

Ruth Candler 0:09

Welcome to W and L after class the lifelong learning podcast. I'm your host, Ruth Candler. Today I'm talking with Kesh Perrella, a leading expert on business and human rights and also Washington and Lee's class of 1960, Professor of ethics and law. Prior to joining the law school in 2013, Kish practiced international litigation and arbitration at Cleary Gottlieb Stein and Hamilton, where her clients were multinational and sovereign entities engaged in complex disputes before US courts and international tribunals. If you'd like to learn more about Kish, please visit our show notes. Well, you'll find her bio and a link to her webpage that houses description of her scholarly pursuits. I hope you enjoy our discussion today about Kish's entry into academia and her approach to teaching courses on torts contracts and international business law. I think you'll also appreciate how Kish helps us begin to unpack the way we consider our own thoughts and approach to corporate social responsibility. Kish,

Welcome to WL After Class.

Kish Parella 1:12

Thank you. I'm delighted to be here.

Ruth Candler 1:15

So I'd like to begin by learning more about your path to Washington and Lee. Prior to joining the Law School faculty, you practice international arbitration and litigation at a global firm. What sparked your interest in this area of law and then what made you want to shift your career to academia?

Kish Parella 1:37

So, I went into the law because I was really interested in how it had the potential to solve real world problems. And so, my background was in political science, and I focused on peace and conflict studies. So when I went to law school, I was still channeling the enthusiasm from the late 90s, about the potential for international tribunals to try to address armed conflict and other types of war crimes and atrocity crimes that were happening around the world. And I thought that law was a really important sort of component of these sorts of global conversations. When I joined a private law firm, I wound up practicing International Dispute Resolution. So, the issues were not armed conflict, they concerned international economic relations. And we defended countries that were quote unquote, sued before international fora by groups of investors for breaching bilateral investment treaties. So, while the policy areas are very different, international economic law versus, say, the norms of international armed conflict, what I was excited about was that we still see individuals, corporations and national governments resorting to international law, before international tribunals to

work out their differences. Why I entered the academy was because I was interested in the study of law as much as I was in the practice of law. And while the practice of law in DC gave me exposure to really cutting-edge issues, I didn't have the time to sort of educate myself or satisfy my curiosity and all the different issues that were raised by the matters that we worked on. That's what the Academy allows me to do. I get to sort of sit back and take a broad look at how different things are connected and read deeply about how legal issues are addressing certain problems, how they're failing to do so. And what potential solutions could be.

Ruth Candler 4:11

You've been teaching at W&L since 2013, but you've remained active in corporate social responsibility and business law. How do you incorporate those global conversations about the role of corporations today in the classroom?

Kish Parella 4:26

Sure. I mean, I don't think we have to look too far to be reminded about the ways that corporate power touches our lives. So, for example, I teach first year contracts. On the very first day, we talk about mandatory arbitration clauses. And we talk about how these affect the rights of individuals to go to court to challenge what a corporation might be doing to them. And then we also talk about how we can find these clauses in all kinds of things - contracts that people don't read. And so, it makes me really, really happy when my students inform me that they started reading their contracts. So, I've told them so many times read the user agreement for tic toc. Or in a second week, I had a number of students who were like, wow, you know, I purchased XYZ, and I read the contract that it came with, I read the terms and conditions. And I noticed that, you know, my rights are affected this way or that way. And that is something very, very immediate, they can see it in the first week or two. And that makes me really happy because they're also consumers. And I'm delighted to see that they're using this knowledge that they gained in law school, to immediately change their own behavior to the extent they can.

Ruth Candler 5:48

I'm going to, I'm going to bring this home for a minute and you talk about reading contracts, and so many of us in our busy day to day lives, we see a contract, and we skim through it, and sign it and it could be pages long. So what is your advice for the everyday consumer?

