diversity.”

A “perfect” definition of shadow banking is “elusive,” according to Lockhart. “A simple and workable definition is financial services providers and credit intermediaries that operate without a bank charter.”

He added that the financial crisis that began in 2007 arguably started in the shadow banking arena. “It propagated to banks and became global because investors and depositors could not assess their counterparties’ exposures.”

Lockhart then speculated on whether shadow banks are being sufficiently regulated.

“If we anchor calibration of regulatory oversight of firms, classes of firms and markets in potential risk to the broad economy, then it seems to me we should variably monitor and supervise institutions and activities in the banking system that may have financial stability implications and do the same in the shadow banking world,” he said. “... The experience of recent years has made the primary aim of prudential regulation to protect the financial system’s ability to support the general economy. In my view, this should be the ‘true north’ of any

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—SEC Commissioner Luis Aguilar (J.D.’79)

expansion of the regulatory overlay on shadow banking.”

Aguilar, who was appointed to the U.S. Securities and Exchange Commission in 2008, noted that during his tenure as an SEC Commissioner, the country’s economy has experienced extreme highs and lows.

“The events of the financial crisis have substantially affected the commission as the primary regulator of the U.S. capital markets. It is no exaggeration to say that the SEC’s continued existence was in doubt,” Aguilar told the audience, referring to the economic downturn in 2009.

He said that in the years since the crisis, the SEC has “entered into one of its most active periods” in adopting new rules. “In fact, the commission has voted on almost 250 rulemaking releases during my tenure. Most of the commission’s new rules rightly focused on addressing flaws in our own capital markets.”

Aguilar said that in addition to focusing on the domestic markets, the SEC is also “working internationally to address the dangers arising from the growth and interconnectedness of the global financial markets and the reality that risks from less-regulated overseas markets can ultimately come to our shores.”

Today’s capital markets are “more sophisticated, larger, faster and more technologically driven than at any time in history,” he said.

“The financial crisis, and its aftermath, made clear that the SEC needed far more information to effectively supervise a number of important market sectors – such as money market funds, hedge funds, derivative activities (including credit default swaps), municipal advisors, credit rating agencies and others,” he said.

Since the crisis, Aguilar stated that the commission has been working to capture data and automate its analytical capabilities so staff can proactively identify areas of risks, emerging trends and fraudulent activities.

“It is impossible to predict with certainty the challenges ahead,” he said. “I do believe, however, that the country requires a well-informed and well-funded SEC to protect American investors – from both domestic and international activities.”

The symposium also consisted of three panels that explored topics such as the political economy of financial regulation, risk management and regulatory oversight, and the theory and structure of financial regulatory agencies.



Luis Aguilar (J.D.'79), a commissioner with the U.S. Securities and Exchange Commission



Federal Reserve Bank of Atlanta President and CEO Dennis Lockhart

International Criminal Court prosecutor speaks on crimes against children in times of conflict

Crimes against children in conflict “destroy the individual, shatter the family unit and tear violently at the social fabric of society,” said International Criminal Court Prosecutor Fatou Bensouda, who spoke at a Georgia Law conference titled “Children and International Criminal Justice” during the fall.

Bensouda was the keynote speaker at the daylong event, which also included a panel discussion and closed workshop sessions, and focused on the ICC’s role in prosecuting crimes against children during wartime.

“In most armed conflicts, the recruitment of child soldiers, sexual slavery, attacks on schools or forced displacement are regrettably common occurrences. These heinous crimes are not only repugnant to our collective conscience but simply devastating to children’s lives, and their families and communities – they should not be tolerated but rather met with the full force of the law,” Bensouda said. “Fighting impunity for crimes against children worldwide should be at the forefront of the global agenda.”

The prosecutor described peace as “simply a respite between wars” and noted that the 21st Century has witnessed countless conflicts throughout the world, all with “serious repercussions” for children.

“While wars may be inevitable, we have an obligation to curb the destructive impact human conflict can have on children,” she said. “My office is firm in its commitment to stand against the commission of crimes against children during conflict.”

Bensouda went on to explain her office’s perspective on the Rome Statute, its founding treaty, and how it protects and promotes the rights of youth. She noted that one aspect of the statute requires that the prosecutor take particular account of the degree to which crimes involve violence against children.

“When I assumed office as prosecutor in 2012, I categorically stated that in addition to focusing on ‘children who are forced to carry arms,’ we must also address the issue of ‘children who are affected by arms,’” Bensouda said.

