

French Law Program

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Newsletter

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From the Director

After 15 years of relations between Maine Law and law schools in France, with a total participation of nearly 300 French and American students, faculty, alumni, lawyers, judges, and government officials, the time is right for us to reflect on our experiences and on the accomplishments of the program. I have asked several former participants to share their thoughts with us. But first I want to describe the origin, development, and current status of Maine Law's relations with law schools in France.

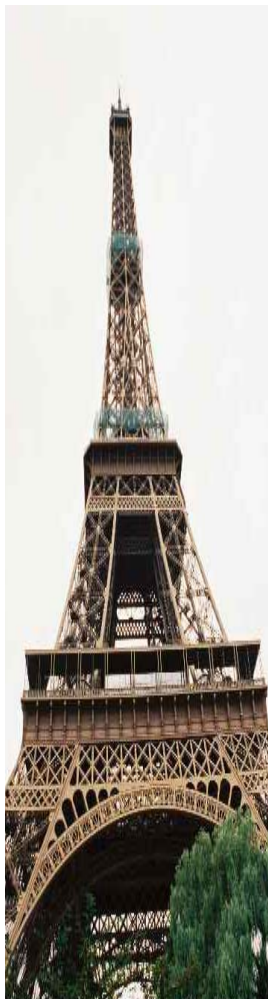
Relations between the Law School and law schools in France began in 1993 when Gilles Cottereau, Dean of the Faculté de Droit et des Sciences Économiques of the Université du Maine, invited me to teach his international law class for three weeks. This was the first of my many teaching experiences at the Faculté de Droit. Soon after, I developed an 18-hour course in American constitutional law which I taught there on numerous occasions. In March 1994, the Law School and the Faculté de Droit signed a formal cooperation agreement, which is still in force. Since 1994, more than 20 French students have studied at the Law School as exchange students, and about 10 American law students have spent a semester at the Faculté de Droit in Le Mans.

Since 1995, our two law schools have conducted an annual Franco-American Legal Seminar. Participation in the Seminar has made available to both French and American students and faculty members remarkable opportunities to visit legal and political institutions in both countries (like the United States Supreme Court, Department of Justice, and Pentagon, the French Conseil constitutionnel and Cour de Cassation, the U.S. Congress, the French Assemblée Nationale and Sénat, the New York Stock Exchange, and the Hôtel de Ville in Paris), to meet with high-ranking officials there, and to engage in intellectually stimulating discussions with each other about important and timely legal issues.

Several years later, the Law School signed a similar cooperation agreement with the Faculté de Droit of the Université de Cergy-Pontoise. More recently, the Law School has developed a strong relationship with the Faculté de Droit of the Université de Nantes, especially with its Centre de Droit Maritime et Océanique (CDMO). The CDMO houses one of the leading marine law programs in the world. CDMO scholars have published articles in the Law School's *Ocean and Coastal Law Journal*, and scholars associated with the Law School have published in the CDMO's *Annuaire de droit maritime et océanique*. The CDMO and the Law School's Marine Law Institute are now planning a joint conference on marine biotechnology that will take place in Portland next year.

The Law School's relations with French institutions and French law have continued to grow. In September 2006, the *Maine Law Review* published a special symposium issue entitled "French and American Perspectives on International Law and International Institutions." Former President of the International Court of Justice, Gilbert Guillaume, wrote the preface to the issue, which contained articles from French and American legal scholars on a number of important and controversial contemporary issues. The symposium has attracted broad, positive attention from both French and American international law communities, as demonstrated, for example, by the President of the American Society of International Law (ASIL), José Alvarez, devoting major portions of three of his columns in the ASIL's on-line newsletter *IL.post* to discussing issues raised in the symposium, and by current planning to continue the dialogue initiated by the symposium at upcoming meetings of the European Society of International Law in Heidelberg (2008) and Florence (2009).

Most importantly, however, the Law School's relations with law schools in France has produced remarkable benefits for students from both countries. Besides opening minds, awakening interests, and broadening perspectives, the program has led directly to several high-level academic publications by student participants. The program has also greatly enhanced the academic and employment opportunities for French participants (thanks to their familiarity with American law and their command of legal English) and has led directly to French-related career opportunities for several American participants. - Martin Rogoff, Director





Gilles Cottereau. Professor of International Law, former Dean of the Faculté de Droit et des Sciences Économiques, and former President of the Université du Maine; co-founder of exchange relationship with the University of Maine School of Law; Franco-American Legal Seminar, many times.

To participate in the exchanges between our two law schools, which I call Maine/Maine exchanges, is to share a moment in common to better understand each other. It is also a chance to learn about institutions which play an important role in our two democracies and to compare our systems of law. It is a time of friendship between American and French participants and an opportunity to explore our two countries—lobster parties, the Maine coast, cherry blossoms in Washington, D.C. Our two law schools have had extremely close relations for many years, thanks to the efforts of Martin Rogoff, of successive deans and faculty members at both schools who have supported the program, and of French and American student participants, many of whom have formed lasting friendships. Maybe the success of the program is because our two law schools are so complementary: the law school building in Portland is round and the law school buildings in Le Mans are square.

“To participate in the exchange between our two law schools, which I call Maine/Maine exchanges, is to share a moment in common to better understand each other.”

I have only the fondest memories of my visits to Portland, of friendly encounters like the seminar sessions and visits to local institutions. I recall especially sitting in on law school classes, taught by the Socratic method, which is so little used in France; a program organized by Maine lawyers at the Law School, involving a simulated trial where members of the bar and judges played their roles with the greatest seriousness before an audience of students; and the description of a judge before a trial explaining what our group was about to see and hear, which was extremely valuable considering the differences in trial procedure in our two countries. And I also have the fondest memories of Washington, D.C. and of the great federal institutions there, like the Supreme Court, the Department of Justice, and the Congress, that we visited.



