

## ***Beyond Unprecedented: The Post-Pandemic Economy*** **Episode 0: “Reintroducing Beyond Unprecedented”**

[00:00:02] **Eric Talley:** This is *Beyond Unprecedented: The Post-Pandemic Economy*, a limited-series podcast examining law, business, and capital markets in a world changed by COVID-19. I’m Eric Talley, the Sulzbacher Professor at Columbia Law School and co-director of the Ira M. Millstein Center for Global Markets and Corporate Ownership.

[00:00:21] **Kate Waldo**ck: And I’m Kate Waldock, a 2L at Columbia Law. I’m also an economist, a research fellow at the Millstein Center, and the former co-host of *Capitalisn’t*.

[00:00:30] **Talley:** Last season, we focused on the shutdown of the global economy and the upheaval caused by the pandemic. This season, we’ll dig into some of the pandemic’s longer-term effects on workers, investors, and corporations, while noting the global crises intensified by the pandemic.

[00:00:46] **Waldo**ck: In the coming episodes, we’ll map out this new normal and explore the ramifications for regulation, investment, and corporate governance. We’ll be joined by imaginative and engaged thinkers who have a gift for explaining how today’s economic phenomena are influenced by our current legal and regulatory framework.

[00:01:10] **Talley:** I am super excited today, only in part because we are starting a new season of the podcast, but in addition, I’m excited to have a partner and having you at my side for the entire second season.

[00:01:23] **Waldo**ck: Aw, that’s really nice of you to say, Eric. I’m really glad and honored to be joining you as a mere student, and I’m also really excited to be recording a podcast again.

[00:01:33] **Talley:** Well, in fact, you are a seasoned veteran not only of podcasts but also a former business school professor at Georgetown. So you’re going to be bringing a lot to the table and substituting for areas where I would otherwise just have to make it up. So I’m really happy to see you. Now, I have to say that I am sort of emerging from being holed up in my office cave really for the good part of two years. And yet, there’s also a little bit of a sense of OK, well, what now? The world is coming back together in a way that may be far different from what it looked like before you started law school. And so there’s some sense in which I’m sitting there right by you as a student of this ever-changing environment, and maybe we can, kind of, figure out how it’s going to be changing together.

[00:02:17] **Waldo**ck: I think that’s a good idea.

[00:02:19] **Talley:** Now, I'm really excited about this season's episodes because one of the things that we're trying to do with this season is to get a sense of, how are we going to be returning back to the new normal? Or will we even be returning back to anything that looks like the old normal looked like? And we've got a bunch of episodes that really kind of circulate around various types of things where we kind of don't even know the legal status of a phenomenon that's going on.

[00:02:46] **Waldock:** Yeah, it's funny. I'm not sure at what point in my legal training this happened, but somewhere I came across this thing that said, you can't offer legal advice until you've actually graduated from law school and, like, taken the bar and everything. And a lot of the questions we're going to talk about on this podcast, it reminds me of being asked by my friends, what do I do if I get a speeding ticket? I'm learning so much, but I also don't know the answer to that specific question because I haven't taken traffic law. And I also don't know everything about labor law. There's a lot for me to learn about capital markets even. And so I think it's really cool that we're going to be talking to experts in specific fields that will provide us with pretty rich answers to these questions, even though there's still very much gray area.

[00:03:30] **Talley:** Yeah. And I think that's almost the definition of where we are right now, in gray areas. It may also be helpful to bring in someone whose day job really is to cover a lot of these phenomena, a lot of these events. And I can think of no one better than our mutual friend NPR's Stacey Vanek Smith. Stacey is the co-host of NPR's podcast *The Indicator From Planet Money* and a correspondent for *Planet Money*. Prior to joining NPR, she worked for *Marketplace*, where she was a correspondent and fill-in host. Stacey has a master's in broadcast journalism from Columbia University as well as a new book titled *Machiavelli for Women*, which is out now.

[00:04:17] **Talley:** Stacey, welcome.

[00:04:17] **Waldock:** Welcome.

[00:04:19] **Stacey Vanek Smith:** Yes, thank you.

