

2018

## From the Editors

Anthony E. Varona

*University of Miami School of Law*, [avarona@law.miami.edu](mailto:avarona@law.miami.edu)

Camille A. Nelson

Follow this and additional works at: [https://repository.law.miami.edu/fac\\_articles](https://repository.law.miami.edu/fac_articles)



Part of the [Law Commons](#)

---

### Recommended Citation

Anthony E. Varona and Camille A. Nelson, *From the Editors*, 67 *Journal of Legal Education* 901 (2018).

This Article is brought to you for free and open access by the Faculty and Deans at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in Articles by an authorized administrator of University of Miami School of Law Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

## From the Editors

Montesquieu's theory of *doux commerce*, or "sweet commerce," teaches that we become gentler and kinder by doing business with those who are foreign to us.<sup>1</sup> Mutual self-interest motivates people interacting across national and other borders to become more sociable and achieve, through collaboration, much more than they could achieve alone. By working to understand the "other," no matter how distant or different they are from us, we better understand ourselves and, as a consequence, we improve our own lives.

Self-interest, however, is only a part of it. The fundamental understanding of the natural and inalienable rights of humankind – values such as dignity, identity, and autonomy – itself argues in favor of better understanding and respecting people who are different from us. We should reach across chasms and divides not solely to benefit our own understanding and position but also to honor the basic tenets of human rights and the enduring requirements of the social contract itself.

It is no surprise the benefits of globalization and internationalization have long been acknowledged, and realized, in commercial trade, tourism, transit, arts and cultural activities, telecommunications, scientific research, space exploration, philanthropy, and many other areas of human enterprise. The legal profession and legal education itself, however, continue to lag in our embrace of internationalism.

In the United States, our attitude toward international and comparative law at times has been not only insular but outright hostile, as memorably exemplified by the late Justice Antonin Scalia's dissent in 2003's *Lawrence v. Texas*. There, Justice Scalia protested against the majority's reliance on the decriminalization of sodomy in other nations as support for its holding that sodomy bans are prohibited under the U.S. Constitution. He wrote that "[t]he

1. See Nathan B. Oman, *Markets as a Moral Foundation for Contract Law*, 98 IOWA L. REV. 183, 202-03 ("There is empirical evidence in support of Montesquieu's thesis. Experimental studies show that market activity is strongly correlated with higher levels of interpersonal trust.") While often attributed to Montesquieu, the *Doux Commerce* theory also is linked to the work of political philosophers David Hume, Adam Smith, and Voltaire. Mark L. Movsesian, *Markets and Morals: The Limits of Doux Commerce*, 9 WM. & MARY BUS. L. REV. 449, 456 (2018) (Prof. Movsesian puts it this way: "The [*doux commerce*] thesis is most closely associated with French *philosophes* like Montesquieu and Voltaire, but Scottish Enlightenment figures like Smith and Hume also endorsed it.").

Court's discussion of these foreign views" is "meaningless" and "[d]angerous dicta ...."<sup>2</sup>

Similarly, President Donald J. Trump's "America First"<sup>3</sup> exhortations curry so much popular support because they resonate with the nation's longstanding embrace of the idea of American exceptionalism. "America First," however, suggests "America best," which itself begs the question that if we really are best and to be emulated and followed, then what do we have to learn, and to teach, from outside of our national borders?<sup>4</sup>

Most of the articles we include in this issue of the *Journal of Legal Education* illustrate that American legal education has much to learn, and to teach, in international and comparative law.

We begin with Professor Rosa Kim's *Globalizing the Law Curriculum for Twenty-First-Century Lawyering*. Professor Kim examines why internationalizing the law school curriculum is especially important today, in the Trump Era, and when the practice of law across all specializations is increasingly global in scope, with the old distinctions between "domestic" and "international" practice now obsolete. She writes that "the core curriculum of most law schools remains tied to a model established over a century ago" and argues in favor of not just a handful of international and comparative law courses in a discrete curricular sector, but of a pursuit of "global competency" across the law school curriculum.

Dean Theresa Kaiser-Jarvis carries the thread of globalization of legal education forward in her article, *Preparing Students for Global Practice: Developing Competencies and Providing Guidance*. She provides tangible and practical suggestions for law professors and associate deans in charge of curricular planning for the purpose of "creat[ing] a globally competent lawyer." Dean Kaiser-Jarvis emphasizes experiential learning, and discusses the value of immersive experiences abroad, familiarity with a legal system other than the common law, exposure to "global networks" and "language[s] other than English."

