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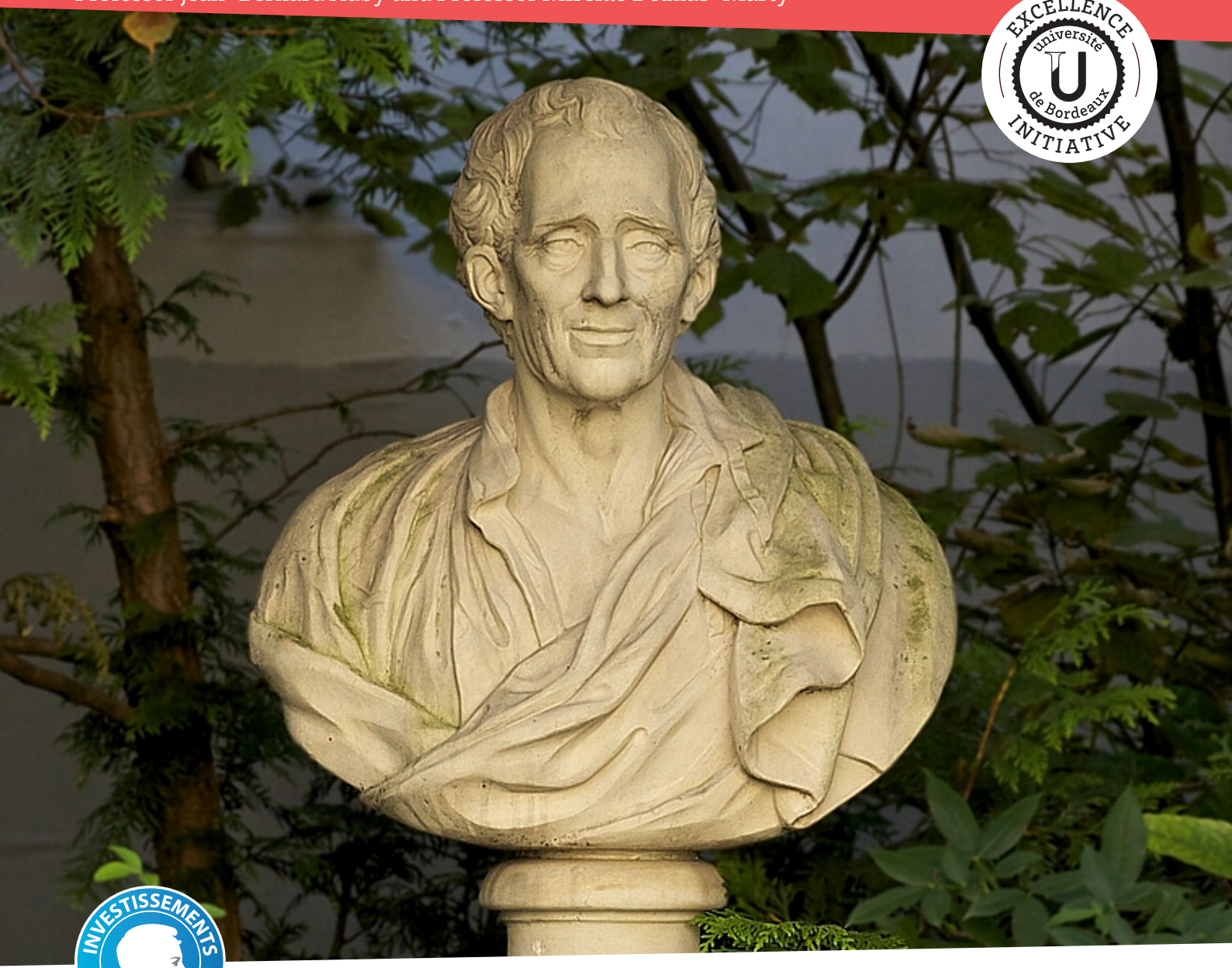
Editorial

Professor Jean-Bernard Auby and Professor Mireille Delmas-Marty



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As a lawyer and political scientist, Montesquieu famously admired and praised British institutions: he thought that they were based upon an admirable system of separation and balance of powers.

It is then only natural that a periodical based at the University of Bordeaux, aiming to communicate with the English-speaking world and prepared to uphold the fundamental values of democracy and the rule of law, would use the name of the Baron de la Brède et de Montesquieu, who was and remains one of the most remarkable figures in Bordeaux's history.

Now, what is the purpose of this "Montesquieu Law Review", of which you are discovering the first issue? The answer is quite simple: it is to give English-speaking lawyers curious to be regularly informed about the main events occurring in French Law – whether in written law, case law or doctrine – direct access, in the language of Shakespeare.

The promoters of this review, most of them involved in comparative work, are conscious that while French law continues to attract the attention of some international audience because of its specific past and current features, the number of foreign lawyers who are able to work in the language of Molière is in steady decline. This, they believe, has to be taken into consideration in legal literature by spreading information about major developments in French law, on the internet and in English.

Of course, among the scientific benefits they expect from the enterprise, there is not only the creation of flows of information from French legal sources to English-speaking readers, but also an encouragement to intellectual dialogue between the French legal tradition – which is part of the continental one, but possesses its own peculiarities – and other, more or less different, legal traditions.

Most contemporary lawyers and analysts of legal globalization are driven to observe a lot of amazing convergences caused by various harmonization phenomena, ranging from formal international legislation or jurisprudence to a more inconspicuous cross-fertilization or spillover effects. These convergences certainly have their limits, and national legal idiosyncrasies still have a strong say, but they are an important characteristic of this period, and a fundamental contextual change for all comparative work.

Moreover, what the observation of legal globalization shows is that the differences between the common law world and the civil law one are not, or perhaps are no longer, this enormous gap that they were traditionally supposed to be.

In fact, some forerunners have already, some time ago, discerned that legal distances created by the Channel then by the Atlantic Ocean had, to some extent, been exaggerated. Let us just quote here F.H. Lawson, who wrote in "A Common Lawyer looks at the Civil Law" (1953): "The more one studies French law, the more ones realizes that in many ways it resembles the Common Law".

All lawyers belonging to democratic systems, whether they come from the Anglo-Saxon tradition or from the continental one, share at least some basic values in the core of which one finds the separation of powers and the rule of law, of which Montesquieu was one of the main advocates in history.

It is in the chapter of *The Spirit of Laws* dedicated to the British Constitution that he wrote: "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty if the judiciary power be not separated from the legislative and the executive. Were it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression".

Here are some of the principles on which our readers will certainly converge. Let us be clear: we do not mean to say that the review will intend to concentrate on constitutional issues: on the contrary, it will try and inform in all sectors of French law. But these fundamental principles are certainly their cup of tea, be they public lawyers or private lawyers.

To all of them, present and future, we bid a warm welcome. To those who will join us now, we add our wishes for a happy 2015.