



# *CURRENT RESEARCH IN PRIVATE INTERNATIONAL LAW*

*Maggie Gardner*  
*Cornell Law School*

*“Beyond the Presumption Against Extraterritoriality”*

**Tuesday, 2 July 2024 2:00 p.m. – 3:30 p.m. (CEST)**

The virtual workshop will be held as a video conference via Zoom.  
Please register for the workshop using this [LINK](#).

*Ralf Michaels and Philomena Hindermann*



### About the speaker:

Maggie Gardner is Professor of Law at Cornell Law School and a founding editor of the Transnational Litigation Blog (TLBlog.org). She teaches civil procedure, federal courts, and transnational litigation, and her research focuses on questions of jurisdictional conflict, international comity, and judicial decision making.

### About the topic:

For the last decade, the debate over prescriptive jurisdiction in the United States has been monopolized by the Supreme Court's rejuvenated presumption against extraterritoriality. Under this framework, U.S. courts interpreting federal statutes must ask (1) whether the statute expresses clear congressional intent to reach extraterritorial conduct, and if not, (2) whether the statute is nonetheless being applied domestically because its "focus" occurred in the United States. But even the Court's presumption-with-teeth cannot answer all questions of prescriptive jurisdiction in a world of concurrent jurisdiction and economic interdependency. Are there limits on the applicability of U.S. statutes that do rebut the presumption at step one? At step two, does some need for balancing of sovereign interests remain--and is that balancing subsumed within the step two inquiry, or is it a distinct doctrine of international comity? This survey of lower federal court decisions shows that U.S. courts are continuing to engage in contextual balancing despite the rule-like framework of the modern presumption against extraterritoriality, but also that the "focus" test may be encouraging judges to identify a more limited and relevant set of factors to consider. What emerges is a multi-factor analysis that is statute-specific but still responsive to the circumstances of individual cases, in which the presumption serves only as an initial sorting rule. This project distills and defends this updated approach as more feasible for judges to apply, more faithful to congressional intent, and sufficiently capable of addressing international comity concerns without the need for an additional, free-standing comity doctrine.

### About the virtual workshop series:

The virtual workshop series „Current Research in Private International Law“ is organised by Ralf Michaels and Philomena Hindermann. The series features guest speakers and Institute staff members who present and discuss their work on current developments and research topics in private international law. The workshops are geared to scholars who are researching in the field of private international law, but attendance is open to all individuals having an academic interest (including doctoral candidates and students).