

Beyond Unprecedented: The Post-Pandemic Economy **Season 3 Premiere: “Introducing Beyond Unprecedented, Season 3”**

[00:00:02] **Sujeet Indap:** We’re in this uncertain world where rates have shot up quickly, asset prices have fallen quickly. Investors finally have to apply some skill to figuring out which asset classes are going to go up by, how much, when to jump in. If you’re an investor, you haven’t seen rates like this in more than a decade.

[00:00:21] **[Music and media clips of journalists saying “unprecedented”]:** The coronavirus pandemic has tanked the global economy with unprecedented speed. The steepness of the decline here is unprecedented. This is a crisis that is unprecedented. It is unprecedented, and we just don’t know.

[00:00:36] **Eric Talley:** This is *Beyond Unprecedented: The Post-Pandemic Economy*, a limited-series podcast from Columbia Law School and the Ira M. Millstein Center for Global Markets and Corporate Ownership. I’m Eric Talley, Sulzbacher Professor at Columbia Law School and co-director of the Millstein Center.

[00:00:51] **Talia Gillis:** And I’m Talia Gillis, associate professor of law and Milton Handler Fellow at Columbia Law School.

[00:01:00] **Talley:** Last season, we mapped out the new normal, exploring the longer-term effects of the COVID-19 pandemic on workers, investors, and corporations, as well as the legal, regulatory, and governance implications. This season, we’ll dig into some of the complex economic and legal issues we see around the corner in 2023 and beyond. And I’m excited to welcome my colleague, Professor Talia Gillis, who is joining me this season as co-host. Welcome, Talia.

[00:01:29] **Gillis:** Thanks, Eric. I’m truly delighted to join the *Beyond Unprecedented* crew. In the coming episodes, we’ll ask a number of questions. For example, what steps are being taken to curb rising consumer costs? How should public companies approach the environmental, social, and governance movement, particularly given heightened anti-woke sentiment? What are the key challenges and opportunities facing the crypto financial system, and what are the potential repercussions of universal proxy card voting for corporations and investors? We’ll be joined by insightful and engaged thinkers who

will help us answer these questions and understand the interaction between our legal and regulatory frameworks and current economic conditions.

[00:02:11] **Talley:** Holy cannoli, Talia, that's a lot of topics. Are you ready to take this on together?

[00:02:16] **Gillis:** Definitely ready.

[00:02:17] **Talley:** Okay, well, this is going to be fun. And in the past seasons of *Beyond Unprecedented*, we've always had a kickoff episode, usually by a luminary much more luminous than ourselves. And thank God we managed to land one again for this episode. We are really thrilled to be joined by Sujeet Indap at the *Financial Times*. He's the Wall Street editor of the *FT* and previously the U.S. editor of the publication's Lex column, and he covers an intersection of corporate law and finance topics. I typically post news stories to my students before I teach a corporate law class or an M&A class, and sometimes I don't check who the author is, and it's almost always Sujeet. Now, prior to joining the *FT*, Sujeet was an investment banker, and his book, *The Caesars Palace Coup*, is now out and chronicles the private equity and hedge fund fight over the Caesars and Harrah's gaming empire. And I will say, just as a small editorialization, that I purchased this book over the December holidays in 2022 thinking I would settle into a nice, comfortable 15 to 20 minutes per night reading it. And I got to tell you, I ripped through it in about a day and a half. I couldn't put it down. And that makes me doubly excited to welcome you, Sujeet, to the show.

[00:03:34] **Indap:** Thanks, Eric. Thanks, Talia. It's great to be here, and I'm looking forward to the conversation.

[00:03:38] **Gillis:** Excellent. So we'd love to bounce off you some of the issues that we're planning for the podcast this season. So we're interested not only in headline-capturing stories but also those that have day-to-day impacts on investors, workers, consumers, companies, and society at large and of course with the legal angle. So for example, rapid increases in the prices of goods and services are a recent shock not seen by people under 30 in their lifetimes. And there are a lot of contributors, from the initial shock of COVID to supply chain disruptions to the war in Ukraine to general uncertainty. And central banks, notably the U.S. Federal Reserve, have been sending hawkish messages of late, and economists and policymakers have been madly debating what they will or should do going forward. So what are you hearing, Sujeet? Are we in this inflation battle for the long haul?

