



## FRENCH LAW PROGRAM

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NEWSLETTER

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### FROM THE DIRECTOR

Since our last Newsletter in 2009, the French Law Program has continued to thrive and grow. Seminars in the United States in 2010 and France in 2011 exceeded expectations and are described in the following pages. Our relations with the Faculté de Droit in Le Mans continue to be enormously productive. Most notable here is our joint publication (with the participation also of the Faculté de Droit of the University of Rennes 1) of the proceedings of the 2010 Franco-American Legal Seminar entitled *The Financial Crisis of 2008: French and American Responses*. The volume includes over thirty articles by American and French law students and legal scholars. The volume runs to more than 600 pages and showcases the work done by students and faculty participating in the Seminar or otherwise associated with the Program.

The theme of the 2012 Franco-American Legal Seminar, scheduled to take place in the U.S. in March, is *Religion, Law, and the State in the United States, France, and Europe*. The subject couldn't be timelier or more important. The U.S., France, and other European countries face considerable difficulties in integrating people with different religious beliefs and practices into their increasingly multicultural societies. These problems, along with the more general question of the relation of religion and the state, are now front and center in all western societies. Student papers, Seminar discussion, and visits with United Nations officials, NGO officers, attorneys, and local officials in New York City will focus on these issues.

This year the Seminar will feature an international conference addressing the theme as part of the program. Leading legal scholars from France and the United States will take part. Among the participants is Professor Joseph Weiler of N.Y.U. School of Law who will be delivering the keynote address. Professor Weiler is perhaps the leading expert on the law of the European Union, and has written extensively on the question of religion and the state. Last year he successfully argued the landmark case of *Lautsi v. Italy* (which involved the question of whether crucifixes could be lawfully displayed in public school classrooms in Italy pursuant to the European Convention for the Protection of Human Rights and Fundamental Freedoms) before the European Court of Human Rights. The University of Southern Maine's Department of Political Science, under the leadership of Professor Francesca Vassallo, is helping organize the conference, as is Professor Malick Ghachem, who is now in his second year at the Law School and promises to be a stalwart of the French Law Program as we move forward.

Other recent developments of interest are described later in this Newsletter. Particularly notable are the continuing scholarly output of French and American legal scholars associated with the Program, progress in curriculum development by Maine's Marine Law Institute and Nantes' Centre de Droit Maritime et Océanique which is being supported by a \$240,000 grant from the French Government's Partner University Fund, and the formation of the French Law Program alumni and friends organization, thanks to the initiative of former student participants Ted Joyce and Amanda Zane.



**FIFTEENTH ANNUAL FRANCO-AMERICAN LEGAL SEMINAR**  
**Washington, D.C., Portland, Maine, April 2010**

The topic for the 2010 Seminar was both timely and controversial—a comparison of U.S. and French responses to the current financial and economic crisis. To engage in a meaningful comparison, Seminar participants had to understand the different structures and mechanics of political decision-making that exist in the U.S. and France, as well as differing French and American attitudes towards the role of government in the economy. Students dealt with these general matters, as well as a variety of specific issues (like proposed regulation of financial institutions, credit rating agencies, and executive compensation, the effect of regulation on competition, the problem of large-scale unemployment, the establishment of new institutions, such as the proposed Consumer Financial Protection Agency, and the role of international, European, and state and local institutions in responding to the crisis) in their prepared statements and during Seminar sessions and meetings with government officials and legal professionals in Washington, D.C.

The 2010 Seminar was significant for the program in two important respects. First, in past years only students and faculty from the Faculté de Droit of the Université du Maine (Le Mans) and the University of Maine School of Law participated. By 2010, the program doubled in size, to include students and faculty from the Faculté de Droit of the University de Rennes 1, and a student from the University of North Carolina School of Law. The substantial rise in the number of French and American participants helps widen the scope and increase the visibility of the program for the benefit of enhanced Franco-American interaction, understanding, and cooperation. Second, the 2010 Seminar marks the first time that we published the Seminar proceedings in book form. This publication includes articles specifically written for the volume by participating French and American scholars, articles contributed by other French and American experts, and contributions from student participants. (The foreword is excerpted on page 6 of this Newsletter.) We view this publication as a way of expanding the reach of our collaborative efforts in France, the United States, and beyond, and showcasing what we believe to be an exemplary program.