Kish Parella 6:08

I think it would be important to at least look out for certain types of clauses. And that's what I sort of educate my students on. When we read a case, for example, there's usually one particular contract clause that's an issue, whether it's a mandatory arbitration clause or it's an indemnification clause, or a limitation of liability clause. And so what I tell my students is we are unpacking contracts one clause at a time. And they are expanding their own vocabulary of the types of clauses they expect to see in, say, consumer contracts. And I will say that to the everyday consumer as well, there are certain clauses that are common in a bunch of these contracts. And so it'd be good to sort of educate yourself on kinds of clauses that you're going to watch out for such as an arbitration clause, because that will mean that you cannot go to court to challenge what this corporation might be doing to you and others similarly situated. Look for waivers of liability limitations on liability. And that's what I would scan for when I'm looking at it. When it comes to things like Facebook, or Uber or other things, I would look for clauses about data collection, as well as clauses about under what conditions these companies can sell your private information to third parties. And those are clauses I think everyone should be on the lookout for. Now, these are not negotiated contracts, right? So if you don't like the clause, it's not like you can negotiate that with Uber. That's a second challenge. But I think the first step is just educating my students and the broader public as to how these clauses have real world impacts on their daily lives.

Ruth Candler 8:01

Thank you. That's very beneficial. So, we talked about teaching in the classroom? How does your teaching, inform your practice?

Kish Parella 8:13

I get great ideas when I teach my students. So, let me give you an example. So, I teach both torts and contracts. And I still remember that one fall, I was teaching my students the concept of privity of contract. And I'm not going to bore you with the details. But basically, I was explaining this concept to my students, and I'm a big fan of chalk and blackboards, of course, it was covered in chalk dust at the end, I was explaining this concept to them. And everything clicked in my own head, about how these two different fields, contracts, and torts do come together in ways that I think are applicable to the subject area I studied. But I don't recall anyone else exploring. And so this, you know, less than in class was the spark for two different papers that I wrote. The first one was in a peer reviewed journal, and I actually dedicated to my one all students, because if it hadn't been for my knee to teach them about this boundary between tort and contract, then I wouldn't have even come across this gem of an idea. And the subsequent paper actually, which is recently cited in a in a UN report, because it was also relevant to how contracts affect broader global issues. And again, all of these are follow on benefits from what happens in the classroom.

Ruth Candler 9:47

So it sounds like you learn just as much from your students as they learned from you.

Kish Parella 9:50

Yes, in two different ways. Sometimes it forces me to clarify things that I think are clear and then I realized it was never clear to me. And there are assumptions that I had. So that's wonderful. And on other occasions, my students bring perspectives. That forced me to think about a familiar problem in different ways. And that's always really, really welcome. So another thing that I would say is, every time I teach a subject, I'm given a new opportunity to teach it better. And so for example, I've been teaching contracts for, I don't know, 12 years. And sometimes I've been teaching the same cases for 12 years, and certainly the same topics for 12 years. But every time I walk into the classroom, I try to do it slightly differently. Because I know what's in my head and the information that I want to communicate to them. But there's always a different way to do it. And that's what I really do like about teaching, because every time it's, you know, attempt 12 or attempt 13, to teach the statute of frauds. And by doing so, I may come across a way not just to teach it, but to also research it, to expand on it to analyze it. And so I do think the teaching half and the research half have this really, really important relationship.

Ruth Candler 11:15

Even though you're teaching the same thing. It's different every time.

Kish Parella 11:19

It is different every time. And that's what's really fun about teaching law, because an odd number of these cases are really, really old. And even though I've taught the cases again, and again, and again, and I know them by heart, it's never the same both times because first students are different. And so the way I teach is heavily what we call Socratic. So it's not what I would call conversational, it is more of question and answer, where I pose the questions, and they give me the answers. And I use something called a rapid-fire cold call. So there's no warning, and nobody raises their hands. I just go through all 40 students every single class. And what's interesting is the questions to answer how they answer it, the perspectives they bring to the case, makes it fresh every time. And every time I teach it, I teach a slightly different because I'm not the same. And with more information, more practice, different insights, I frame the cases differently. I teach different things about the case in a different order. And so it's always fresh. I would say that.

Ruth Candler 12:33

How many years ago would you say that teaching methodology changed from lecture to this more interactive, conversational mode.

