

A Letter From The Editors

DePaul Journal for Social Justice Editorial Board
DePaul University College of Law

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A Letter *From* The Editors

By The 2016-17 Journal for Social Justice Editorial Board

Dear Loyal Readers,

The DePaul Journal for Social Justice's Editorial Board is comprised of five third-year law students. While each member of the Board is committed to advancing social justice causes in unison through our work on the journal, in our personal and professional lives, we often go about these pursuits in our own ways. However, the 2016 election and the resulting political climate has brought us together in ways that we could have not expected.

The Board recognizes that the Trump era is going to be a time characterized by unprecedented uncertainty for folks who have felt the burden of inequality since the founding of our great nation. The spirit of hope and change regarding social justice ushered in by former President Obama and an eager Congress has quickly faded, leaving many wondering just what life will be like if you look a little different, love a little different, or are without the other privileges traditionally held by many Americans.

This unfortunate outlook motivated the Board to speak out on some of the issues we foresee will become front-and-center in the coming years. This Spring, we held two events, both of which we felt addressed urgent issues. The first was a phone-bank event named "Call Your Legislators Day," where we gave students a space to voice their opposition over some of the new administration's policies directly to their elected representatives. For the second event, called "Progressive Lawyering in the Age of Trump," we hosted a panel of progressive lawyers and social justice advocates; that panel shared their concerns with the current state of affairs, and provided some recommendations for action that can be taken by law students and lawyers alike.

In the words below, some members of the Editorial Board will give their perspective on some of these issues. While admittedly young and without much legal experience, we humbly submit that your Editorial Board's perspectives should not be overlooked. We come from diverse backgrounds, have experience in different areas of the law, and as young Americans, we are all very much in touch with the pulse of civil society. We hope to provide some encouragement for current and future law students, and for lawyers who are already in the trenches fighting for those who often do not have the means to do so on their own. We hope you find our words useful, and we hope you stay as committed as we are to the fight for social justice.

A Lawyers' Role in Resisting the Trump Administration's Dehumanization of Immigrants

Never forget that immigration is about people. It seems silly to say it, since immigration, "the action of coming to live permanently in a foreign country"¹ is an action done by people. But the act of migration, and immigration law as a result, focuses on people; where they come from, where they go, why they move, who they are trying to be reunited with. Perhaps it is because

¹ OXFORD ENGLISH DICTIONARY (2d. ed. 1989), available at <https://www.oxforddictionaries.com/oed>.

immigration law is so nuanced and technical that it makes it easy to forget that at the end of the day immigration law means constantly working with, talking to, and thinking about human beings with their own unique lives and set of circumstances. For those law students interested in becoming immigration lawyers, we must never forget that.

While immigration has always been a hotly contested issue, this past year it became glaringly obvious that there are people within our country and the current administration that have forgotten that immigrants are individual human beings. Immigrants are not one massive wave, bringing in problems, drugs, and crimes to the United States, and they are not all rapists.² Immigrants include Deferred Action for Childhood Arrivals (DACA) recipients, children who entered the U.S. before they were 16, who are currently enrolled in or have graduated from school, or have been discharged from the Armed Forces, and have lived in the U.S. since 2007 and were present in 2012.³ Immigrants include couples who entered the United States on tourist visas valid for several months and then stayed after their visas expired. Immigrants include refugees and asylum-seekers who have escaped atrocities in their home countries, who have traversed oceans by hiding as stowaways, or countries by foot and train, in order to knock at the United States' door. Immigrants also include children that were unwittingly brought to the U.S. by their parents, as well as adults who came through their own volition. Immigrants are the success stories whom we see profiled in magazine articles as doctors, lawyers, CEOs, and entrepreneurs. Immigrants are those people that live quietly under the radar, working at schools, warehouses, stores, and restaurants. Immigrants are even people that have committed crimes, those that live in poverty, and those with unglamorous lives ridden with hardship.

Like U.S.-born or naturalized citizens, immigrants are multi-faceted individuals with complicated lives. United States citizens commit crimes and transgressions that land them in prison, but never are they exiled or banished. Our prison system is already the exile our criminals are condemned to. But immigrants are doubly punished, incarcerated by the U.S. penal system and then torn away from the home they have chosen to live in and forced to return to a country they either barely know or one they left after making a difficult decision many of us will never have to face.

On the campaign trail, presidential nominee Trump chose to characterize immigrants as a roving band of criminals, lusty for blood, seeking to hurt and crush everyone in their wake. As President, Mr. Trump has continued to prey on the hysteria surrounding the immigrants that do commit crimes.⁴ His January Executive Order calls for the creation of the Office for Victims of Crimes Committed by Removable Aliens, further singling out immigrants as the worst of the

² Katie Reilly, *Here Are All the Times Donald Trump Insulted Mexico*, TIME (Aug. 31, 2016), <http://time.com/4473972/donald-trump-mexico-meeting-insult/> (On June 16, 2015, presidential candidate Donald Trump stated, “[W]hen Mexico send its people, they’re not sending their best [...] They’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people”).

³ *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Dec. 22, 2016), <https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca#guidelines>.