[00:04:32] **Indap:** The inflation that we saw, not only that it appeared quickly it's just that how sharp that has been. It was supposed to be transitory. Jay Powell, the Federal Reserve chairman, told us, in fact, it's been much more enduring than we thought it was

going to be. And now maybe we're getting some signals that it is starting to recede. But it's been an extraordinary moment for investors because, as you mentioned, it has led to central bank tightening around the world. And if you're an investor, you haven't seen rates like this in more than a decade. We've seen in the last decade this incredible surge in asset prices, which has largely been driven by low interest rates. So growth companies, tech stocks, crypto, this entire world where asset prices go up and everyone who has money to invest, the investor class has been able to profit from it. And so now we're in this uncertain world where rates have shot up quickly, asset prices have fallen quickly, and investors finally have to apply some skills of figuring out which asset classes are going to go up, by how much, when to jump in. And so it's an extraordinary moment because, again, it's been so long that these muscles we think investors have, they really haven't had to use them in a long time. And policymakers, investors really don't know what they're doing.

[00:05:42] **Talley:** Sujeet, were you alive to see the inflation crisis of the 1980s?

[00:05:45] **Indap:** I was alive, but I was not paying attention to fiscal and monetary policy at that time. Volcker obviously was a polarizing figure at the time. There was a Federal Reserve chairman who had sent interest rates to like, what, 20%? And so that ultimately crushed inflation. And, you know, people are wondering for Jay Powell, is it his Volcker moment to do something like that?

[00:06:04] **Talley:** Yeah, I remember the day, and Volker was not a popular guy. He was basically slamming on the brakes on the economy. And, you know, Talia, have you lived through a rapid inflationary session yourself?

[00:06:15] **Gillis:** No, I myself haven't really lived through it. But it's interesting that where I grew up in Israel kind of still experiences the really significant inflation that happened already decades ago. But certain things like the fact that so much of, you know, many people's rent and other things are kind of pegged to dollars rather than the local currency. And so you can see that people, particularly that grow up during this time, it can have these implications for their whole lifetime because during their critical financial years, they experienced something quite extreme. You mentioned, Sujeet, that there's some signals that it might be receding. I wonder what you make of the fresh economic growth data that we just saw with respect to the increased annual rate of growth, particularly in the fourth quarter of 2022. It seems like it exceeded expectations in terms of growth and definitely we did a lot better than the quarters before then. Do you see this as a signal of a trend of what we expect to see this year or perhaps just a blip given all these blips we've seen over the past few years?

[00:07:12] **Indap:** Yeah, well, pity Jay Powell, again, I'll bring it up again because he is the man of the moment. He's trying to arrest inflation. That is what he's solely focused

on. And he has seemed, he and his fellow U.S. central bankers, they have been willing to sacrifice economic growth and employment in the hopes of bringing down inflation to this mythic 2% target. And in fact, what we're seeing in the data is employment is still very robust, very strong. You know, unemployment is still below 4%. It doesn't really seem to be going up. The jobs numbers are always very good. And now we see this GDP report, which was also very healthy. And so this brings up the concept of the so-called soft landing that, in fact, inflation can be arrested without too much economic pain. So that is what everyone is trying to read the tea leaves on. And so that would be the dream scenario, right, that you would not have to have this deep economic suffering but in fact could get inflation under control at the same time. The Fed is going to, I think, err on the side of caution and caution being having the economy land harder, if you will. But for now, we're seeing maybe the best of both worlds and fingers are crossed for that.

[00:08:14] **Talley:** Hey, Sujeet, another topic that we're going to try to cover this season is the pushback against strong ESG commitments made by companies on a variety of issues, including climate and workers rights and racial and gender equity. And there are a lot of reasons to think that many of those initiatives are also good for shareholders. But we've definitely seen people come out of the woodwork that say not all of them are, not these ones are. And there are a variety of firms now that are facing sort of an intensifying version of a kind of an anti-woke movement targeting many of these same reforms, and that has also involved some shareholder activists. How do you see this playing out as public companies try to navigate their way through simultaneously making earnings for their shareholders but also trying to serve these larger commitments?