The 2010 Seminar got underway on Saturday, April 10 when the participants arrived in Washington, D.C. The group stayed at the Adams Inn, a cozy bed-and-breakfast-type hotel in the Adams-Morgan section of the city. On Saturday and Sunday, French and American students got acquainted with each other and visited monuments, museums, and other historic sites. Our first visit on Monday was to the United States Supreme Court. After an enlightening presentation by a Court docent in the courtroom itself and a tour of the building, we met with Justice Breyer's four law clerks. Discussion was wide-ranging, with a focus on the role of the clerks and the workings of the Court. Later that day, we visited the Federal Reserve Board for a tour of the building and a presentation about its history, structure, and functions. Our final stop of the day was the French Embassy where we heard presentations by the Financial Counselor (describing the efforts of the international community to better regulate financial institutions), the Counselor for Multilateral Affairs and the Environment (describing the role of the G20 and possible reforms in global governance), and Liaison Judge Philippe Caillol (discussing Franco-American judicial cooperation).

On Tuesday morning the group visited the Washington, D.C. offices of the K & L Gates law firm. The purpose of that visit was to explore the role of lobbyists in the current financial crisis and their role in the legislative process more generally. Attorney and registered lobbyist Jonathan Blank, financial services lobbyist Dan Crowley, and former 10-term congressman and member of the House Appropriations Committee the Hon. James T. Walsh each made informative presentations that prompted lively discussion. That afternoon, the group visited the Capitol, for a tour of the building and a meeting with Maine Senator Olympia Snowe, who responded to questions regarding the Senate's role in the current crisis. In the evening the group traveled to Portland, Maine, where American student hosts housed the French students.



The group met in Seminar sessions on Wednesday, Thursday, and Saturday. Seminar sessions were devoted to student presentations of prepared papers and discussion of those papers. During the periods on Wednesday and Thursday that the Seminar was not in session, the group visited the Law School's Cumberland Legal Aid Clinic, the Cumberland County Courthouse, the Cumberland County Jail, and the Portland law firm of Bernstein, Shur, Sawyer & Nelson. On Friday, the group spent the entire day in Augusta. The purpose of the visit to Maine's capital was to explore state responses to the economic crisis. While in August, the group had the opportunity to meet with Maine Governor John E. Baldacci, along with other state officials. A concluding dinner took place on Friday evening. Speeches were made, gifts were exchanged, and French and American students cemented the close, amicable relations that they had developed during the week.

As unforeseen events would have it, the French students and faculty had to extend their visit due to the eruption of a volcano located on Iceland's Eyjafjallajökull glacier. The eruption substantially disrupted transatlantic air travel and the French group remained in the United States for nearly a week longer than anticipated. Maine Law faculty, students, and administrators responded vigorously to our visitors' plight so that their extra time here would be educationally profitable and enjoyable. French students were given access to computers, attended classes and lectures, and socialized with Maine Law students. In spite of the difficult circumstances, spirits remained high.



Rochambeau, Washington, De Grasse

Le Procope, Paris



### SIXTEENTH ANNUAL FRANCO-AMERICAN LEGAL SEMINAR Paris, le Mans, Rennes, March 2011

The 2011 Franco-American Legal Seminar took place in France from March 5 through March 13. The principal theme for the Seminar was *Environmental Catastrophes: Prevention and Response*. The Seminar's secondary theme was *Franco-American Amity in Historical Perspective*.

The American student group arrived in Paris on Saturday, March 5. Saturday and most of Sunday were free for sight-seeing. On Sunday evening the Seminar began with a dinner at le Procope restaurant. Le Procope is the oldest restaurant in Paris, established in 1686. It was frequented by such French literary luminaries as La Fontaine, Voltaire, Rousseau, Diderot, and Verlaine; and also by American representatives in France during the revolutionary period and immediately after (including Benjamin Franklin, John Adams, John Jay, Thomas Jefferson, and James Monroe). Le Procope is thus not only an historic place, but one of special significance as a symbol of Franco-American friendship and cooperation. The dinner took place in the Benjamin Franklin dining room, a beautiful venue dominated by an illuminated bust of Franklin. The dinner was attended by 38 persons including Judge Abdulqawi Ahmed Yusef (International Court of Justice), Ambassador Mark Miggiani (Maltese ambassador to France); Professors Armel Le Divillec (Paris 2), Mark Kende (Drake), Pierre-Henri Prélôt (Cergy-Pontoise), and Leila Sadat (Washington University). Judge Yusef and Ambassador Miggiani addressed the group after dinner. Professor Rogoff also spoke—he described revolutionary-era links between France and the American colonies and later the fledgling United States, with emphasis on Benjamin Franklin's role in negotiating a war-time alliance with France and later the peace treaty between the United States and Great Britain (which was signed in Paris on rue Jacob, only a few short blocks from le Procope).