David Corbé-Chalon. Doctoral student in international law, Université du Maine, Le Mans; exchange student from Université du Maine, 2000-2001; Franco-American Legal Seminar, 2000.

Following my participation in the 2000 Franco-American Legal Seminar, I spent a year as an exchange student at the University of Maine School of Law. The reasons I wanted to spend the year at Maine Law were to become fluent in English and to study American, international, and comparative law in a foreign environment, since I envisaged an academic career in international law. A strong element in the fulfillment of these objectives was the size of the Law School, which makes the integration of foreign students into its community very easy and facilitates legal study and research. I also took advantage of the many activities and conferences organized by the Faculty, student associations, and the International Relations Office at the University of Southern Maine.

“The year I spent at Maine Law remains truly one of the most enriching I have spent so far...”

Since the Law School is the only one in Maine, contacts with the legal community and with visiting national and international personalities are more easily established there than in larger places. The city of Portland is also a very nice mid-size city, offering many cultural, social, outdoors, and sports activities and events, which make the study-abroad program even more attractive. The year I spent at Maine Law remains truly one of the most enriching I have spent so far, for the personal and professional contacts which I have maintained since then, for the incomparable experience abroad acquired, and for the different opportunities it has brought to me. The continuing relationship I have with the Law School has developed in me a strong interest in fostering transatlantic cooperation, especially through university partnerships, for a better mutual understanding and collaboration beyond our differences.



Jay Theise (right front) and group at Hôtel de Ville, Paris

Jay Theise. Maine Law '70; lawyer, Jay F. Theise & Associates, Boston, MA; Franco-American Legal Seminar, 1997.

As I write this, I am looking at my Barreau du Mans, *Carte d'Identité Professionnelle* of the Ordre des Avocats au Barreau du Mans, with my name handwritten on it awarding me "*honorifique*" membership as bestowed upon me on March 15, 1997, in Le Mans, France, at a spectacular dinner party given in a special private home which also held the law offices of one of the most prominent members of the Bar of the district, a building known as a *hôtel particulier*, an historic building. The occasion was part of the experience of being the alumni representative of the Law School accompanying a delegation of our very best students who were participating in the Law School's Franco-American Legal Seminar with the Faculté de Droit of the Université du Maine, under the direction of Professor Martin Rogoff, and including Professor Tom Ward and then Dean of the Law School Donald Zillman.

Our student delegation, with their French law student counterparts, presented and debated in French, in a masterful display of intellectual and cultural understanding of the similar yet different effects and implications of the seemingly same body of law in each country. What made it so exciting is that our two nations both share the same announced bedrock principals, the Rights of Man, which spring from violent revolutions, but which have a vastly different meaning in each nation. The presentations and interpretations were fascinating and brilliant.

Some of our students spoke strong French, but others had to commit not only to study the law and prepare their presentations, but also to learn a sufficient amount of French to make their presentation. I cannot remember a prouder event watching these brilliant young students present with the clarity and confidence that reflected so well on them and their achievements, and on the growth and development of our Law School, and its stature as an important institution for the attraction of interesting and interested students of the highest caliber, while providing those students with a first-class legal education and opportunity to see the world and be recognized for their achievements.

On a personal note, for many of the students it was their first trip abroad. I remember my first trip abroad like it was yesterday. The personal pleasure of witnessing the awakening to this experience of those first-time travelers was incalculably thrilling. I speak French and know Paris quite well, where our group spent some time. It was my great pleasure to lead the group to wonderful places in the city, and host them at events that some of them whom I still see from time to time are kind enough to tell me are as vivid in their memories today as they were in March of 1997 when they were happening.

P.S. How I got my Honorary Le Mans Bar Membership. During the trip, I was invited to a luncheon meeting of the Le Mans Bar Association. I was introduced and asked to talk about the Law School, and my own practice, which by then had taken me frequently to France and other European capitals. When I concluded, there was a general question and answer period. The hot topic of the day was the international debate over the emerging science and possibilities of cloning. I was asked in French if United States lawyers had a uniform position concerning cloning, and I responded, "Yes, the American Bar Association fully supports a law mandating the cloning of clients!" Another asked me what I thought of the French judicial system. I asked him: "Before or after Robespierre?" Evidently they liked both answers, because not only did they respond with the laughter that I hoped they would, but later, on the morning of our departure, the President of the Bar presented me my Bar card and a French lawyer's robes, complete with *pitosh*, the long stocking cap. I tried it on immediately. Where was Daumier when I needed him?

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“I value the contact I had with... French law teachers and administrators ...”

John Bean. Maine Law '03; career law clerk, United States Court of Federal Claims; exchange student at Université de Cergy-Pontoise, Fall 2002; Franco-American Legal Seminar, 2002 and 2003.

I have a ready stock of light-hearted responses to the question “Why did you go to law school so late in life?”, such as “It was within walking distance of my house.” or “It beat working.” These answers have more than a little truth in them, as does the answer, “It gave me another chance to live and study in France.” I was a French literature major in college, and had similar motivations back then. I was very happy to choose some courses from the French menu at Maine Law. I became friends with the French students who came to Portland to spend a semester or two: David, Laure, Rebecca, and Agathe. I value the contact I had with the French law teachers and administrators who helped make the Franco-American Legal Seminars and my exchange semester at Cergy-Pontoise such positive and remarkable experiences. These programs provide an unequalled opportunity.

