

FOREWORD

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This issue of the *Duke Journal of Comparative & International Law* is the first non-symposium issue and marks a shift in the format of the *Journal*. In an effort to provide readers with a better representation of the rich and varied subject matter of comparative and international law, the *Journal* will accept and review unsolicited submissions from authors around the world. When appropriate, the *Journal* will continue to focus on specific topics in comparative and international law through targeted symposium issues. In addition, those issues will now be interspersed with general issues that will better represent the tremendously diverse topics that comparative and international law encompasses. As the first non-symposium issue, the current issue reflects that diversity by providing perspectives from around the world on a variety of topics of tremendous global significance.

The first article, “Current Trends in Corporate Governance: Going from London to Milan via Toronto,” is by Professor Brian R. Cheffins of Cambridge University. Professor Cheffins is one of the world’s leading authorities in the field of comparative corporate governance and the first fellow of the Duke Global Capital Markets Center. In his article, Professor Cheffins compares and evaluates several different models of corporate governance. He examines the impact of a movement toward a worldwide capital market on the corporate governance structures in individual countries, including the United Kingdom, Italy, and Canada. Professor Cheffins recognizes that local norms may be changed in an attempt to make domestic capital markets more accommodating to the global trend of international finance. In this context, he endorses the recent reforms in the British system, including control over abuses by boards of directors. Professor Cheffins acknowledges that, while the U.K. reforms have some appeal, countries with different systems of ownership and control may well need to look elsewhere to determine

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the norms that may need adjusting. Regardless of the source, Professor Cheffins concludes, corporate governance should not be studied in the isolation of a single country.

In “Is the United States Obligated to Drive on the Right? A Multidisciplinary Inquiry Into the Normative Authority of Contemporary International Law Using the Arm’s Length Standard as a Case Study,” Professor Brian D. Lepard of the University of Nebraska College of Law explores normative authority in international law by considering the justification for states to recognize the authority of international law and to comply with international legal norms. Using the arm’s length standard of income allocation as an example, Professor Lepard employs a multidisciplinary analysis to the issue of authority. He explores what it means to speak of the “authority” of a norm and what various theories say about which reasons should justify the acceptance of a norm. In so doing, Professor Lepard outlines a normative theory of authoritative international norms. In light of this theory, Professor Lepard concludes that the arm’s length standard should be regarded as having authority. While U.S. treaties do not require absolute adherence to the standard, and the norm is not yet binding under customary international law, current U.S. tax treaties legally obligate Congress to give great deference to the standard and to attempt, in good faith, to make the arm’s length standard work. Because the standard has international persuasive authority in a normative sense, its authority should be binding. In addition to its application to the arm’s length standard, the normative analysis that Professor Lepard proposes can be extended and applied to other areas of international law where the nature of authority is elusive.

Salil K. Mehra, an associate at Wachtell Lipton Rosen & Katz, follows with an engaging article entitled “Extraterritorial Antitrust Enforcement and the Myth of International Consensus.” Mr. Mehra argues in favor of extraterritorial application of U.S. antitrust laws. He believes that comity analysis is appropriate only if international regulatory aims are consistent. The Boeing/Douglas dispute between the United States and the European Union demonstrates that international regulatory aims, in fact, are not consistent. Thus, Mr. Mehra concludes, U.S. antitrust laws should apply.

Ioannis A. Tassopoulos, a lecturer at the University of Athens, received both LL.M and S.J.D. degrees from Duke. Mr. Tassopoulos’ article, “New Trends in Greek Contemporary Constitutional Theory: A Comment on the Interplay between Reason and Will,” examines

the evolution of modern Greek constitutional history since the country's independence from the Ottoman Empire. He traces recent developments in Greek contemporary constitutional theory. At the center of his analysis is the interplay between reason and will as elements of the law. The prevailing paradigm in Greek constitutional theory developed during unstable political and social circumstances in postwar Greece and emphasized popular sovereignty as the bedrock of both reason and will. Since 1975, the fundamentals of democratic constitutional theory have been well established in Greece. Recently, the most important issues have concerned parliament's role in resolving constitutional disputes for which no judicial review is provided, and the legitimacy of judicial review. Some legal scholars emphasize the priority of reason over will for the justification of constitutional decision-making; while others take the position that, after all, "auctoritas non veritas facit legem." Mr. Tassopoulos argues convincingly that Greek contemporary constitutional theory must tackle the problem of objectivity in constitutional interpretation.

Following Mr. Tassopoulos' article, George C. Christie, James B. Duke Professor of Law at Duke, comments on the article and notes the comparisons that can be made between Greece and the United States. Professor Christie reminds us that, since it is only recently that Greece has at last become a democratic republic with stable institutions, meaningful comparisons between Greek and American constitutional practice can be made. However, any such comparisons must still be made in the light of Greece's very different history and must still consider certain structural reasons why the inquiry into the interplay between reason and will takes on added importance in the Greek context.

The issue concludes with a note written by Christine E. Mercier, a J.D. candidate at Duke University. Ms. Mercier considers the consequences that the European Union conversion to the euro will have on the U.S. tax system. Because many U.S. corporate taxpayers have multinational operations in Europe, the conversion affects a significant number of American taxpayers. Ms. Mercier describes the process of European monetary integration, summarizes the U.S. tax issues presented by the conversion, analyzes regulations issued by the U.S. Treasury in anticipation of the euro, and considers additional tax dilemmas the regulations do not address. The note brings to light how, in an increasingly global economy, changes in one part of the world can significantly affect an unrelated national system.

This diverse group of articles marks a change for the *Duke Journal of Comparative & International Law*. With the ever-increasing challenges and developments in the field of international law, it becomes increasingly important to expand consideration of as many issues as possible. To further this goal, the *Journal* invites submissions for future issues on topics in comparative and international law from its readership and the profession.