[00:09:02] **Indap:** Yeah, well, the ESG industrial complex, as I call it, is one of the most important developments in recent years on Wall Street and in investing. There's a huge push, particularly from pools of capital, pensions, and the like, who have views on how companies should have broader mandates beyond just maximizing shareholder value. The problem, though, is just how do you define that? ESG is such a nebulous term that it kind of means everything to everyone, and that, again, industrial complex has created an enormous subindustry of metrics and advisers and consultants to find a way to to make money. And at the same time, there has been this political backlash. Obviously, we've seen states like Florida react against BlackRock, whom they consider to be, for lack of a better word, woke. At the same time, there's plenty of people who have come out and said BlackRock has not been aggressive enough in targeting, say, coal or dirty fuel. This nebulousness, if you will, has created pecuniary opportunities, political opportunities, and at the same time, there is a sense that companies have to lead in areas like climate and social justice. They have a role to play, and I expect that very complicated dance to continue. I mean, BlackRock reported earnings recently and they, of course, had to announce that in the states pulling out money, it was cost them a few

billion dollars. But then you realize they managed trillions of dollars, that didn't really even affect their business. I think the bigger story is how do you ultimately measure impact, and how do you hold either asset managers or even allocators accountable for whatever it is they want as it relates to results?

[00:10:37] **Talley:** And is there any sense that that interacts with inflation, like if you're a university endowment or a public pension and you're trying to make sure that you're adequately provisioned for the expenses that you've got coming downstream back in the days where there were low rates and pretty high returns, maybe you had a luxury to do things as well as just trying to maximize return? Does that put added strain on some of these public pensions that would love to pursue a more ESG-centered focus as well, but now they're a little bit worried on making sure that they're fully solvent going over the next decade?

[00:11:13] **Indap:** Certainly universities and more forward-thinking institutions have tried to divest away from, let's say, fossil fuels, coal and the like. But in fact, those fossil fuels have been incredible asset classes in recent years, particularly with the Ukraine war, and there's a lot of investment that needs to be undertaken in green energy, clean fuel, and infrastructure to be developed. And there's a huge opportunity there, and there's going to be real moneymaking opportunities. I mean, you see Tesla has been one of the great stocks, and you can say whatever you want about Elon Musk, but it has been the driver in the EV industry and forced every other auto manufacturer to step up their game. There's incredible wealth opportunities, too. So it may be that there is a needle to thread where you can do well and do good, but people are still trying to figure that out.

[00:12:01] **Gillis:** You know, Sujeet, it's curious in a way given how prominent so many of these ESG discussions are, do you think there's an industry that is somewhat shielded from these discussions and pressures?

[00:12:11] **Indap:** There is this whole culture of like these really aggressive Wall Street private equity firms, hedge funds, and they would seem to be the most rapacious and anti-progressive or anti-woke, just purely financial creatures. And in fact, what's been interesting is that they have aggressively started impact investing and ESG groups. They even can't ignore incredible sea change from capital allocators, the pension funds, the endowments, they all have imperatives, and if you want their money, you're going to have to present some seriousness on the topic. These pools of capital are extremely influential. They have enormous resources, and even the masters of the universe can't totally ignore them anyway. And just how those various imperatives end up getting balanced on a day to day basis, we will see.

[00:12:58] **Gillis:** The last few months have also been witness to a near or at least partial collapse of the cryptocurrency system. The recent implosion of FTX is but one

example. So, Sujeet, you've recently been writing about that bankruptcy process and where it's heading, including how legal representation fits into the mix. So is crypto dead? And if it has a second life, what would that second life look like?

[00:13:21] **Indap:** Crypto was this asset class that just exploded, particularly the last few years. The crypto winter, which has led to a series of these bankruptcies—FTX being the most prominent one—really starts early last year, when there was a collapse of some hedge funds from particular a coin called Terra Luna, which was the so-called Stablecoin. It just created this contagion, and all the excesses and weaknesses of this industry exploded all at the same time. And that has led to this domino effect, if you will, of various entities being found to be insolvent and having to go through bankruptcy. And what we didn't realize is how connected they all were and how it all seemed like a house of cards. So the question I guess, then, is there some underlying reason for crypto to be rehabilitated? Do we need some kind of digital currency as a means of economic exchange? Then there's the whole concept of decentralized finance, DeFi, and these institutions that are supposed to take on the traditional banking sector and whatever weaknesses it has, does crypto have some kind of place in the economy? It's going to really depend on, you know, how these bankruptcies play out. Can this actual formal legal process for restructuring and paying off debt and account holders, can it lead to an outcome where these account holders can somehow be made whole and then create restructured crypto exchanges that have proper oversight regulation? It's unclear right now. Twenty twenty-three is a big, big year for that. But I mean, at this moment, how could one actually feel good about putting their money on one of these exchanges? And not because, again, there'll be massive losses. Again, you'll just lose your dollar and get caught up in some kind of bankruptcy. This could be the 1999 kind of internet moment where the excesses are flushed out and benefits accrue. But that is, at least at this point, an uncertainty.

