

## **Call for Participation in a Discussion Group on**

### ***THE LAW OF THE FOREIGN COMMERCE BUREAUCRACY***

**Abstracts due: August 31, 2021**

#### **Introduction**

The following is a Call for Participation in a Discussion Group on *The Law of the Foreign Commerce Bureaucracy* to be held during the virtual AALS Annual Meeting from January 5-9, 2022.

Discussion groups allow a small group of faculty to engage in a sustained conversation about a topic of interest. This discussion group's participants are expected to write and share a short abstract (3 pages, double-spaced) to begin their participation in the discussion. The rest of the session will feature a lively and engaging discussion among the small group of participants. The participants in this discussion group will be the people identified in the original proposal submitted to the Annual Meeting Program Committee, plus additional individuals selected from this call for participation. There will be limited audience seating for those not selected in advance to be discussion participants.

#### **Description**

This group will bring together scholars from various legal subfields to confront the question of how foreign relations law is made in the area of economic law and policy. The intent of this group is to take up the diffusion of authority in foreign commercial affairs and to leverage administrative law expertise among those working deeply on the literature on bureaucratic authority both in the executive branch and in Congress.

A renewed examination of the foreign relations bureaucracy in the area of foreign commerce is warranted at this moment for at least two reasons. First, in recent years, the distribution of authority within the executive branch and its oversight by Congress on matters of international business has, like certain other areas of foreign relations, received renewed attention for good reason. Whether with respect to vaccine distribution and export constraints on personal protective equipment, the making of trade agreements, or the economic competition with China, just to name a few, the compass within the administrative state has shifted and not only with the change in presidential administration. Competitive agency behavior and the widespread and innovative use (or notable non-use) of delegations of authority has created questions for foreign allies on the direction of U.S. involvement in international rulemaking.

Second, is the reconfiguration, invention, and deployment of new tools that draw into question the congressional-executive relationship on international economic matters. On tariffs and taxes, pandemic response, supply chain review, and reengagement with multilateral institutions, both the Biden and Trump administrations have explored the prospect and subsequently operationalized creative tools and institutions to address these foreign relations and economic matters. That approach is unlikely to change, making now a ripe moment for in-depth scholarly review of those tools.

This discussion group will consider the unique challenges facing the specially situated foreign commerce bureaucracy and the opportunities available for it. Most of the foreign relations law studies look at the separation of powers when it comes to the law of war or national security, for example, but few have undertaken to consider both the administrative law constraints (or lack thereof) and the bi-branch power structure when it comes to economic matters. Further, to the extent that foreign relations scholars have explored administrative law difficulties, they have done so with respect to specific delegations or with respect to treatymaking. Likewise, administrative law scholars rarely explore the specially situated foreign economic policy questions and legal issues. Both the law and the literature tend to view these issues in isolation.

The overall goal of this program is to bring together experts from these diverse fields and backgrounds in light of recent policy decisions by the United States that bring those topics into sharp contrast. The fields have remained siloed for many years, each rarely viewing the others as part of the compendium of literatures that would be relevant to its development. In fact, their siloed literatures have only exacerbated the divergence among them in the law and the salience of their apparent contrast. This Discussion Group will seek to bridge the gap. Initial conversations with colleagues from both fields and diverse training yield an interest in connection but no formal mechanism for doing so. We envision that this could precipitate a standing forum for engaging across these two fields.

The format of the program is a roundtable of views with four anchored papers – that is, four short “think pieces” – followed by two short commentaries on those pieces and their intersections. Following those presentations, two further think pieces drawn from a call for papers will supplement the ideas already on the table. The commentators will introduce all four think pieces in the course of their comments. Those solicited through the call will then intervene, and then the floor would be open to all contributors.

### **Call for Abstracts**

The Annual Meeting Program Committee invites faculty and administrators who would like to join this Discussion Group to submit a three-page abstract that addresses **by August 31**.

Space in this Discussion Group is limited; the Committee, along with the faculty who proposed this discussion, will select the remaining two discussion participants from the abstracts submitted. At the AALS Annual Meeting in January, selected participants will make a one-two minute presentation during the Discussion Group. The remaining time will be devoted to a moderated, roundtable group discussion.

Each submission for this Discussion Group should include:

- The title of the submitted presentation/paper;
- The name, school and email of the applying participant;
- A three-page, double-spaced abstract; and
- The curriculum vitae of the applying participant.

In reviewing the submitted abstracts, the Discussion Group organizer and selection committee will consider the following:

- The fit and overall quality of the abstract for the Discussion Group;
- The diversity that the applying participant may bring in terms of a variety of factors including viewpoint diversity, institutional affiliation and status (tenure-track, non-tenure track, tenured); and if applicable
- The applying participant's willingness to publish his or her paper along with other Discussion Group papers.

Abstracts are due by **August 31, 2021** and should be submitted using the online submission form <https://aalsweb.wufoo.com/forms/r7szvob1pac94u/>.