

## From the Editors

In this issue, we are proud to present a symposium collection of articles and essays about the legal academy's responsibility to address the individual and systemic injustices now connoted by the name Ferguson. The organization of this collection is described below. An introduction to the symposium by our guest editors follows.

In our regular feature *At the Lectern*, readers will find David Noll's pithy introduction to premodern civil procedure and its terminology. We think law teachers and students alike will find this piece helpful.

This issue also includes three insightful reviews of important, recent books on natural law, comparative law and government, and statutory interpretation. Stuart Banner reviews R.H. Helmholz's *Natural Law in Court: A History of Legal Theory in Practice*; Ronald Rotunda reviews F.H. Buckley's *The Once and Future King: The Rise of Crown Government in America*; and Peter Strauss reviews Robert Katzmann's *Judging Statutes*.

### **Ferguson and Its Impact on Legal Education Symposium**

We have arranged the articles and essays in three groups in order to highlight some of the intersections we see among the pieces and to aid readers interested in a particular theme. The groupings are not scientific; other groupings could be imagined; there are many intersections among all the pieces.

Two themes emerge from these very diverse pieces. First, a legal education should provide students with socio-economic, political, and historical context for the application of legal doctrine, especially the context of oppressed and disadvantaged communities. Second, although it's neither common nor easy to provide this context within the traditional law school curriculum, law faculties must do so.

The first group contains two articles that focus in large part on how doctrinal courses could be improved and used more deliberately to analyze in detail specific contemporary law enforcement events—like the killing of Michael Brown and the subsequent grand jury proceedings—and to contextualize those events with accurate legal history. Christopher Green explores, among many other points, the many doctrinal courses that would be implicated if law teachers were to examine the police conduct, the municipal courts, the grand jury proceedings, and the Department of Justice report on Ferguson. These courses include constitutional law, administrative law, evidence, property, torts, and contracts, in addition to criminal law and procedure. Not only would faculty members improve individual courses by presenting more contextual information, but collaborating faculty members could also build upon that contextual information to help students grasp the relevance of

multiple courses to particular events and issues to an extent that students might not otherwise perceive. For her part, Martha McCluskey's work analyzes the Supreme Court's jurisprudence on the Fourteenth and Fifteenth Amendments during the Jim Crow period. Through a close analysis of several cases that are rarely taught, McCluskey shows how the Court enabled and promoted lawless violence against African Americans and defeated their efforts to organize politically by cynically deferring to states' rights even though the states were too weak to control vigilantes. She argues that this analysis is hidden from law students' view in many constitutional law courses by case selections that depict the Court as a basically progressive agent, including on racial issues.

The second group contains essays in which the authors address the pressing question of what and how to teach law students, especially when events in the real world—such as the killing of Michael Brown—focus public attention on the legal system's role in mitigating or enabling injustice. Susan Bandes, Jeannine Bell, Chad Flanders, and Howard McDougall all reflect upon these issues and their responsibilities as teachers in courses they teach. The authors describe their strategies for providing students with information, including data and analyses from other disciplines, multiple perspectives, and opportunities to engage with and discuss hard issues. The strategies range from a new, unique mini-course to adaptations within doctrinal classes to deep engagement with community members in the context of a clinic.

In the final group of essays, and a lecture, the authors tackle large issues about racism and systemic injustices in ways that pose a challenge to the traditional law school curriculum and mission. Amna Akbar, Scott Cummings, Charles Lawrence, and Gary Peller all speak to what they believe law teachers should teach and model through professional service and scholarship, especially with respect to social movements that are not, or are not entirely, dependent on litigation or legislation. These deeply personal pieces are politically passionate calls for major reform.

This collection addresses tragic events and conditions. Nevertheless, we have found the pieces inspiring because they have the potential to invigorate teaching and scholarship and to generate new curricular ideas through the authors' explicit commitments to empowering those who have little or no voice in our society and legal system. In this era of anxiety about law school finances and ranking, student debt, and the legal job market, this collection is a breath of fresh air, reminding us of the important work law faculties, students, and graduates still have to do.

In closing, we are very grateful to all of the authors for contributing their wisdom, experience, and advocacy to this issue. They had a very short time to compose, and they have been gracious about our editorial deadlines.