Here are two memories. (1) In Laval, the American Seminar students took questions from a rather full amphitheater of law students. Polite, general questions dominated, until the subject of the continued existence of the death penalty in a civilized country arose. A debate ensued, primarily between one American student who was for the death penalty, and an increasingly energized crowd of French students who were passionately against the death penalty. I was playing the role of translator at this point, trying not to yield to the temptation of softening the words that were hurled back and forth. (2) At Cergy-Pontoise, I had to give an oral presentation on a question of European Union law. Several students had gone before me during the semester, and almost all had been scolded both for their lack of finesse in interpreting the topics they had been given, and for exceeding the time permitted for the presentations. I was a little nervous, and had repeatedly trimmed my notes, almost to the point of incoherence. My presentation was rushed, and I stumbled over my French. The teacher graciously admitted that I had covered a lot of ground in a short period of time: “Malgré les barrages que vous posent la langue française, vous avez au moins fait un bon effort à faire le tour de votre sujet dans le temps exigé.”

My sincere thanks to all those responsible for these programs for many happy memories.



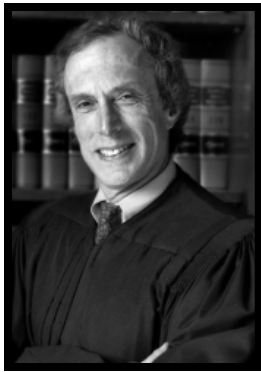
“I lived an American dream during my time in the United States, thanks to the people I met there (professors, students, friends from the dorm)...”

Nathalie Fourgeaud Legal advisor specializing in labor law, Ritz Hotel, Paris; exchange student from Université de Cergy-Pontoise, 2004-2005; Franco-American Legal Seminar, 2005.

When I left Paris on August 19, 2004, I didn't yet know that I was headed for the best experience of my life. I was on my way to Portland, Maine, to spend a year at the University of Maine School of Law. I arrived on a Thursday, and four days later I was in a small lecture hall attending a Constitutional Law class. I found myself very lost for several reasons: I didn't speak English very well, the way American students learn law is very different from the French way, and judicial opinions are drafted very differently, too (in French cases, there are no dissents). But day after day, it became easier for me to understand the class discussion, and I made friends who helped me a lot by giving me their notes.

I also had to adapt to a new life style: different food (even if sometimes, I cooked French food!), different customs (such as Thanksgiving), and different sports events. (I was lucky because in 2004 the Boston Red Sox won the World Series and several months later the New England Patriots won the Super Bowl!). During my time in America, I also traveled a lot. I went to Boston, New York, Chicago, and Orlando. I also went to Washington D.C. for the Franco-American Legal Seminar, with a group of American students from the Law School and a group of French law students from Le Mans. There, I had the chance to visit the Congress and also the Supreme Court (where I saw seven of the nine justices!).

When I came back from America, I went to the University of Montpellier to specialize in labor law. Then I worked as a legal advisor for Air France for several months. Since June 2007, I have been working for the Human Resources Department of the Ritz Hotel. To conclude, I want to say that I lived an American dream during my time in the United States, thanks to the people I met there (professors, students, friends from the dorm) who were all very nice to me. Thanks again a wonderful year!



Photograph ©
Jack Montgomery 2003

Kermit V. Lipez. Judge, United States Court of Appeals for the First Circuit; Franco-American Legal Seminar, 2005.

We were a witness to history during our trip to Paris. Shortly after our arrival, as some of us walked from our hotel to the Brasserie Balzar for lunch, we passed the Sorbonne where we were scheduled for a visit the next day. That visit never happened because, as we discovered from the large police presence, the Sorbonne was occupied by students who were protesting a law just adopted by the French National Assembly and Senate that allowed employers to dismiss people under age 26 without cause during a lengthened probationary period. In a familiar Paris scene, students had taken to the streets to register their protest.

This controversy became a focal point of our visit. The next day, a vice president of the Senate explained to us that France's rigid labor laws were an impediment to employment and economic growth. He strongly defended the government's initiative, which had not yet taken effect because opponents in the National Assembly and the Senate had requested the Constitutional Council to provide an advisory opinion on the constitutionality of the legislation. As it happened, we were visiting the Constitutional Council the next day.

Sure enough, the Council member who greeted us said that we had arrived at a dramatic moment. The Council was about to receive a request from the National Assembly asking for an opinion on the constitutionality of the controversial reform legislation. We subsequently learned after our return to Maine that the Council had upheld the constitutionality of the law. However, to diffuse the crisis in the streets, the government then withdrew the law.

There were two features of this controversy that were striking. First, in most employment settings in the United States, employment at will is the norm. I was surprised that most young workers in France had employment security from the time they took their first job. It was also difficult to reconcile the passion in the streets with the underlying issue—job security. Secondly, in our constitutional system, advisory opinions are proscribed. Yet in France the primary responsibility of the Council is the issuance of such advisory opinions.

These differences were an important reminder of the danger of legal parochialism. Different histories had produced different laws and systems, none of which were inevitable. As I reflected on the wisdom of our own choices, I appreciated the crash course on comparative law provided by our sojourn in Paris. Still, I regretted missing the Sorbonne. Maybe next time.

Kathryn F. King. U.S. history and law studies teacher, Hampden Academy, Hampden, ME; special student, University of Maine School of Law, 2001-2002; Franco-American Legal Seminar, 2002.

In 2001 I took a sabbatical leave from teaching high school in order to study at the University of Maine School of Law for a year as a special student. I went, not to begin a new career, but to pursue an understanding of legal ideas that I believed would make me a better social studies teacher. My memories of that year are bookended by an achingly beautiful, crystal blue September 11th morning and (if I don't count final exams) the Franco-American Legal Seminar. No single experience has more profoundly affected my thinking and teaching than the window on French culture and law afforded me by those ten days in Le Mans and Paris in March, 2002.