She has elevated children’s issues to one of her office’s six goals in its strategic plan, in addition to “fighting impunity for sexual and gender-based crimes.”

In order to “reinforce our in-house expertise in this crucial area,” Bensouda in December 2012 appointed Georgia Law Associate Dean for International Programs and Strategic Initiatives Diane Marie Amann as her special adviser on children in and affected by armed conflict.

“Professor Amann has provided, and continues to provide, my office with invaluable support since her appointment,” she said, “including advising on the development of the office’s Children’s Policy and creating awareness on children’s issues as they arise in situations involving war crimes, genocide and crimes against humanity.”

Bensouda shared an example of a cornerstone case for the International Criminal Court. The case charged Thomas Lubanga Dyilo, a former rebel leader in the Democratic Republic of Congo, with the “conscripting, enlistment and use” of children under the age of 15 “to participate actively in hostilities.”

Lubanga was found guilty of the crimes in 2012, and this case “was a landmark decision for the court” and the whole Rome Statute system,” according to Bensouda. “The case also highlighted various issues, including the impact of crimes against children on whole communities, the specific issue of girl child soldiers and the devastating effects that such crimes can have on the right of children to education.”

The ICC is now expanding its focus from the specific issue of child soldiers to more fully considering the ways children are affected by conflict, Bensouda added. She noted that the court is in consultations currently to create a Policy Paper on Children.

“The Policy Paper on Children will be a comprehensive elaboration of how my office handles, and intends to systematically approach children’s issues in all aspects of its work,” she said. “It will address not only issues relating to crimes against children but also those relating to our interaction with children: for instance, taking into account their view, issues of protection and support of children who are witnesses and victims, as well as children of adult witnesses.”

She added that she hopes this policy paper, once adopted, will also serve as a guide for countries and other relevant actors in their work to combat crimes against children and to address children’s issues in the judicial process.



Cosponsors of this conference, in addition to the Georgia Journal of International and Comparative Law, the law school’s Dean Rusk Center for International Law and Policy and the Georgia Law Project on Armed Conflict and Children, included the UGA African Studies Institute, the Planethood Foundation and the American Society of International Law-Southeast.

House Lecturer examines fashion and fairness through the years

Women in the professional world have always been judged by their clothes and how they wear them, according to 1992 Georgia Law graduate Kelly Caffarelli, who delivered the speech “Long Pants or Short Skirts: Fitting In, Fighting Back or Finding Your Own Way” as the law school’s 33rd Edith House Lecturer.

Caffarelli, the president of Caffarelli Consulting, a firm that advises mission-focus organizations on how to make their programs more impactful, highlighted the fashion sense and attitudes of leading ladies through history who inspired hope and paved the way for women’s rights and roles in professions such as law and business, as well as society at large.

“As early as 1925, deans of national law schools were surveyed and they commented that, ‘Women were as good or better than their male classmates,’” Caffarelli said. “In 1925 ... men recognized that women understood the law and that they did well in law school, but that still hasn’t translated to professional equality for women.”

Caffarelli noted her own experiences with gender bias in the workplace and gave advice on how to face these challenges to the future lawyers in the audience.

“Be aware that life isn’t fair, and men and women are not treated equally,” she said. “[Men and women] have this internal [gender] bias and we have to act intentionally to counterbalance it, and perhaps take an extra moment to encourage women.”

Caffarelli said women should do what makes them comfortable professionally – from choosing what area of law to practice to what to wear to work on a daily basis.

Caffarelli served as the president and as a member of the Board of Directors of The Home Depot Foundation for 10 years. Under her direction, the foundation granted more than \$340 million to nonprofits focused on affordable housing and community development. She earned her bachelor’s degree from Williams College and her Juris Doctor *magna cum laude* from Georgia Law, where she served on both the editorial and managing boards of the *Georgia Law Review* and was inducted to the Order of the Coif.

The Edith House Lecture is sponsored by the Women Law Students Association in honor of one of the first female graduates of Georgia Law. House, a native of Winder, Ga., was co-valedictorian of the law class of 1925, the first class to graduate women.

—Courtney Lee Brown



Watch Caffarelli’s lecture online at www.law.uga.edu/edith-house-lecture-series



PepsiCo leader speaks about the role of a corporation in the modern age

PepsiCo Chairman and Chief Executive Officer Indra Nooyi discussed the role and responsibilities of corporations as well as her company’s Performance with Purpose strategy – which strives to deliver sustainable financial success by operating in line with the needs of society – this past fall at a Georgia Law lecture.