On Monday morning the group visited the Senate, located in the historic and beautiful Palais du Luxembourg. We were hosted by the third-ranking member of the Senate's administrative staff and his colleague who is responsible for the organization and functioning of the Senate's legislative sessions. They explained the place of the Senate in the French constitutional scheme, its workings in detail, and the historic and symbolic significance of the magnificent statues, paintings, and frescoes adorning the building. During this presentation, the group was seated on the Senate floor, and was later able to explore the chamber where plaques on certain desks indicated the names of illustrious past senators who occupied those desks (like Victor Hugo and Georges Clemenceau). Later that day, the group visited the Court of Cassation (France's highest court for civil and criminal matters), where a member of the Court described the jurisdiction and workings of the Court. In the late afternoon, the group attended a colloquium at the Collège de France entitled *Paris in America*. The first part of the colloquium was devoted to the career of Édouard Laboulaye (1811-1883), a professor at the Collège de France, the author of several books about the United States and its government, and the person who conceived the idea of (and raised the funds for) the Statue of Liberty and convinced his friend Frédéric Bartholdi to undertake the project. The second part of the colloquium was devoted to a discussion of the recent book by Justice Stephen Breyer entitled *Making Our Democracy Work: A Judge's View*. Robert Badinter, former president of the Constitutional Council and former Minister of Justice, presided. Discussants were Justice Breyer, Guy Canivet (member of the Constitutional Council), Mireille Delmas-Marty (Collège de France), and Antoine Garapon (Secretary General of the Institute for the Study of Justice). Justice Breyer's remarks (in French) were animated and passionate as he presented a justification for and the responsibility of the United States Supreme Court in assuring democracy in the American political process.



The group spent all Tuesday morning at the Constitutional Council, where we were received by the chief of the Council's legal staff. He explained the workings of the Council, with special emphasis on the new basis of jurisdiction that it was accorded by the July 2008 amendments to the French Constitution. The addition to the Constitution of new article 61-1 now allows the Council to consider the constitutionality of a law that has already entered into force during an ordinary litigation in the civil or administrative court system. This is an enormous innovation in French constitutional practice, which has long been hostile to judicial review. After learning about this new procedure (called the QPC, *question prioritaire de constitutionnalité*), our group witnessed arguments in four QPC cases through closed-circuit TV in a conference room in the Council building. We then toured the Council's premises, followed by a champagne reception. On Tuesday afternoon, we attended a seminar at the École normale supérieure organized especially for us by Professor Jean-Louis Halpérin on French legal culture. Late in the afternoon the group travelled to Le Mans. French students and faculty greeted us there with a reception in a restaurant near the train station. American students were met by the French students who would host them in their homes until Sunday morning.

All day Wednesday and Thursday French and American students presented and discussed their papers on the principal theme of the Seminar: *Environmental Catastrophes: Prevention and Response*. Papers were uniformly well done and enthusiastically presented. On Wednesday evening, the group attended a reception at the Le Mans Bar Association's *Maison des Avocat* hosted by the president of the Le Mans Bar Association and the president-elect. Also in attendance were the *Procureur de la République* for the area (a position equivalent to United States Attorney), and the president of the district's trial court. There was discussion of the possibility of establishing an internship opportunity for American exchange students in local law firms, the public prosecutor's office, and the courts. On Friday, the group visited Rennes. After having had lunch in a typical Breton *crêperie*, the group visited the *Parlement de Bretagne*, now the seat of trial and appellate courts, but in pre-revolutionary days the seat of the important legal and political institution called the *Parlement de Bretagne*. To understand certain significant legal outcomes of the French revolution (like attitudes towards judges and judicial review, for example), it is necessary to understand the role the regional *Parlements* played in the Old Regime. These important historical matters were amply described by our guides. Later that evening, we had a Gala Dinner in a local restaurant. Speeches were made, gifts were exchanged, and amicable relations cemented between French and American students.