Because I presented at the Seminar a paper on impeachment I can incorporate into my teaching the French audience's opinions about the impeachment of former President Clinton; and because I heard a French student speak on his country's perception of lobbying as a form of political corruption I can give my own students different perspectives on the influence of lobbyists on the making of public policy. My teaching of trial process is the richer for my exposure to a criminal trial in France and a subsequent explanation by a French judge of the procedures I had observed. Conversation during dinner with members of the Le Mans Bar Association left me meditating ruefully on the inadequacy of my French vocabulary, but also prepared me to discuss with my classes French views on a number of social issues; and a visit to a French Constitutional Law class led to my publishing a paper on the influence of European opinion on the use of capital punishment in the United States.

Age took on a new dimension when I touched a wall built during Roman times and saw a 16th-century stained glass window in a Le Mans church. History that had existed for me only in photographs or in my imagination came alive in my early morning runs down the Avenue des Champs-Élysées to the Arc de Triomphe, in my visit to the Louvre to see the Mona Lisa and Hammurabi's Stone, and in my first sight of the flying buttresses and gargoyles of Notre Dame. I tasted my first pate and *tarte tatin*, drank my first French coffee, marveled at the narrowness of French streets. And during a ride on the TGV through the French countryside I listened for the first time to a survivor of World War II describe life under German occupation.

On September 11th, long before I knew that I would travel to France, my Civil Procedure teacher, Professor Zarr, told my fellow law students and me that international understanding and cooperation had taken on a new significance. The University of Maine School of Law and the Franco-American Legal Seminar have made it possible for me to contribute in at least a small way to that understanding through my teaching.



Gilbert Guillaume. Judge (1987-2005) and President (2000-2003), International Court of Justice.



Preface: French and American Perspectives on International Law and International Institutions,
58 Maine Law Review 281 (2006).

On September 11, 2001, the Twin Towers of the World Trade Center in New York were ripped open by two commercial airliners that had been hijacked by suicide commandos. The towers collapsed before the eyes of television audiences around the world that witnessed the live broadcast of the death of several thousand men and women. This terrorist attack reoriented American foreign policy toward a war on terrorism and “rogue states.” With this aim in mind, the Bush administration set forth in September of 2002 the new national security strategy of the United States and proclaimed at that moment its right to use military force in a preventive manner against any terrorist group or any country capable of threatening American interests. The majority of the member countries of the United Nations rejected the Bush doctrine as incompatible with the rule according to which a nation can only use armed force upon the decision or with the authorization of the Security Council, or pursuant to its natural right of self-defense.

The latter was the basis for the American engagement in Afghanistan in October 2001. This intervention was criticized by some legal scholars, but it received the consent and the support of Washington’s allies, including France. However, no such general accord or support was granted to the American military intervention in Iraq in 2003.

The divergent views that became apparent at that time between the United States and France did not concern the desired objective, namely to oblige Iraq to destroy the weapons of mass destruction that Baghdad supposedly possessed. They concerned instead the means to be used to achieve this goal. France wanted to give the United Nations inspectors and those of the International Atomic Energy Agency time to pursue their investigations into the existence of such weapons before any decision of the Security Council authorizing the use of armed force. The Bush administration claimed that the Iraqi regime was continuing to develop nuclear arms and biological weapons of mass destruction, that the Security Council had “not lived up to its responsibilities,” and that therefore the United States had the right to act unilaterally against Iraq without any Security Council decision.

These opposed views are the focus of three detailed studies in the present volume. In the first of these, Stephanie Bellier in her study of self-defense recalls the traditional distinction between, on the one hand, anticipatory self-defense, also known as “preemptive” self-defense, which seeks to respond to an imminent threat of aggression, and, on the other hand, “preventive” self-defense, which intervenes in reaction to a potential threat. The author notes that the Security Council and the International Court of Justice have both repeatedly condemned preventive self-defense. She underlines that the Security Council can intervene not only in cases of armed aggression, but also as soon as there appears a threat to peace. She then presents the positions taken on this matter by the United States and France with no dissimulation of the ambiguities and weaknesses of those positions, which also come up for scrutiny in the study of Ana Peyro Llopis.

In her study of preventive strikes, Sophie Clavier concludes that the unilateral action of the United States in Iraq not only was pursued without explicit authorization from the Security Council, but also violated provisions of the U.N. Charter. She sees this action as setting a dangerous precedent in fact, but adds that, given the objections encountered by the American military intervention, this precedent has no legal impact and has not modified applicable law.

The crisis of Franco-American relations during the Iraq war of 2003 has spurred more thorough reflection about the different perspectives of these two countries that revealed themselves at that moment regarding the use of force, and more generally about the role of international organizations and of international law in the world today.

On the first point, the detailed study of Ambassador Lewin and that of Abdelkhaleq Berramdane are in agreement. It appears to them that, given its superpower status, the United States privileges unilateral action and bilateral relations. For the Americans, multilateral diplomacy is of only marginal significance. France, on the other hand, a second-order power, sees the European Union and the United Nations as preferred forums for action.

But beyond these observations, the studies brought together in this special issue raise a question of prime importance, namely the attitude that each country brings toward international law, whether it be on questions of doctrine, the reactions of judges, or the action of leaders.

Profoundly divergent views must first be laid out between the French doctrine and the American doctrine. In her essay, Alix Toubanc carries out a systematic review of some of the major French treatises in the area of international public law. She demonstrates the diversity of approaches, but nevertheless comes to the conclusion that the French school of international law is unanimous about the application of a positivist method. French authors focus on describing the applicable law and carefully distinguish it from political decisions or moral and/or religious options. The rule of law is presented as self-contained and legal reasoning is primarily deductive. For some Americans today, this vision is considered as rigid, unrealistic, and reductionist.