Nooyi, the chief architect of Performance with Purpose, explained that when she joined PepsiCo in the 1990s, “it became very clear the world around us was changing in profound ways, and we needed to evolve our company in anticipation of these changes.”

After her appointment to CEO in 2006, Nooyi placed renewed emphasis on research and development and made strategic business moves, including several acquisitions, expansions and inclusions of new products. By doing so, PepsiCo was able to create a plan that would allow for both profits and progress, she explained.

In current times, “To consumers, who you are as a company is becoming as important as what you sell,” she noted, and raised the question, “To whom and for what is the modern corporation responsible?”

Nooyi shared several examples of Performance with Purpose in action at PepsiCo. These actions include partnering with local suppliers in India to change agricultural practices that have reduced water usage so much so that by 2009 PepsiCo India conserved more water than it consumed. The company also works to create business opportunities with local farmers.

Additionally, the creation of the PepsiCorps program gives its employees the opportunity to work in underserved parts of the world “to improve economic, social and environmental aspects of communities.”

What these groups have done is “simply outstanding,” Nooyi said, noting that employees have been able to return to the corporate world with new perspectives, which is “critical” for a global company.

“At PepsiCo, you can change the company and make a difference in the world at the same time,” she said.



Photo by UGA Photographic Services' Peter Frey.

Napolitano makes a case for public service

The success of one's life can be judged by answering one question: “Did I make a difference?” according to Janet Napolitano, University of California System president and former U.S. secretary for the Department of Homeland Security, who presented “Anatomy of a Legal Decision” as Georgia Law’s 112th Sibley lecturer last fall.

“There are many ways to make a difference, both within the legal profession and [out],” Napolitano said. “But ... for those who possess a legal background, there are opportunities in public service to obtain rewards that transcend the size of the paycheck.”

Napolitano discussed how she used her time in public service to make a difference with an initiative called Deferred Action for Childhood Arrivals (DACA), which was developed under her direction while she served as secretary at the DHS. DACA’s mission is to allow those who have been born in or brought to the United States by undocumented immigrants and who live in fear of deportation to “come out from the shadows.”

In the two-plus years since its implementation, DACA has brought forward more than 675,000 young people who have applied for and received “deferred” status. This status generally means “to suspend moving forward with certain cases for a fixed period of time” and does not grant amnesty or otherwise permanently resolve immigration status, according to Napolitano.

Recognizing that there is still much work to be done in the area of immigration, she added that her hope is that future lawyers from public universities will bring aid to the public sector in years to come.



Photo by UGA Photographic Services' Andrew Davis Tucker.

“... there are opportunities in public service to obtain rewards that transcend the size of the paycheck.”

“I am now in the education business,” she said. “I could not agree more that it is a fundamental obligation of universities, especially *public* universities, to grow future leaders who will look beyond their own careers ... and consider the possibilities of public service.”

The Sibley Lecture Series, established in 1964 by the Charles Loridans Foundation of Atlanta in tribute to the late John A. Sibley, is designed to attract outstanding legal scholars of national prominence to Georgia Law. Sibley was a 1911 graduate of the school.

—Courtney Lee Brown



Watch Napolitano’s lecture online at www.law.uga.edu/john-sibley-lecture-series



Tenth Annual WIPI Conference examines social justice and legal representation

The student-organized Working in the Public Interest Conference focused on Georgia's response to human trafficking, current issues in immigration law, the disproportionate costs and consequences of civil penalties and routine criminal procedures for non-major offenses, and how to facilitate dispute resolution and mediation between communities and the police who serve them. Jonathan Rapping, the president and founder of Gideon's Promise and director of the honors program in criminal justice at Atlanta's John Marshall Law School, presented the keynote lecture.



Conference focuses on balancing public interests with private rights

Georgia Law's 27th Annual Red Clay Conference was titled "Balancing Public Interests and Private Rights in Environmental Law." Eric T. Freyfogle, the holder of the Swanlund Chair of Law at the University of Illinois at Urbana-Champaign, delivered the keynote address on the longstanding tension between private property and public interests. He reiterated the basics of property ownership and identified how understanding modern-day ownership can help to ensure that institutions can effectively function while sustaining human communities and natural systems.



GALP Symposium debates issues facing the state

The Fourth Annual Georgia Association of Law & Politics Symposium brought together some of Georgia's leading legal and political minds to discuss several topics, including the impact of changes to the election dates of future elections, the potential privatization of the state's probation system and the growth of cityhood initiatives in communities throughout Georgia. GreenLaw Executive Director and 1992 Georgia Law alumna Stephanie Stuckey Benfield served as the keynote speaker.