Kish Parella 12:45

So, in law instruction, the Socratic method has been favored for a very, very long time. In fact, I think it's sort of the traditional approach to teaching a lot of law school classes, especially first year courses. So, for example, when I was in law school, we all had a version of cold call, it's the rare teacher that did not use it. Now, did all my teachers call it every single student, every class? No, most people don't do that. But Washington only has very small section sizes. You know, our sections are very small compared to most law schools, which gives me the benefit of going through all 40 students. And my sense is that students really like it because it includes almost everyone in the class. And it engages them in active learning, which is one of the reasons law schools have traditionally favored this mode of instruction.

Ruth Candler 13:46

Let's talk for a moment about your appointment as the class of 1960, Professor of Ethics and Law. Tell me about what that means to you personally and professionally?

Kish Parella 13:59

Well, it's a great honor. And I'm delighted to serve in that role at Washington & Lee. I use that as an opportunity to basically host really important conversations on this campus, for the students, faculty and staff and alliances. So, for example, last year, the Institute for honor hosted a conversation about corporate responsibility in times of armed conflict. Inspired by the Russian invasion of Ukraine, there was a great deal of scrutiny as to what corporations were doing following that invasion. And so, I was delighted to invite Ambassador David Schaeffer, who gave the keynote address. And what's extraordinary about him is that he was actually the first ambassador at large for war crimes. And it was really exciting for me and those who attended to have such an expert, deliver the opening remarks and talk about a number of armed conflicts around the world and the role of corporations in it. We also had the former head of human rights at Twitter, participate in these conversations, as well as a scholar who is a global expert on business and human rights, and two of our alums, who are executives and advise executives, on how they navigate these challenges. And so, I love the fact that this conversation happened on our campus. You know, next March, we're going to have also another really exciting conversation. And we're going to talk about corporate responsibility and the opioid crisis. And I'm delighted to share that our keynote address is Beth Macy, author of *Dope Sick*. And we are also going to have another group of exciting panelists, both from business law and bioethics, who can help us sort of understand the role of corporations in this crisis. So, I think that's the best

advantage of this position, and the resources that Washington & Lee has invested in supporting these conversations.

Ruth Candler 16:18

You mentioned that the Institute for honor this year is going to focus on corporate accountability related to the opioid epidemic. How does this relate to honor and the Institute for Honor?

Kish Parella 16:32

Sure, I think the crisis implicates ethics questions across all dimensions, especially for those in professional schools or those considering going into one profession, like law or medicines, for example, the opioid crisis raises questions of business ethics, medical ethics, and legal ethics. And those are going to be uniting themes in how we unpack both the causes of the opioid crisis, as well as how corporate actors have responded to it.

Ruth Candler 17:04

Let's pivot a little and discuss your scholarship. What are your academic interests?

Kish Parella 17:09

I work in a field called Business and Human Rights, which is relatively new, but is often associated with a broader and older concept called Corporate Social Responsibility. But business and human rights is different, because it really connects international law and a lot of global norms on human rights to corporate actors. The challenge has been that so many international human rights norms have been directed at governments. So we have, you know, lots of treaties and different types of international guidelines on what governments can and can't do. What we don't have as much on is what corporations can and can't do. When it comes to human rights and human rights across all fields, whether we're talking about child labor, whether we're talking about women's rights, whether we're talking about access to health, labor rights. These questions have been un-asked for a long time until the field of business and human rights really established itself. And so, what I tried to do is first educate my students on these issues and how they are really going to come up in their own practice when I was practicing in Washington, DC. I don't know that any of the major law firms had partners or associates or even sort of what you might call IT departments that are dedicated business and human rights. But now, if you go on the websites of a lot of these major law firms, they all have these. And they might have half a dozen partners who have expertise in Business and Human Rights, which speaks to two things, governments from around the world are starting to regulate, creating legal risks for a number of corporate

actors who do not attend to their duties when it comes to protecting human rights. Beyond regulation, I think there's a lot of publicity and public awareness about the role of corporations in fueling armed conflict, or in contributing to human rights violations by not protecting their own services or how they're conducting business in a particular country, or various other issues. And so, this is a major issue in business law and international law. And what I love about my research, is that I get to span both disciplines. I get to talk to scholars who work almost exclusively in international human rights law and scholars who work exclusively in corporate governance and try to connect these two important conversations.