Until the Second World War, American legal scholars also considered international law as a set of rules that the United States was obliged to respect. However, the philosophy of law in the United States has changed considerably over the past sixty years, and these changes have included an altered view of international law. Under the influence of the school of legal realism, especially at Harvard, American doctrine has taken an interest in the process of the creation of law, “the international legal process”; and scholars at Yale have constructed a theory of law in relation with political action, “policy oriented jurisprudence.” Interdisciplinary approaches developed, and schools of thought multiplied, from neoliberal theories to “critical legal studies.” American legal thinking has increasingly taken into consideration values that positive law has the moral obligation to respect. Emmanuelle Jouannet shows in her excellent study, this vision is often perceived in France as “ideological, moralizing, or simply confused, for it mixes together political, economic, and social considerations that are considered foreign to law and that render deci-

sion-making uncertain.”

The enriching analyses of the American doctrine do indeed present a risk, namely that of weakening the obligatory character of norms in international law. In his recent Lauterpacht lectures at Cambridge, Jean-Pierre Cot wondered who might profit from such changes. He observed that in domestic law they would probably be beneficial to the judge, but that in an international society composed of sovereign states this critique of the law would above all benefit the States, which could be tempted to turn it into an instrument to advance their interests.

This conjecture receives some confirmation when one examines the positions of American and French judges faced with international law. Martin A. Rogoff does just that in a very rich study of the application of treaties and the decisions of international tribunals in the two countries. He observes, first of all, that France is bound by a number of obligations in this area due notably to the development of EU law and the jurisprudence of the courts of Luxembourg and Strasbourg while this is not the case with the United States.

He also notes that American courts, influenced by legal doctrine, have given to the American Constitution a dualist interpretation that was not required, while French courts have adopted a monist perspective even though the Constitution of 1958 is less clear in this regard than the one of 1946. As a consequence, French judges have frequently found themselves applying treaties and decisions of international jurisdictions whereas the question has rarely come up for American judges. According to the author, French courts, despite certain hesitations, have taken up this challenge in good faith with the aim that their country respect its international obligations and to this end have entered into a constructive dialogue with the courts of Luxembourg and Strasbourg. American judges, on the other hand, have not developed a coherent jurisprudence in this area and their recent decisions have tended to reflect their preoccupation with “safeguarding the sovereignty of the United States at the expense of international obligations. The decision to respect these obligations is thus left up to the administration or to Congress.”

These differences in approach of legal doctrine and that of judges have had definite consequences when it comes to French and American diplomacy's views of international law. In this regard, it is a commonplace observation to recall that the foreign policy of a country is a function of its interests and its capacity for action. The United States and France are both proof of that. Law, however, does not have the same significance for the strong and the weak. This has often been underlined in domestic law, for example in the area of labor law in the nineteenth century, but it is also true in international law. Thus, the United States can be tempted to see in this law, relativized by doctrine and ignored by American judges, a regrettable limitation on its freedom of action and one that it naturally seeks to overcome. Inversely, French diplomacy can judge it worthwhile to submit to it as part of the free exercise of state sovereignty so as to make of it a rampart against arbitrariness and an instrument of influence. It is encouraged in this direction by university teaching that puts the accent on respect for international norms and by a jurisprudence which, in spite of certain difficulties, when all is said and done, shows itself to be concerned with assuring its application.

It is advisable, however, to go beyond these observations and ask, as Dana Zartner Falstrom has done, about the influence that national legal traditions may have had on these different perceptions of international law. In this regard, one can never repeat too often that generally speaking, the law is not perceived in the two countries as having the same function and is not elaborated according to the same methods, even if it sometimes ends up with analogous solutions, as is shown in the remarkable study by Kevin M. Clermont and John R. B. Palmer on exorbitant jurisdiction.

The legal tradition of the United States originated in English Common Law. It subsequently developed according to principles that inspired the American Revolution, and in keeping with the circumstances that saw the country's expansion in the nineteenth century within a federal framework, which led to the progressive conquest of the continent. In the United States the first object of the law is to protect individual interests. It must evolve so as to adapt spontaneously to the new demands of the moment. It does so through the actions of courts, and Oliver Wendell Holmes went as far as to say that “[t]he prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by law.” Since then, the natural reaction of Americans is first to act and then to seek the recognition of the legality of their action by the judge. Accepting the rule of *stare decisis* while pleading the existence of new facts is, it would seem, one of the favorite pastimes of American jurists.

The French legal tradition is entirely different. Born from Roman law and Canon law, French law is conceived first and foremost as reflecting the general interest of the community. It is not just a written law but a codified law that courts apply in each particular case without any power to create law themselves. Memory of the Parliaments of the Old Regime excludes the existence of any true judicial power. Since then, the natural reaction of the French is first to ask before acting about the conformity of the action being contemplated with the law.

These different conceptions of law and justice have been transposed to the international arena as recent events demonstrate. For the United States, the development of terrorism and the risk of the spread of weapons of mass destruction constituted fundamental changes that entailed a modification of the conditions whereby States can have recourse to self-defense. Earlier law did not apply to these new situations. For France, it is necessary to face these threats within the framework of existing law and, if necessary, modify the law through agreement between states—but action could not precede the change in the law.

More generally, the fundamental values of French society and American society affect each country's vision of international law. For the United States these include economic rationality, the search for effectiveness, and the importance of morality, religion, and judicial justice. For France these include the very conception of law, the dissociation of morality from law, the importance of formalism, and the distant relationship between law and economic considerations.

One of the essential virtues of the present volume of the *Maine Law Review* is its exposure of the different visions that scholars, judges, politicians, and finally citizens in both countries have about international law.