[00:04:20] **Waldock:** I am curious about your perspective on how things have been during the pandemic and what things look like now.

[00:04:27] **Smith:** It was a very emotional experience. We were all so scared and confused and didn't have a lot of information, and the information changed. And I sort of feel like when I look at the economy now, there are all these disconnects, all these paradoxes. It's just, nothing quite adds up anymore. It's like we experienced this shock, and the economy feels disoriented.

[00:04:49] **Talley:** Yeah, that makes sense. And you know, one of the things that's hard to figure out about the moment that we're in right now is everything necessarily had to change. Almost every facet of our lives. And now we're sort of coming out of it. But the different changes that that panic has set on us—and it's not just COVID-19, it's the racial justice movement, it's this big dislocation of essentially everyone all at the same time—it's really hard to know whether we should just expect to converge back to the same old, same old or things are going to be very, very much different than they used to be.

[00:05:21] **Waldock:** In March of 2020, I and a lot of people—it wasn't just me—thought that like 90% of the businesses in the U.S. would go bankrupt. And the last thing that I saw coming was just this massive increase in stock prices that happened, I guess, I don't know, after April, basically, and is still going on. I mean it's slowed down a little bit. But that, and I mean, obviously, there's reasons for it, but how people have gotten involved in trading meme stocks and the kind of mini bubbles we've seen are just really—were not on my list of things that I thought would be coming as a result of the pandemic.

[00:05:58] **Smith:** Also, so many people starting businesses. I mean, it was such a strange thing to me that so many entrepreneurs have been born during the pandemic. It is the last thing I would expect during what was a very dramatic, immediate economic recession that all these little businesses were born. I mean, I've been thinking about this stuff every day because it is literally my job. But it feels like you guys are dealing with larger questions of law. So I'm curious what inspired you to do a season two right now?

[00:06:28] **Talley:** Yeah, it's a good question. I mean, I guess we had sort of thought, OK, the first season was going to be, sort of, a one-off season on how law, regulations, courts are, sort of, dealing with this unprecedented stomach punch of what was 2020. But, you know, on some level, the changes that whole year set in motion have given rise to a bunch of new emphases and priorities and reforms to law, to policy, to regulatory interventions. And those, in turn, are, sort of, the key drivers behind the economy. And then the economy is, sort of, a key driver behind it. So our idea was on some level to say, look, the story goes beyond *Beyond Unprecedented* in the sense that we are now trying to figure out what's going to stick, what's not going to stick. What are some of the newest challenges that we're going to see going forward? And you know, I'll tell you, I've been doing research and teaching in corporate law for over 25 years. In some ways, the amount of dislocation that's going on right now is like something I've never experienced, right? One of the things that I tell my students is that, you know, the game is changing in a bunch of areas of law and regulation and policy, and we're going to be pretty much responsible for authoring at least what part of that looks like, and maybe trying to predict what it looks like.

[00:07:58] **Waldock:** I agree with everything you said. I also just have a shallower reason to do this, which is that I had a podcast, and I wanted to scratch my podcasting itch again.

[00:08:09] **Smith:** I just remember during the housing crisis when I used to bug Eric biweekly to talk with me. I remember just quantitative easing and that sort of government intervention being so controversial. Everyone worrying about the government spending so much money and what implications that could have. And just the, trillion dollar aid package that, kind of, blew by and another big one coming. And it seems like that might have reset things to a new normal. It feels like there's just a lot happening policy wise and legally.

[00:08:42] **Talley:** On some level, the legal and statutory drama is just heating up because there are a bunch of these, sort of, emergency band-aid resolutions that are now starting to get baked into a little bit more of a, kind of a permanent set of policy choices. And I guess that's one of the things that we were interested in trying to explore. The fact that there are a huge—and surprisingly large, in some ways—number of people who were just, you know, resigning from their jobs. We're kind of in the middle of trying to figure out, well, what does this mean?