First Music and Technology Conference held

The student-edited *Journal of Intellectual Property Law* hosted its first Music and Technology Conference and brought together some of the industry's top entertainment attorneys as well as policy advocates and technologists from across the country. Casey Rae, the chief executive officer of the Future of Music Coalition, presented the keynote address.

Protect Athens Music Conference celebrates fifth year

The Fifth Annual Protect Athens Music Conference, hosted by Georgia Law's Sports and Entertainment Law Society, addressed issues relevant to the intersection of law, music and business for musicians, students, professionals and anyone interested in music or the music business. Panel sessions focused on publicity and promotions as well as the role of record labels in the digital age.



Isakson speaks on international trade and economic growth

“Free and open trade is in the best interest of the United States,” according to U.S. Sen. Johnny Isakson, who spoke to a group of law students, faculty and others regarding international trade and economic growth at the Dean Rusk Center for International Law and Policy this spring.

The senior senator from Georgia has spent a large part of his time in the Senate working on matters regarding African trade, in which he is still very involved. However, his most recent initiative, the Transatlantic Trade and Investment Act, is a proposed agreement between the United States and the European Union.

“It’s odd that the two greatest trading partners, Europe and the United States, don’t have an agreement,” Isakson said. “We have one with Colombia, we have one with Panama, we have one with South Korea, but we don’t have one with the European Union and that’s wrong. I’m working very hard to see to it that we do.”

As there will be many developments in international trade in the coming years, Isakson expressed the need for lawyers specializing in trade negotiation and the vast career opportunities awaiting them.

He said it is important to our country’s economy that the laws governing our trade are “compatible and harmonizing with one another. . . . For those of you in the law school here, there are a plethora of jobs available in harmonizing regulation.”

Isakson also answered questions from audience members regarding his thoughts on negotiation prospects with Cuba, recent trade sanctions placed on Iran and his support in granting President Barack Obama “fast track” authority, which expedites the process of negotiating trade agreements and treaties with foreign nations.

“The strength of America lies in our ability to trade fairly with the rest of the world,” he said.

Isakson, who is currently serving his second term in the U.S. Senate, is the only Republican senator to chair two committees in the 114th Congress: the Senate Committee on Veterans’ Affairs and the Senate Select Committee on Ethics. He is also a member of the Senate Committee on Finance, which has jurisdiction over taxes, trade, Medicare and Social Security and which plays a critical role in the debate over cutting spending and reducing the nation’s debt. Additionally, he is a member of the Senate Committee on Health, Education, Labor and Pensions, and the Senate Committee on Foreign Relations.

—Courtney Lee Brown



International presenters cover range of topics

Georgia Law organized and sponsored several events geared toward promoting the exchange of ideas about important and timely international legal and policy matters. Below is a highlighted list from the 2014–15 academic year.

Marc Masurovsky, co-founder of the Holocaust Art Restitution project, spoke in the fall on the legal challenges faced by claimants seeking restoration of cultural assets stolen during the Holocaust. He also discussed his leadership of the ERR Project, which aids provenance research by providing a searchable database of more than 20,000 art objects taken from Jews in German-occupied France and Belgium.

Alvin Y.H. Cheung, a visiting scholar at New York University’s U.S.-Asia Law Institute, delivered “Hong Kong’s Umbrella Movement: Perspectives from International and Constitutional Law.” The Umbrella Movement began in September 2014 with activists outside Hong Kong government headquarters calling for a popular election of the chief executive, the city’s highest leadership position. Cheung addressed the Chinese government’s rejection of democratic reform in Hong Kong against the backdrop of China’s obligations under international law.

A panel discussion on domestic and international legal issues relating to the Ebola virus was held earlier this year. With experts in international public health law, domestic public health law and global public health policy, the group explored a variety of topics, including quarantines, privacy issues, travel restrictions, experimental drugs and the significance of United Nations Security Council Resolution 2177, which identified Ebola as a threat to international peace and security.

Author Loung Ung, who left her native Cambodia as a child in the 1970s during the genocide committed by the Khmer Rouge, gave the inaugural Betty Jean Craige Lecture at UGA. Ung’s presentation, titled “First They Killed My Father,” drew on her trilogy of memoirs. In these books she describes how Cambodian dictator Pol Pot’s regime, which was responsible for killing approximately 2 million people including many members of her family, affected her life and her development as a human rights activist.