On Saturday, the group visited the castle of the count of Rochambeau, located on the Loir River, a small tributary of the well-known Loire River. The count's ancestor was the famous Jean-Baptiste Donatien de Vimeur, comte de Rochambeau, who commanded the French army whose support was crucial to George Washington's victory over the British at Yorktown in 1781. Nathalie de Gouberville, the daughter of the recently-deceased count, who now lives in the chateau with her husband, gave us a guided tour of the chateau and its grounds, providing much interesting historical information about General Rochambeau, his accomplishments, and his participation in the American Revolution. Following the tour of the chateau, we had lunch in the charming provincial village of Thoré-la-Rochette, visited a local vineyard to sample the wines of the region, and stopped off on the way back to Le Mans for a quick visit to the picturesque village of Trôo.





**Foreword, THE FINANCIAL CRISIS OF 2008: FRENCH AND AMERICAN RESPONSES. PROCEEDINGS OF THE 2010 FRANCO-AMERICAN LEGAL SEMINAR**

This volume is the product of the 2010 Franco-American Legal Seminar, which is a joint undertaking of the University of Maine School of Law (Portland, Maine) and the French law faculties of the Université du Maine (Le Mans, France) and the Université de Rennes 1 (Rennes, France). The primary purpose of publishing the proceedings of the 2010 Seminar along with other articles on topics in French law is to stimulate dialogue between French and American legal academics, lawyers, and public officials that will contribute to deeper understanding between France and the United States. It is also intended to acquaint French and American legal academics with a program which has been in existence for nearly twenty years and has built strong, substantive bridges between law schools in the United States and France. This publication is the result of the close cooperation that the University of Maine School of Law has had with the law faculty in Le Mans for the past twenty years and with the law faculty in Rennes for the past five years. A number of other French and American law schools have been involved in and supportive of the relations initiated by Portland and Le Mans and our hope is that the publication of the proceedings of the Seminar and related articles stimulates the involvement of other law schools and legal academics on both sides of the Atlantic.

Why a program and a publication devoted to French and American law? First of all, the French and American legal systems may be said to represent the two principal legal systems in the world today: the Anglo-American common law system, which is enormously influential because of the political, economic, and cultural power of the United States, and the continental European civil law system, which has spread to all parts of the globe. Second, each country sees its legal system as a model for others, and actively seeks to promote it abroad. The French Council of State made this explicit in a 2001 report entitled *L'Influence internationale du droit français*. Third, there are significant differences in French and American conceptions of law, legal doctrines, and institutional roles, which at times contribute to misunderstanding and conflict (like during the run-up to the American invasion of Iraq in 2003). A frank exploration of these differences (as well as significant similarities) can only enhance mutual understanding, acceptance, and cooperation.

The relationship between France and the United States has longstanding and deep roots in history and shared values. This relationship is perhaps best exemplified by Alexis de Tocqueville's *Democracy in America* (1835, 1840). Tocqueville had a keen interest in studying the United States for the insight that it might provide for France. Our Seminar and this publication draw inspiration from Tocqueville's efforts in comparative politics, history, and law, and especially from his profound understanding of the United States and his desire to translate his insights into useful guides for his compatriots. Similarly, a long line of American scholars, artists, scientists, and public figures have drawn on their studies and experiences in France to enrich their skills and understanding, much to the benefit of the United States. Thomas Jefferson is a well-known example. Another example is Massachusetts Senator Charles Sumner, perhaps the most determined, outspoken, and influential political leader to oppose slavery in antebellum America, during the Civil War, and in the Reconstruction period. Senator Sumner developed his progressive attitudes toward race relations and deepened his understanding of government and politics during time spent studying in France as a young man, as David McCullough describes in his recent book *The Greater Journey: Americans in Paris* 131 (2011).

The topic for the 2010 Seminar could not have been more timely or controversial—a comparison of U.S. and French responses to the current financial and economic crisis. To engage in meaningful comparison, Seminar participants had to understand the different structures and mechanics of political decision-making that exist in the U.S. and France, as well as differing French and American attitudes towards the role of government in the economy. These matters, as well as a variety of specific issues (like proposed regulation of financial institutions, credit rating agencies, and executive compensation, the effect of regulation on competition, the problem of large-scale unemployment, the establishment of new institutions, like the proposed Consumer Financial Protection Agency, and the role of international, European, and state and local institutions in responding to the crisis) were dealt with by students in their prepared statements and Seminar sessions and were the subject of discussion in meetings with government officials and legal professionals in Washington, D.C.