This exercise in consciousness-raising can only be beneficial and the editors of the *Review* deserve our sincerest gratitude. After all, the United States and France are two countries of democracy and of law united by a long alliance. Knowing each other better means understanding each other better and accepting better these differences. But it also means a willingness to modify one's own point of view in light of the thoughts and experience of others. As for me, the latter has been achieved while reading this rich collection, and I can only wish the same good fortune to all those who become acquainted with these studies.





Alicia Curtis. Maine Law, '06; lawyer, Lambert Coffin, Portland, ME; Maine Law Review, Articles Editor, Franco-American symposium issue; Franco-American Legal Seminar, 2004.

When I started law school, the inquisitorial power of the judge in the French legal system was an interesting tidbit of information about French culture, akin to trite cocktail party observations about the French tendency to take five week vacations, or to go *en grève* at the slightest insult. During the trip to France in March 2004, we had the opportunity to sit in on a criminal trial. I watched the judge lean over and question at length a young man shifting from foot to foot in front of the high bench, answering her questions about a missing bag in a rapid, defensive tone. The prosecutor sat high up and off to the right, her face in regal profile in the afternoon light, her eyes closing and head tipping forward as she stole catnaps during the questioning. She stood up at the end and delivered her recommendation for a sentence. At that moment, watching the judge act as both police and judiciary while the prosecutor remained disengaged from the trial, I understood how a constitution is not just the basis for interesting exam questions. In that room, law was not a lawyer-driven process and our U.S. boundary between the law's enforcement and its adjudication was blurred. I understood that a different legal system amounted to more than different cultural *mores* or habits; it was a different relationship between the individual and the state.

After that experience my interest was piqued when Professor Rogoff approached me, as the rising Articles Editor for the Maine Law Review, with an idea for a symposium issue on the difference between French and American perspectives on international law and institutions. Again, what seemed at first to be an intellectual exercise in comparing and contrasting legal theories and systems took on a more human level of meaning. We planned to include articles on topics as diverse as economic regulation or the effect of environmental treaties. Numerous French authors, however, focused in some fashion on the war in Iraq, which became a prism through which to view the two countries' differences. Many of us on the law review were proud to facilitate a dialogue between these learned authors on topics we had been crudely debating with friends and family and perhaps yelling at television news commentators about: the unilateral use of force in response to terror and the role of the United Nations in maintaining peace and security. More importantly, we came to hope that the symposium issue would bring to the U.S. a greater understanding of the legal theories on relationships between states that shaped the French position on the war in Iraq, just as I had come to understand that different legal structures shaped the judge's relationship to the criminal defendant in court that afternoon in March 2004.



Cab Howard. Professor of Law, University of Maine School of Law; Franco-American Legal Seminar, many times.

In the Fall of 1985, when I was working at the state's Attorney General's office, the then Dean of the Law School called me and asked if I would like to revive the school's course on the Canadian constitution. After protesting that I knew nothing about Canada, I agreed. Thus began a now twenty year involvement with comparative constitutional law, a subject that has since become a staple in the curriculum of American law schools. The pedagogical objective of the subject is to make the students less ethnocentric, to make them aware that in many important respects, both in the organization of governmental institutions and in the protection of individual people from the government, other perfectly civilized countries behave differently from ours. But to fully understand how these other systems operate, it is not enough simply to read about them; one must experience them. I learned this a couple of years after my Canadian course was first offered when, in anticipation of teaching a new course in French and German constitutional law, I made it a point, while on a musical tour of Germany, to visit two of its high courts, in order to get a better sense of how what I had been reading played out in practice.

Some years later, after I had joined the faculty of the school on a more permanent basis, I was delighted to discover that an institutional relationship existed between it and its namesake, the Université du Maine in Le Mans, featuring an annual exchange between the two schools. Since I was able to manage a conversation in French, I was immediately invited to participate in one of the biennial trips to France. I have since done so twice more. In the course of these excursions, I have visited all three of the high French courts: the Constitutional Council, the Council of State, and the Court of Cassation, as well as attending proceedings in various trial courts. I have had the opportunity to converse with numerous judges and other officials of these courts, so as to better understand how they actually operate. I am not, I confess, unqualifiedly in awe of what I found; in some ways, I think the United States does things better than France, in some ways not. But the point is that experience challenges the sometimes unarticulated assumptions one holds about one's own legal system, and makes one realize that what one may take for granted does not have to be that way at all.

I still teach my Canadian course at the school, as well as, from time to time, the school's two required courses on the American constitution. The value of the experiences I have had in France has been that they have deepened my understanding of these North American systems, and provided me with a perspective which I try to impart to the students. As Paul Freund once wrote: "[A] glimpse into the households of our neighbors serves better to illuminate our own, as when by pressing hard against the pane we see not only the objects on the other side but our own features reflected in the glass."



Gabriel Weiss. Maine Law, '06; Université de Paris I, '07 (LL.M. in French and EU law); Associate, Debevoise & Plimpton, Paris, France; Franco-American Legal Seminar, 2004.

I participated in the Franco-American Legal Seminar during my 1L year. It took place over spring break; a van to Logan airport left the law school after our last Friday afternoon classes had ended. By evening we were settled on an Air France flight—Professor Rogoff had reserved a group of seats together for all of the teachers and students. In retrospect I think I took this charmed Friday for granted, sitting with a handful of my classmates and four Maine Law professors (Rogoff, Cluchey, Howard, and Maine) with a 10-day European tour ahead of us. And looking back on it I am extremely thankful to have been a participant because, I am certain, such intimate extra-curricular activities are rare in many American law schools.