One editorial note: We have honored the symposium authors' preferences regarding capitalization of Black/black and White/white when used to denote persons. Thus, attentive readers may notice inconsistencies across the articles. The editors viewed these choices as part of the authors' message and believed

that an insistence on editorial consistency would be misplaced in an issue of this nature.

Kellye Testy

Kate O'Neill

Thomas D. Cobb



### **Ferguson and Its Impact on Legal Education Symposium: An Introduction**

The 2014 shooting and death of Michael Brown in Ferguson, Missouri, and the outpouring of street protests it unleashed, along with the government's immediate and longer-term reactions to all that, are pieces of a larger constellation of events that has gripped the nation ever since. Paul Butler's observation, quoted by Susan Bandes in these pages,<sup>1</sup> reminds us that who is shocked by what happened to Michael Brown and what happened in Ferguson as a result may partly be a function of one's own experiences of race-based violence, including its complex—if sometimes simple and brutal—imbrication with the powers of the State. This long, long after the U.S. Supreme Court and courts across the nation officially declared race discrimination under law impermissible in our constitutional system.

After Ferguson, some of us supposed that because the law was so prominently involved in it in different ways, Ferguson might have distinctive meaning for those of us inside the legal academy who prepare students to engage, manage, and govern the very legal systems Ferguson implicates. The suspicion was that Ferguson was resonating in the lives, the thinking, the teaching, and the writing that law professors were doing. But how? Was Ferguson revitalizing questions about what it means to be a professor of law inside a legal system that is continuous with multiple forms of inequality and injustice, including—prominently—injustice operating on the basis of race? What was teaching law in the aftermath of Ferguson like? Was it shaking, or more, shattering, anyone's faith in the rule of law itself? If it was, could that faith be recovered, and on what terms, and was that even the point? Was teaching doctrine across the curriculum—and were the professors teaching it—remaining unchanged? What new light was Ferguson shedding on Duncan Kennedy's old saw that legal education is training for hierarchy? How was what we do inside the legal academy being understood in relation to what happened to Michael Brown and others, whose deaths have been noticed and recognized on a national stage in ways that others before them had not been?

1. Susan A. Bandes, *Moral Shock and Legal Education*, 65 J. LEG. ED. 298, 299 n.5 (quoting Damien Cave & Rochelle Oliver, *The Footage That is Putting Race and Policing into Sharp Relief*, NY TIMES, (July 30, 2015, updated Aug. 20, 2015, <http://www.nytimes.com/interactive/2015/07/30/us/policevideos-race.html> (quoting Paul D. Butler) ("A lot of white people are truly shocked by what these videos depict; I know very few African-Americans who are surprised.")).

To figure out how law professors were processing and reacting to Ferguson, and to gain a more direct understanding of Ferguson's effects on ways of being and doing inside the legal academy, the Editorial Board and the editors of *The Journal of Legal Education* decided to ask. What follows in these pages is an initial set of answers that the *Journal* received, most solicited, a few submitted. While the contributions collected in this volume issue from a variety of perspectives, they all beat with a deep sense of tragedy about Ferguson, as well as a sense of urgency about the need for new ways of thinking about and teaching law—in our scholarship, in our classrooms, and in our lives, as citizens—that is not business as usual. Though reference is made in different contributions to concrete responses in action—from conversation, to protest, to law reform, to other forms of institutional and civic engagement—the essays emerge from and contribute to the creation of a space for an important kind of reflection. In this space, we hope, it may be possible to consider both what Ferguson has meant for those outside the legal academy directly caught up in it, and what it means in the minds and hearts of colleagues inside and across the legal academy. Through their example, they ask us to consider for ourselves what Ferguson means to us, knowing we are not alone if convinced that, as an event, Ferguson reflects deep, longstanding, and ongoing injustices that somehow must be stopped.

A colloquium like this is always a collective effort, and many thanks are due to those without whom it would not have happened. Thanks, therefore, to the Editorial Board and the editors of the *Journal of Legal Education* who approved the idea, to Robin West, Chairperson of the Editorial Board, who, as a guest editor, orchestrated the effort, and to Kate O'Neill and Thomas D. Cobb, who, as co-editors, advised and engaged with the authors to bring their works to print. Primary thanks, of course, must go to the contributors to the volume, for sharing their reactions and for their role in helping to shape the ongoing conversation about what Ferguson does and should mean for legal education.

Marc Spindelman, Guest Editor



### **Guest Editors for “Ferguson and Its Impact on Legal Education”**

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