This volume brings together articles by senior and junior faculty members in the United States and France as well as notes and comments by French and American law students based on their Seminar presentations. The issue also contains articles on other French law subjects (like the 2008 amendments to the French Constitution, the new and important *question prioritaire de constitutionnalité* jurisdiction of the Constitutional Council, and religious freedom and establishment issues) that should be of interest to our readers. The volume concludes with Appendices that list the subjects of the Franco-American Legal Seminar since its inception in 1994 and a description of the 2010 Seminar.



## RECENT DEVELOPMENTS

**Partnership University Fund Grant:** In 2009, the Marine Law Institute at the University of Maine School of Law and the Centre de Droit Maritime et Océanique of the Université de Nantes received a three-year grant of \$240,000 from the French Government's Partner University Fund to develop a joint research program and course of study in comparative marine law. Faculty from the two schools are cooperating on these endeavors, which should soon come to fruition in a joint LL.M. program. Grant funds have also been used to organize several marine related conferences (one important one in Maine on international maritime boundary delimitation on the occasion of the twenty-fifth anniversary of the International Court of Justice's decision in the Gulf of Maine maritime boundary delimitation case) and to support joint research and publication efforts (a collection of essays on piracy in international waters is forthcoming).

**Formation of French Law Program alumni and friends organization:** The French Law Program has now been in existence for almost twenty years. Nearly three hundred French and American law students have participated in the Franco-American Legal Seminar and about forty have studied as exchange students at the University of Maine School of Law, the Université du Maine in Le Mans, and the Université de Cergy-Pontoise. In recognition of the continuing importance of these experiences in the lives of French and American students, former participants in the Program have established an Alumni and Friends organization to advise, assist, and continue to participate in the Program. Former participants Ted Joyce and Amanda Zane have undertaken the task of putting the organization in place, assembling a list of the names and address of past participants (both French and American), and maintaining contact with them. If you are interested in assisting Ted and Amanda, please contact either of them at: tedjoyce19@gmail.com or amanda.nicole.zane@gmail.com.

**Director publishes casebook on French constitutional law:** *French Constitutional Law: Cases and Materials* (Carolina Academic Press, 2010) is the first casebook on French constitutional law in the English language. It includes extracts from decisions of the Constitutional Council and Council of State, significant laws, important reports, and a variety of French legal writings (many translated into English for the first time). These materials are accompanied by commentary, notes, and readings from secondary sources, including a generous sampling of extracts from historical and philosophical texts, to permit an understanding of the French constitutional system in context. The aim of the book is to present French constitutional law from a French perspective—to understand how the French think about constitutional law and its practice. Dynamics of constitutional evolution in France are stressed, and special attention is devoted to the extensive and significant constitutional amendments of July 2008. The book deals in depth with the following matters: separation of powers and the structure and functioning of government, the evolution and practice of judicial review by the Constitutional Council, the role of the Council of State in the French constitutional system, sources of French constitutional law and their interpretation, the Republican tradition (liberty and human rights, democracy and national sovereignty, secularism, equality, social solidarity, and the indivisibility of the Republic), and the application of supranational law (international law, European Union law, and European human rights law) in the French constitutional system.

**Director receives honorary doctorate:** The Université du Maine in Le Mans, France, has awarded the degree of Doctor Honoris Causa to French Law Program Director Martin Rogoff for his work over the past eighteen years in developing, maintaining, and strengthening the close academic partnership between the Faculté de Droit, des Sciences Économiques et de Gestion of the Université du Maine and the University of Maine School of Law. The honorary degree will be presented by former Dean of the Faculté de Droit and former President of the Université du Maine — Gilles Cottreau (who was also the co-founder of the University of Maine School of Law – Faculté de Droit relationship) in a ceremony in Le Mans on November 24, 2011.



## French Law Program



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For up-to-date information about the French Law Program, please log on to the Program's website:  
<http://mainelaw.maine.edu/academics/french-law/index.html>.

**Please let us know what you think.** We are interested in your thoughts and memories about your participation in the Law School's French Program. Please share them with us by communicating them to the Director by mail or by e-mail ([rogoff@usm.maine.edu](mailto:rogoff@usm.maine.edu)). We are also interested what you think about this Newsletter and any ideas you might have for future issues.