The trip itself brought us to some of the most important judicial and political institutions in Europe, not just to visit and say we'd been there but to complete a theme of study about the newly proposed European Constitution (for which Professors Rogoff and Howard had prepared us with weekly classes in the months leading up to our departure). We met the Le Mans students and faculty in Paris shortly after our arrival and the trip was thus enriched from the start. By the time we arrived at their law school we had not only seen a case argued before the European Court of Justice in Luxembourg but had also made friends with a group of French counterparts who shared our interest in comparative legal study. To this day I remain in contact with a few of the Le Mans students.

Because my childhood was heavily influenced by and periodically located in France, I entered Maine Law with the goal of focusing on international law. The curriculum largely accommodated this pursuit; Professor Rogoff's seminar and various contacts were also particularly helpful. Following his advice and with the help of then General Counsel, now Deputy United States Trade Representative John Veroneau (a Maine Law alum), I spent my first-year summer interning in the U.S. Trade Representative's office in Washington. During my second summer I was an intern in the New York office of a French law firm. Following graduation from Maine Law, I was accepted to the Université de Paris I (Sorbonne-Panthéon) LL.M. program, and this fall will begin work in the Mergers & Acquisitions department of a U.S. firm's Paris office. While such work does not involve the socio-political discussions in which we engaged during the seminar, it nonetheless incorporates important legal considerations and questions anchored in fundamental rights as well as an understanding of legal and business culture differences, in particular the direct opposition between corporate restructuring and workers' rights in Europe. I can trace the progression in my studies and career back to my first year at Maine Law and the Franco-American Legal Seminar, without which I might never have plunged so wholeheartedly into international law. I think it is important for prospective and current students to know that the school provides a wonderful environment and support system for people wishing to pursue serious international legal studies.

Theodore Joyce, Esq., Visiting student at Maine Law, 1999; Adjunct-Professor, ESC Rouen, Rouen, France; Franco-American Legal Seminar, 1999, 2002, 2003.

Participation in the Franco-American Legal Seminar in 1999 has been one of my most fulfilling accomplishments. And not just for the accomplishments that were achieved during my week visit to France in 1999, but for all the personal and professional accomplishments that would stem from that fortuitous visit. Participating in the Séminaire Juridique led to my meeting my good friend, and fellow tax geek, Ludovic Ayrault, whom I met during that first visit in 1999 and whom I have seen during many subsequent seminars and visits to France. The Séminaire Juridique also set the ground work for my teaching in Europe, as well as symposiums in Tunisia, Cyprus, Turkey, and Spain. As an adjunct professor at law schools and business schools in France, I constantly think back fondly to my experience as a student participating in the Séminaire Juridique and constantly push my students to reach out for similar opportunities that will give them global exposure that is so vital in today's borderless legal, business, and social world. My sincerest gratitude to Professor Rogoff and the University of Maine (in the US and France) for this life changing experience.



Ted Joyce with Kathryn King

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2006 Franco-American Legal Seminar: Report from the Director



Director with bust of Montesquieu
in Constitutional Council

Of the 12 Franco-American Legal Seminars that we have had with our sister law school in Le Mans since 1994 (six in France and six in the U.S.), the 2006 Seminar was the most memorable. We were geographically and jurisprudentially at the center of events of the utmost importance for French society and the French legal system. Also, some of us had the extraordinary good luck to meet with Robert Badinter, without a doubt the most important and highly-regarded legal figure in France during the past generation.

Our delegation was composed of several students, Professors Zarr, Howard, Ward, and Rogoff, Judge Kermit Lipez of the U.S. Court of Appeals for the First Circuit, and Nancy Ziegler, Judge Lipez's wife and a 1980 graduate of the Law School. The theme of this year's Seminar was a comparison of the drafting and ratification of the United States Constitution of 1787, the French Constitutions of 1946 and 1958, and the Constitution of the European Union (whose ratification had been rejected by French voters in a recent national referendum). French and American students prepared papers on aspects of the theme and presented their papers to the group. Our group also visited French legal and political institutions, where we were received by judges and political figures.

Our first visit was to the Court of Cassation, where we met with Judge Dominique Hascher. Judge Hascher described the structure and work of the Court, which is France's highest court for criminal and civil matters. He then took us on an extensive tour of the Court's beautiful premises. Following our visit to the Court of Cassation, we had lunch at Le Procope restaurant. Le Procope, founded in 1686, is the oldest restaurant in Paris. It is notable for having served as a meeting place for leaders of the French Revolution (Danton, Marat, and Robespierre), for leading philosophers of the Enlightenment (Voltaire, Rousseau, and Diderot), and for Americans living in Paris during the 1780s, most notably Benjamin Franklin and Thomas Jefferson. In fact, our group had lunch in the Benjamin Franklin Room, a room dominated by a large bust of Franklin. That afternoon, we visited the Palais du Luxembourg, the home of the French Senate. We were received there by Roland du Luart, a Vice President of the Senate. M. du Luart was a most gracious host, explaining the organization and work of the Senate, leading us on an extensive tour of the Palais du Luxembourg (one of the most beautiful public buildings in France), and hosting a champagne reception for us in his magnificent office.

The next day we were supposed to visit the Sorbonne for a guided tour, but because of events unfolding at the Sorbonne at that time, our tour had to be canceled. French students, protesting the enactment of a law concerning contracts of employment for young employees (*le contrat premier embauche* or *CPE*), had seized possession of parts the Sorbonne and were occupying the premises. The Sorbonne was surrounded by riot police (the dreaded *CRS*) in full riot gear, and the situation was extremely tense. The hotels where our group was staying were quite close to the Sorbonne, so we were witnesses to the events unfolding there throughout the four days we spent in Paris. (Similar confrontations were taking place in French cities and universities throughout the country.) That afternoon we visited the Constitutional Council, where we were received by Olivier Dutheillet de Lamothe, a member of the Council. The Constitutional Council is France's constitutional court. M. Dutheillet de Lamothe spoke with us about the jurisdiction and role of the Council, after which we had a guided tour of the premises. While we were meeting with M. Dutheillet de Lamothe, the formal instrument challenging the constitutionality of the *CPE* arrived at the Council. The tension and excitement were palpable, as the Council was being asked to play a central role in the historical events that were then taking place in France. Our group was at the legal epicenter of the battle over the *CPE*.