2. *Lawrence v. Texas*, 539 U.S. 558, 598 (2003) (Scalia, J., dissenting). Justice Scalia quotes Justice Thomas's concurring opinion in *Foster v. Florida*, where he wrote that the Supreme Court "should not impose foreign moods, fads, or fashions on Americans." *Id.*, quoting *Foster v. Florida*, 537 U.S. 990, n. (2002) (Thomas, J., concurring). See also *Atkins v. Virginia*, 536 U.S. 304, 347-48 (2002) (Scalia, J., dissenting) (rejecting views of other nations on the legitimacy of execution of defendants with intellectual disability, noting "Equally irrelevant are the practices of the 'world community,' whose notions of justice are (thankfully) not always those of our people.").
3. President Donald J. Trump, Inaugural Address, available at <https://www.whitehouse.gov/briefings-statements/the-inaugural-address/>. "From this moment on, it's going to be America First."
4. Or from immigrants who imbue their American identities with "foreign" experiences, understandings, and capabilities? It bears noting here that both of us are immigrants and naturalized American citizens. (Camille was born in Jamaica and Tony in Cuba.)

Next, we have an article co-authored by Andrew Winston, Peter Roudik, Barbara Bavis, and Donna Sokol entitled *The Law Library of Congress: A Global Resource for Legal Education*. In this piece, the co-authors discuss how a quintessentially domestic American institution – the Law Library of Congress, for which the “first obligation is to serve the US Congress and the US Supreme Court” – has become a treasure trove of international and comparative law resources for both domestic and international researchers. The article provides a detailed overview of these resources as well as describes how US and foreign academics and law students are able to access them.

We then move to two articles that provide detailed and fascinating looks into challenges and opportunities confronting legal education in Africa and Russia. In the first piece, entitled *Comparative Research in Contemporary African Legal Studies*, Professor Charles Manga Fombad provides a fascinating example of how the debates around the globalization of legal education are unfolding around the world in ways that are both similar to and different from how they have evolved in the United States.

In his article, Dr. Fombad discusses the move towards enriching African legal scholarship and curricula with more international and comparative law content. He bemoans what he describes as “the declining interest that most African law schools have in teaching comparative law” and “its disappearance from the law curriculum” and concludes that it will “likely...have a negative impact on the quality of legal research and, consequently, legal education.” He argues in favor of the incorporation of comparative scholarship and curriculum in African legal education, especially “at a time of progressive denationalization through regional and sub-regional integration.”

In the second article of this dyad, *A Profile of Russian Law Students: A Comparison of Full-time versus Correspondence Students*, Professor Kathryn Hendley examines the dynamics of legal education in Russia, with a detailed examination of how law is studied in Russia, by whom, at what stage in their educational careers, and to what effect in terms of job placement and attitudes towards, with a particular emphasis on the distinctions between traditional full-time law students and those who attend by means of “correspondence.”

Next, we depart from the international and comparative theme of this issue with a very topical article by Professor Scott F. Norberg entitled *J.D.s and Jobs: The Case for an ABA Accreditation Standard on Employment Outcomes*. In it, Professor Norberg proposes a new “employment outcome standard” for adoption by the ABA for the reaccreditation of law schools. Norberg addresses the motivations for such a standard, and specifically the interplay between what he refers to as “persistently weak graduate employment outcomes” and “high levels of law school debt” affecting a sizeable cohort of law schools in the United States.

The final article in this issue is a review by Professor Richard A. Boswell of Emeritus Professor Richard J. Wilson’s book, *THE GLOBAL EVOLUTION OF CLINICAL LEGAL EDUCATION: MORE THAN A METHOD*. In his book, our colleague Professor Wilson traces the history, progression, and impacts of

clinical legal education across the world. Professor Boswell concludes that Professor Wilson shows how “Clinic is more than just a way of teaching but is also a very vibrant global movement that has deep roots in what educators have learned about how students learn.”

This is the first issue of the *Journal of Legal Education* for which the American University Washington College of Law took the lead, in partnership with our colleagues and institutional co-editors at Northeastern University School of Law. Our law school assumed the institutional co-editor responsibilities from University of Washington School of Law, which had very admirably served in the role since 2014.

This issue’s theme is an especially fitting one for us, insofar as our law school has long valued the integration of international and comparative law across our traditional and experiential curricula. We thank all of this issue’s authors for their important contributions, our colleagues and co-editors at Northeastern for their generous guidance and help, and for their hard and excellent work the other members of our AUWCL JLE editorial team, which includes Professors Khelani Clay, Robert Dinerstein, John Heywood, Billie Jo Kaufman, Mark Niles, Shannon Roddy, William Ryan and Ripple Weistling.<sup>5</sup>

We hope that you will enjoy this issue.

Camille A. Nelson

Anthony E. Varona

5. We also thank our editorial assistant, Emma McArthur, and our graphic designers, Erik Garcia and Linda Wen, for their excellent graphic design and production work.