Ruth Candler 20:09

Well then, what would you say are the specific mechanisms for holding corporations accountable?

Kish Parella 20:15

Well, I'm a lawyer. So, the first one I'm going to start with is, quote unquote, the law. There's always litigation against corporations for their human rights violations around the world. Unfortunately, in light of recent Supreme Court case law, that avenue is probably not as viable as it may have been. But there are different types of legal strategies that are being attempted around the world to find a cause of action that could win that could work to hold corporations accountable. In addition to this, a number of governments including the US government is basically regulating in this space, whether its export imports, or its mandatory disclosure laws or mandatory due diligence laws. A number of regulators have prioritized the human rights practices of corporations, and are directly imposing obligations on these actors. So that's legal risk. In addition to legal risk, there's always reputational risk, companies look really, really bad when the New York Times has a headline that accuses them of all kinds of wrongdoing. And so, and this reputational risk can hurt them in a number of ways, indirect and direct. And no company wants to be accused of committing human rights violations. And so, I think it's really, really important for companies to take a preventative stance, and to really engage in human rights due diligence, whether or not they're obligated to do so. Another reason is from sort of a management perspective, poor human rights violations can also compromise the relationships a corporation has with a number of different stakeholders, partners that it has in order to succeed. And so, it's just not a good idea to manage these potential risks poorly, because it might change different organizations willingness to work with that corporation in the future.

Ruth Candler 22:44

Kish, could you illustrate these concepts with an example?

Kish Parella 22:50

A number of organizations have started to publish report cards on companies. So if you Google *Know the Chain*, for example, it will publish a report card for companies like Apple, and other big companies that inform the public, in a one or two page document, how this company is performing on human rights due diligence. There is another organization called *Access to Medicine*, which ranks 20 large life sciences companies on how they're performing regarding the right to health. There's also the *Corporate Human Rights Benchmark*, which also usually identifies a sector such as like the auto sector, and will rank major companies within the sector as to how they perform on human rights, due diligence. And these are all public. And so, consumers can look at the rankings and decide whether they're going to change their minds on who they buy from. And it's not just consumers who look at these - investors are increasingly looking at these rankings and pressuring companies to change their practices, because it just looks bad. And it can be a sign of other types of mismanagement of other issues within the company.

Ruth Candler 24:18

Thank you for that. Well, we'll post those on our on our show notes so that everybody has easy access to them. How does working outside the university impact your scholarship?

Kish Parella 24:29

I think that one of the benefits of interacting with non-academics is twofold. One, I receive confirmation about whether the research questions I'm pursuing are the relevant questions to ask. For me, it's really important that my scholarship is not just satisfying my curiosity or the curiosity of the four people who might read my paper, but that it's actually really relevant in some way to the issues that I really care about. And so, one issue that I really, really care about is how contract clauses or contracting practice impacts a corporation's human rights practices and its supply chain. And so, working in the academy, I might have certain hypotheses, I am privy to certain types of information within the academy. But that can only get me so far. So, it's really, really important to get a feedback loop from people in the industry, or human rights lawyers or business executives, or who have you that can confirm that basically, these questions are really important. Now, they might not agree with me on what I think the best recommendations are. But it's important to at least identify the key questions. And then to also potentially get feedback on the implementation possibilities and challenges of some of the recommendations I may have.

Ruth Candler 26:14

So then who are the audiences that you're trying to reach with your scholarly work?

Kish Parella 26:20

There are multiple, I think the first group are probably lawyers, who are advising multinational clients, either as external counsel or internal counsel. Beyond that, they could be human rights organizations, or different types of civil society organizations that try to convince companies to improve their human rights practices. They could also be other scholars, obviously, who are reading this material. I also hope to engage those within companies who I think of as just basically management, or senior executives, who might be interested in this information, not only because I have recommendations for how they might do things differently, but because there's a good case for why they should be doing it at all. So that's who I hope to reach.

Ruth Candler 27:25

We've talked before about your love of reading and that you challenge yourself to read broadly, and not just within your favorite genres? And I think the majority of us stay with what we know and love. So, I find it fascinating that you approach your book selection in this way. I'd be curious to know what your favorite genre is, and what genre have you pulled from that is farthest from your comfort zone.