[00:15:06] **Talley:** Yeah, let me follow up on that, Sujeet. We've gone through multiple phases in my life, maybe four, that involve significant asset bubbles that have popped. And the description that you just gave, you could have given for almost every one of them, right? That that could have been, you know, we didn't know how interconnected these things were and that all sort of fell at the same time. It sounds a lot like 2009, sounds a little bit like the dot com bubble, sounds a little bit like the S&L crisis, right. And one thing that's kind of interesting to notice about each of those previous crises is what we have today is not a system that has abandoned those tools. It's kind of redeployed them in a more modest way, right? We still have subordinated debt, and we still have internet advertising and internet-based businesses. And we still have securitized vehicles that hedge out a lot of risk. They're all still in existence today. They just, it's just not as much the jumbo proportions of them that we are consuming at each point in this crisis. What does that steady state, if anything, look like for crypto in 2029, for example, when we hit whatever our next unknown crisis is going to be?

[00:16:15] **Indap:** Yeah, and it could be just a better payment system. I mean, I think that crypto and decentralized finance, I mean, it came from the idea that the traditional banking sector, the way money was intermediated and the gatekeepers around that were not ultimately responsive to ordinary people and that there was a better way through technology, through code, smart contracts, decentralization to create a better system. What ultimately happens is you realize that there are benefits to a highly regulated financial system and having regulators and proof of accounts and some kind of backstop from a central bank in particular, those things have arisen and had staying power for a reason, right? But that said, again, there's a whole technology around money transfer and ledgers that could ultimately be a useful way to conduct economic transactions in the actual bubble and investing part of it—I can get rich quick—that actually might go away. When that goes away, and when you just have purely kind of infrastructure—something far less dramatic and glamorous—maybe that is what ultimately endures.

[00:17:18] **Gillis:** So, Sujeet, one of the things that you kind of mentioned is this connectedness in the crypto world that people are somewhat taken by surprise with. Another element that you've written a bit about lately is the connectedness with respect to legal representation and Sullivan becoming the lead bankruptcy counsel with respect to FTX filing for bankruptcy. And so how exactly do you see the tensions around who the lead bankruptcy counsel is and what might come out of this process? So you mentioned, for example, that the extent to which the bankruptcy system will help in a situation like that might tell us more about how viable crypto is in the long term. So is it about kind of seeing bankruptcy specifically play out in this example that we're going to learn something about crypto? Is it that the bankruptcy process itself might kind of expose and make us more knowledgeable at how things function and therefore how things should be reformed going forward? So what do you think will be our takeaways from this bankruptcy process?

[00:18:14] **Indap:** Yeah, no, I mean, I write a lot about the intersection of corporate law and corporate finance and corporate finance litigation. And one of the reasons is that litigation, as both of you know, produces a lot of documents and disclosure, and a lot of things just happen in open courts. You just learn a lot. American Bankruptcy Chapter 11 definitely has a value of transparency. Everyone gets a lawyer. Everyone's lawyer can speak in court. And so the process can be slow and grinding at times, but the flip side of that is there is a lot of disclosure and debate, and you learn a lot. So I expect that, and we have seen this from these bankruptcies. We're actually getting disclosures finally around these companies' financials and how they made money and where money and coins and tokens are located. And we've learned just so much from the transparency that bankruptcy has brought, and hopefully from that there is some kind of path forward. So it is, as legal scholars and me as a journalist, you know, these bankruptcies are

extremely painful for the people who are creditors on the other side of it. But for the rest of us, it's just a wealth of documents and disclosures and knowledge that we get. And hopefully there is some kind of, like, social externality of learning from these and taking best practices to what we're discussing earlier. Maybe we can build a better crypto ecosystem.

[00:19:29] **Talley:** So, Sujeet, this season, one other thing that we're planning to take on is the SEC's adoption of a mandatory universal proxy card for contested corporate elections, which is rolling out in 2023 and would require shareholder voting cards or these proxy cards to list all candidates who have been nominated for a public company board, regardless of whether they are nominated by the challenger or by the incumbent. And, practically, this means that a shareholder who is a voter is now going to, for the first time ever, really going to be able to mix and match who they want to vote for for seats on the board. Is that a good thing? I mean, it's got to make voting a little bit more complex. Does it place new demands on information about all the different candidates that are going to be out there? Ultimately, how big of a deal is this going to be for public companies?