The same day that we visited the Constitutional Council, Judge Lipez, Professor Howard, and I had lunch with Robert Badinter at the Palais du Luxembourg. M. Badinter is presently a member of the French Senate. Before that, however, he was a practicing lawyer and leading advocate for the abolition of the death penalty in France, Minister of Justice during the presidency of François Mitterrand, and for nine years President of the Constitutional Council. During lunch, discussion ranged over a wide variety of subjects – American politics, the war in Iraq, the lifetime appointment of federal judges, and M. Badinter's great affection for the United States (where he had studied in the years immediately following the Second World War).

Following our visits in Paris, our group traveled to Le Mans for two days of seminar sessions with French students and faculty on our chosen subject (the Constitution). The presentations were well done and discussion was lively. On Friday evening the group was the guest of the Le Mans Bar Association for dinner at its *Maison de l'Avocat*. Since the inception of our exchange relationship with the Law Faculty in Le Mans, we have also enjoyed close relations with the Le Mans Bar Association. This year we were warmly received by the President of the Le Mans Bar, Madame la Bâtonnière Mireille Hay. The next day, the day before our return to the United States, we visited the Loire Valley for a day of tourist activities. We had a guided tour of the Château d'Amboise (where Leonardo da Vinci spent the last years of his life and where he is buried) and we visited a vineyard in Vouvray for wine tasting.



Franco-American Legal Seminar Topics

1994 Judicial Protection of Individual Rights	2001 No seminar
1995 Organization of Court Systems	2002 Combating Political Corruption
1996 Comparative Products Liability Law	2003 The Presidency in the U.S. and France
1997 Historic Preservation and Property Rights	2004 Federalism in U.S and European Union
1998 Regulation of International Trade	2005 National Security and Civil Liberties
1999 Criminal Responsibility of Elected Officials	2006 Comparison of Constitutions: U.S. & France
2000 Regulation of Capital and Labor Markets	2007 No Seminar
2008 Assimilation of Immigrants and Refugees	

PUBLICATIONS RELATED TO MAINE LAW'S FRANCO-AMERICAN PROGRAMS

Julien Cantegreil, *Legal Formalism Meets Policy-Oriented Jurisprudence: A More European Approach to Frame the War on Terror*, 60 *Maine Law Review* (forthcoming).

David Corbé-Chalon & Martin A. Rogoff, *Tort Reform à la Française: Jurisprudential and Policy Perspectives on Tort Reform in France*, 13 *Columbia Journal of European Law* 231 (2007).

John Duff, *The United States and the Law of the Sea Convention: Sliding Back from Accession and Ratification*, 24 *Annuaire de Droit Maritime et Océanique* 239 (2006).

Kathryn F. King, *The Death Penalty, Extradition, and the War Against Terrorism: U.S. Responses to European Opinion About Capital Punishment*, 9 *Buffalo Human Rights Law Review* 161 (2003).

Emmanuelle Jouanet, *French and American Perspectives on International Law: Legal Cultures and International Law*, 58 *Maine Law Review* 291 (2006).

Hélène Lefebvre, *Fifteen Years of Particularly Sensitive Seas Areas (PSSAs): A Concept in Development*, 13 *Ocean and Coastal Law Journal* (forthcoming).

Pierre-Henri Prélôt & Martin A. Rogoff, *La Cour Suprême des États-Unis et l'affaire des réfugiés haïtiens*, 1994 *Revue du Droit Public* 1529.

Pierre-Henri Prélôt & Martin A. Rogoff, *Le fédéralisme devant la Cour suprême des États-Unis*, 1996 *Revue du Droit Public* 759.

Gwenaële Proutière-Maulion, *From Resource Conservation to Sustainability: An Assessment of Two Decades of the European Union's Common Fisheries Policy*, 11 *Ocean and Coastal Law Journal* 37 (2005-2006).

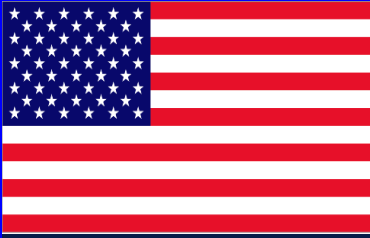
Martin A. Rogoff, *A Comparison of Constitutionalism in France and the United States*, 49 *Maine Law Review* 21 (1997).

Martin A. Rogoff, *Application of Treaties and the Decisions of International Tribunals in the United States and France*, 58 *Maine Law Review* 405 (2006).

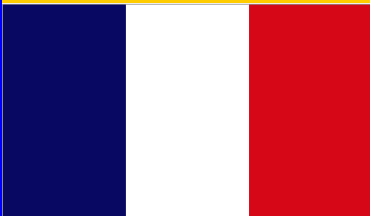
Martin A. Rogoff, *For the Abolition of the Death Penalty in America: The Advocacy of Robert Badinter*, 30 *Human Rights Quarterly* (forthcoming).

Andrew R. Sarapas, *Les droits des personnes handicapées dans le domaine des transports européens*, *Revue du Marché Commun et de l'Union Européenne* 395 (June 2000).





French Law Program



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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). We are also interested what you think about this Newsletter and any ideas you might have for future issues.

Special thanks. Thanks to Jenni Hebert of the University of Maine School of Law for designing and producing this Newsletter.