Kish Parella 27:55

Wow, I do really love reading my comfort zone is mystery. So I particularly like 19th century murder mysteries. And that's just my go to. I really love sort of the atmosphere these books create. And I really love stories that have a strong sense of place, as well as strong characters. The books that I'm unfamiliar with are ones that I would call sort of epic fantasy. You know, I love watching movies like Lord of the Rings, but I've never managed to actually read the books. So it took some work that I had to sort of work on my skills of getting through these major world building novels and my favorite authors and Kay Jamison. And I'm so glad that I kind of branched out because she really defines this new genre where science fiction meets fantasy. So I love that No, I wouldn't have enjoyed these books had I never really pushed myself to kind of read well beyond my traditional comfort zone.

Ruth Candler 29:01

How do How long did it take you until like into the book? Was it chapters? Was it just pages where you thought, wow, I'm really enjoying this.

Kish Parella 29:10

I think with these long novels, it might be like 100 to 200 pages. They require a lot of patience. I mean, for example, there's another book I loved. It's by Susanna Clarke. It came out over 20 years ago, and it's called Jonathan Strange and Mr. Norrell - it's over 800 pages. And it took me about 150 pages before I started enjoying it. You were committed, but I had to like, read 150 pages before I was hooked. And I consider it one of my all-time favorite books.

Ruth Candler 29:44

So would you say that that's one of your favorite books that you've read?

Kish Parella 29:47

Yes, top five is, is that book and I'm just waiting for her to come out with something like that again. But again, it's a type of fantasy that says are different. But I wouldn't have had the pleasure of getting to know those characters or her writing style. Had I never gone beyond my traditional comfort zone.

Ruth Candler 30:11

It's inspirational – I have to think about that. So, so I know that you also love cooking and have quite an impressive cookbook collection. Tell us about that.

Kish Parella 30:21

So I can't stop myself from buying cookbooks. I buy cookbooks like people buy shoes, I guess, or other things, handbags. But cookbook covers are always so welcoming. And I love looking at them. And yes, I have run out of shelves for my cookbooks because they span all types of different types of cuisine, from Italian, Indian, Asian, and all types of things, from breads to soups to salads. And of course, I have a hefty collection of baking cookbooks.

Ruth Candler 31:00

So are you building more bookshelves or getting rid of cookbooks?

Kish Parella 31:05

Well, as I said, I do love to read and I do love to collect cookbooks. So, we're always buying bookcases in our house. And my, my cookbook collection has now stretched to the maximum capacity of our kitchen. So, they're now in the living room and they're in office. They're just everywhere in the house.

Ruth Candler 31:28

You can just consider that art on your wall. Exactly. So do you have a signature dish?

Kish Parella 31:32

I do not. Um, there are lots of things I like to make last night, I tried to make my mother's chicken curry. And sometimes it turns out and sometimes it doesn't. And honestly, that's what she's telling me. And I found that a very unsatisfying answer, until I experienced it myself. But my husband was very happy with it. So I guess that's it.

Ruth Candler 31:54

So no rhyme or reason for why a curry dish wouldn't or would be successful?

Kish Parella 31:57

There are lots of different spices. And my mother is not really into measuring things, and neither am I. It's just about eyeballing and aroma and stuff like that. So you could see why there'd be a great deal of variation in the the output.

Ruth Candler 32:12

Well, thank you Kish. I've really enjoyed our conversation today. Thank you for joining us.

Kish Parella 32:18

Thank you so much for having me.

Ruth Candler 32:20

And thanks for all of you for tuning in today. We hope you'll visit our website wlu.edu/lifelong. Well, you'll find many different lifelong learning opportunities. You'll also find our show notes for today's episode as well as an introduction to our fabulous podcast team. Jim Goodwin is our technical producer Kelsey Goodwin and Sarah Butler are writers and W&L alumni Eric Owsley, Drewry Sackett, and Kelley Melvin serve

as our strategic advisors. Take a look and until next time, let's remain together not unmindful of the future.