[00:20:24] **Indap:** It's definitely been a big topic amongst the corporate law community. Just for listeners' benefit, I mean, running a proxy contest where you have some kind of activist investor or someone who's not part of the company's slate has been an expensive and cumbersome process, and there's all sorts of quirks of American shareholder democracy and the costs and the taxes are the theoretical or figurative tax of running a proxy contest. The bar is now much lower. So companies are worried that a much, much less accomplished or impressive types of investors will now be running for a single board seat, and they'll have to spend time dealing with that, and boards don't like that kind of distraction or, honestly, anyone really questioning them—like even smart activist investors are seen as a thorn in their side. And there's a whole cottage industry around advisers, lawyers, consultants, bankers who protect incumbent boards from these kinds of gadflies. So, I mean, the SEC has made the determination. Yeah, it should be easier if an investor has a good idea, they shouldn't be hampered by the costs and the cumbersome nature of proxy contests. I suspect it'll be not as bad as companies think it will be. And ultimately, you know, shareholders, I think, can vote for themselves. There's a handful of shareholders that ultimately matter in these elections, and they're pretty smart and sophisticated and can probably see through unserious dissident shareholders who are running for election. I think what's also been interesting is the legal response that companies and their advisers have come up with. There is this idea of advance notice bylaws, which is a relatively recent phenomenon in the last several years, where companies can set the rules on who can run for election and when they have to submit their applications to run and what kind of information that you have to provide. So the cat and mouse is continuing between companies and activists.

Universal proxy seems squarely investor friendly. It's going to be much more complicated than that, I think.

[00:22:11] **Talley:** Sujeet, I want, finally, to ask you about your book, *The Caesars Palace Coup*, which has been on the shelves now for a little over a year, maybe about 16 months. Is it still available on bookshelves of bookstores around the United States?

[00:22:24] **Indap:** Yes, it is. We came out with a paperback version late last summer. And yes, very much still out there. We're still doing book events. We've described it as a courtroom in a boardroom thriller. And, I mean, the reason we wrote it, just for listeners who may not be aware, it's about the Caesars casino chain. There had been a \$30 billion buyout in 2008 by a couple of very famous private equity firms, Apollo and TPG—this is like right before the financial crisis—that clearly paid too much. There was an enormous amount of debt that they had put on this casino chain, thinking casinos were relatively recession resistant. That didn't prove to be true. And so ultimately, there is this very dramatic and ugly and heated fight between these hedge fund creditors who buy up the Caesars debt and the private equity firms who want to stay in control. And that takes place in boardrooms and courtrooms. And so there had never been, we thought, like a real kind of treatment of a situation like this. Distressed debt had become a big asset class on Wall Street. A lot of high-profile companies have gone through fights like this. So we wanted to tell a story kind of comprehensively about something like this. And so that was what really drove me and my co-author, Max Frumes, to write the story. And, again, there hadn't been a story like this, and we thought it would be a fun tale to tell.

[00:23:35] **Talley:** You know, I sort of anticipated that, you know, we'd get deep into some, you know, byzantine, you know, details of things. And very shortly after I opened this book, I felt like I had stumbled into maybe the next entry in *The Hunger Games* series of books, where creditors and debtors fight to the death switching and careening in alliances with one another for a tax on the other.

[00:23:59] **Gillis:** It's just incredibly meta that this discussion of these gambling on distressed debt and the infighting and everything else is happening around a casino chain. So you can kind of imagine these these two dimensions, one of the casino chain in which you're taking these large gambles and high stakes and it happening at the level of distressed debt.

[00:24:20] **Indap:** There was a review from Reuters of our book, and the title of the review was "When Chapter 11 Meets Ocean's 11." And I was very upset that I did not think of that before Reuters did, because it's a great tagline.

[00:24:35] **Talley:** Sujeet, thanks so much for joining us today.

[00:24:37] **Indap:** No, thanks, Eric and Talia, this was great.

[00:24:40] **Gillis:** Our guest today was Sujeet Indap, *Financial Times* editor, former banker, and author. Make sure to check out Sujeet's book, *The Caesars Palace Coup*. Join us this season on *Beyond Unprecedented*, and make sure to follow us on Apple, Spotify, or wherever you get your podcasts. Thank you so much for listening.

[00:24:58] **Gillis:** *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, Cary Midland, and Martha Moore are producers. Editing and engineering by Jake Rosati. Special thanks to Erica Mitnick Klein and Molly Calkins at the Millstein Center, with research assistance by Alice Legrand. If you like what you hear, please leave us a review on your podcast platform. If you're interested in learning more about law, the economy, and society, visit us at law.columbia.edu or follow us on [Facebook](#), [Twitter](#), and [Instagram](#).