[00:09:10] **Smith:** It does feel like there's something sort of emotional or cultural going on at the same time between Americans and work. And I feel like work has been such a

central part of American life and of our economy. It's how we define ourselves: the work ethic. It's almost like a religion, and it's been really fascinating to watch that maybe shift, if that's part of what's going on.

[00:09:32] **Waldock:** So you've spent a good chunk of the pandemic writing a book about women in the workplace. Are we in a new normal in terms of racial diversity, in terms of representing underrepresented voices? Or is that, kind of, still a part of our culture that's still in flux?

[00:09:50] **Smith:** Certainly there's a greater awareness of diversity and inclusion in the workplace. But, actually, the thing that inspired me to write the book is we do a piece every year or two on the gender wage gap, right, which is that women make about 80 cents on the dollar compared to men. For Black women, it's about 63 cents. For Latina women, it's 55 cents. And one economist I talked to, Francine Blau, just kind of tossed off, she's like, oh, you know, these numbers have been stuck for a decade. Real change takes time, and it sometimes seems like it's not happening at the pace you would expect. Lending to minority and women entrepreneurs actually has gone down in 2020. I do wonder. Maybe the great resignation, the worker shortage, I feel like that will move stuff faster because employers just need people. I think a lot of groups who have traditionally been discriminated against will have a better shot at getting jobs or getting promotions than they would have before. Things just move in strange and slow ways in the economy sometimes.

[00:10:52] **Talley:** One place where there's actually been a little bit more of a forced change has actually been at the corporate governance and board membership levels. Some of the data that we see right now suggests that public company boards have become way more diverse, even in the last couple of years, but maybe not as much in the venture capital sector. One of our episodes is going to be about this idea that even as there have been sort of notable efforts to push governance diversity, particularly on boards and sometimes at management in public companies, the private companies have been much slower to move in this regard.

[00:11:30] **Waldock:** We're also planning on talking about retail investors, who have been, basically, creating the term "meme stock trading." Basically, they're pumping up stocks and companies like GameStop based on viral internet content. And, you know, some people are having a lot of fun, but some people are also losing a lot of money. And one of the questions on my mind is whether this is just a flash in the pan phenomenon or whether there are now a lot more retail investors that are permanently invested in the stock market. Based on what you've seen, do you think that this trend will stick around?

[00:12:02] **Smith:** Oh my gosh, yes. So I think I realized that things had changed entirely when our intern at *The Indicator* said, oh yeah, well, he started trading stocks on Robinhood in high school. And he was like, oh yeah, we would all, we were all on Robinhood. And then I was talking to some people at *Morning Brew*, and they said their listenership, which is, you know, they tend to be very sort of stock oriented, market trady, wonky. And they said, oh yeah, most of our listeners are, you know, teenagers, early 20s. I just think the cultural change has been really big. And so for that reason, I don't think it's going away.

[00:12:37] **Talley:** So I guess there is a question about how durable this is going to be, given that it seems substantially driven by high school interns. You know, the fact of the matter is a big chunk of this is entertainment as well.

[00:12:51] **Waldock:** I'm going to take a moment to hearken back, based on my own experience here. I started investing in the stock market around, I mean, not in high school, but when, I think when I was 19 and "day traded," in air quotes, until I was, say, 21, which is when the financial crisis happened.

[00:13:09] **Smith:** Did you make—are you secretly a millionaire?

[00:13:11] **Waldock:** I secretly lost 95% of my summer internship money in an hour or so.

[Laughter.]

[00:13:20] **Waldock:** And did not, did not go back to the stock market for like 10 years after that.

[00:13:25] **Smith:** I do think there's a trend happening right now, for sure. And, but I think there's, there is also sort of a deeper trend going on. Investing in the stock market used to be kind of hard, and now it's just, it's so easy. And I do think that that changes things a lot.

[00:13:41] **Talley:** There are some big questions about whether, for example, meme stock trading is a form of market manipulation, right? It's not the usual form of market manipulation because it involves a bunch of, you know, Reddit bros who may not know each other all deciding they're going to coordinate to target, you know, a particular company, you know, usually to punish short sellers on that company. You know, in cryptos, there are a lot of interesting open legal questions as well about, about money laundering, about tax evasion. And on some level, you know, I look at some of these, these recent trends, and I wonder whether part of the underlying entertainment or risk is trying to figure out what the legal status of a bunch of these activities is going to be in five months or 10 months.

[00:14:31] **Smith:** I mean, I remember reading the story, and we talked to someone on WallStreetBets who had put everything on GameStop and had won enough money to buy a car. I mean, it was like in two days he won, or not won—

[00:14:44] **Waldock:** Earned.

[00:14:44] **Smith:** He earned? I don't know what to. . . . He took in, his money—his investment—went up. There was something kind of awesome about it, right? It's like the underdog stock, and all these kind of little guys get together, and they take—I mean, there was sort of a satisfying emotional arc to it. But you're right, I mean, if a bunch of hedge fund owners got together and did this, it would be totally illegal. It would be 100%, without question illegal. And does it make a difference that it's just a bunch of guys in their pajamas in their basements? It sort of feels like it does. But, I mean, I guess the purpose of the law is to take away feelings, right? And so there's some kind of order to our society.

[00:15:26] **Waldock:** It's not just meme stock trading. Everything I see, I'm kind of like, is that legal? Like if a hospital lays off people who aren't vaccinated, is that legal? Are certain strikes among Uber delivery drivers—is that legal? Are they allowed to organize in that

way? Even questions about, you know, shareholder activism. I think based on the corporations class I've taken, I should be able to answer those. But there's still a lot of interesting legal questions that have arisen because of the pandemic that—and some of which, a lot of which don't have answers.

[00:16:01] **Talley:** You know, another interesting topic that we're hoping to do one of our episodes on is on what has been kind of a recent and pretty dramatic rise in shareholder activism. But not the old school type of shareholder activism where some hedge fund that thinks the company should get rid of its R&D department or pay out more in dividends. What have you seen in terms of increasing activity in ESG-oriented activism?

[00:16:31] **Smith:** I think there's been a lot of increased awareness and companies maybe understanding a little more urgently that they need to, sort of, have a business plan, obviously to get greener but also to deal with climate change. So I do think a lot of times it has to do with money. If it makes financial sense, companies will do it. If it's out of the goodness of their hearts, that becomes more questionable.

[00:16:55] **Talley:** And this shouldn't be too surprising on some level, right? Because the fact of the matter is particularly in capital markets, particularly in areas where the stakes are large there are gray areas everywhere in law. It's just not surprising on some level to see people test boundaries, because they've always done that in financial markets. It's just that the number of unclear boundaries that we have right now just seems enormous. They just seem to be all over the place, and it's kind of hard to figure out where even to start in trying to unpack these puzzles.

[00:17:27] **Smith:** Technology is changing so fast that it gets confusing and hard to understand. But trying to regulate that or make laws about stuff that is changing and innovating so fast, it feels like legally hard to regulate something unless you understand it and a lot of the stuff, it's very hard to understand. It's confusing. I mean, it's like through the looking glass economics.

[00:17:53] **Talley:** OK, well, Stacey, thank you so much for joining us today.

[00:17:56] **Smith:** Oh, thank you for having me.

[00:17:58] **Talley:** Our guest today was Stacey Vanek Smith, NPR host and author. Make sure to check out Stacey's new book, *Machiavelli for Women*, and hear her on *The Indicator*.

[00:18:10] **Waldock:** *Beyond Unprecedented* is brought to you by Columbia Law School and the Ira M. Millstein Center for Global Markets and Corporate Ownership. This podcast is produced by the Office of Communications, Marketing, and Public Affairs at Columbia Law School. Our executive producer is Michael Patullo. Julie Godsoe, Nancy Goldfarb, and Cary Midland are producers. Editing and engineering by Jake Rosati. Writing by Martha Moore. Production coordination by Zoe Attridge. Special thanks to Erica Mitnick Klein and Molly Calkins at the Millstein Center. If you like what you hear, please leave us a review on your podcast platform. The more reviews we have, the more people will listen. If you're interested in learning more about law, the economy, and society, visit us at

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