⁴ See *supra* note 2; see also *Donald Trump uses San Francisco killing to slam illegal immigration*, THE SEATTLE TIMES (Jul 3, 2014, 9:48 PM) <http://www.seattletimes.com/nation-world/donald-trump-uses-san-francisco-killing-to-slam-illegal-immigration/>.

worst when it comes to criminal offenders.⁵ His efforts to stigmatize immigrants are wasteful and unnecessary, as there are national and state crime victim's compensation services readily available. Even the Trump nominated Attorney General Jeff Sessions has contributed to the false attribution of crime with immigrants. In his recent remarks, Attorney General Sessions warned again "criminal aliens and the coyotes and the document-forgers [seeking] to overthrow our system of lawful immigration" and "criminal organizations that turn cities and suburbs into warzones, that rape and will innocent citizens and who profit by smuggling poison and other human beings across our borders."⁶

The words of the President and the Attorney General seek to inflame the nativist attitudes that have permeated our country since its inception but have now reached a modern and coded iteration. Their words create a public image of immigrants as the "other" and a highly dangerous and violent "other" at that. Instead of grasping that immigrants are not a single colossus but rather a multitude of individuals, and that individuals, U.S. citizens and immigrants alike, choose to commit crimes and violate the laws of this country, the President and his cabinet have instead reduced 4.4 million immigrants to the acts of a few.⁷

This Journal encourages students to think beyond the incendiary comments thrown around at this moment in time and to consider the individuality of all immigrants. As lawyers we may sometimes think in the abstract and think of the ways in which we can synthesize laws, rules, cases, and facts. But for those students that hope to become immigration attorneys, social justice advocates, and decent human beings, this Journal urges you to think of immigrants in the individual and not the aggregate.

When a potential client approaches an immigration attorney and asks "how can I become a lawful permanent resident?" "how can I bring my daughter to the United States?" or "how can I continue to study and work in this country?" any good attorney will tell the client that it is hard to come up with a clear answer until the attorney interviews the client and gathers all the necessary facts. A person's immigration journey varies greatly depending on where they were born, how they entered, when they entered, and countless other questions. To think that a person is reduced to a single event is to be a subpar lawyer.

However, we are more than just lawyers; we are citizens of this world. As social justice advocates we are called to help those most deserving, those pushed to the margins of society, and to advocate for them as fiercely as possible. It is impossible to do this if we think of immigrants as the President and his administration wish us to view them, as criminals, as evil incarnate. There may be cases where the immigrants we are called to represent have indeed broken laws and committed reprehensible crimes. But we have a criminal system in place which calls for due process. It is up to us to provide zealous representation, and it is up to us to be compassionate and thoughtful, and to think of immigrants as individuals, as mothers, children, fathers, students,

⁵ Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 30, 2017).

⁶ *Attorney General Jeff Sessions Delivers Remarks Announcing the Department of Justice's Renewed Commitment to Criminal Immigration Enforcement*, U.S. DEPARTMENT OF JUSTICE (Apr. 11, 2017), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-announcing-department-justice-s-renewed>.

⁷ Steven A. Camarota, *Immigrants in the United States, 2016*, CENTER FOR IMMIGRANT STUDIES (Oct. 2016), <http://cis.org/Immigrants-in-the-United-States>.

and workers, who for some reason decided to give up their home and make their way to a foreign country. It is up to us to make sure that their sacrifice was not in vain, and to ensure that they receive representation from attorneys who see them as the individuals they are and treat them with the dignity and respect every human deserves.

How Law Students Can Defend “So-Called” Judges & The Rule of Law

On June 2, 2016, the American people bore witness to one of the most unprecedented and unfortunate attacks on the federal judiciary seen in modern American political history. On that day, Donald Trump, then the presumptive GOP candidate for President, attacked the Honorable Judge Gonzalo P. Curiel, explicitly stating in an interview with CNN’s Jake Tapper that Judge Curiel should be removed from presiding over the infamous Trump University case. Mr. Trump’s reasoning: because Judge Curiel is Mexican, and very proud of his heritage. On that basis, *and that basis alone*, Trump concluded—without evidence—that Judge Curiel would carry a bias against Mr. Trump regarding the TU case, so much as to create an “absolute conflict” for Judge Curiel.⁸ In other words, Trump believed his hardline stance on immigration from Mexico would bias Judge Curiel against him. Quite the assumption to make, to say the least.

Fast forward to early February 2017. Donald Trump is now President of the United States, and has recently rolled out his highly controversial—and arguably unconstitutional—first executive order which temporarily barred citizens and refugees of 7 majority Muslim nations from entering the United States. Unsurprisingly, lawsuits were filed in opposition to Trump’s executive order. One of those lawsuits was assigned to the Honorable Judge James L. Robart, a federal District Court Judge for the Western District of Washington. After Judge Robart granted a Temporary Restraining Order (“TRO”) immediately halting Trump’s travel ban,⁹ Trump took to his favorite outlet—Twitter—and bashed Judge Robart. One of Trump’s tweets read as follows, “[t]he opinion of this so-called judge, which essentially takes law-enforcement away from our country, is ridiculous and will be overturned!”

Unfortunately for Trump, Judge Robart’s order was affirmed by the Ninth Circuit Court of Appeals on February 9, 2017, and Trump’s order was dead in the water.¹⁰ More unfortunate, however, remains the fact that Trump’s attacks have done irreparable harm to our system of democracy by undermining public confidence in our judicial branch. While we cannot un-ring those bells, we can take steps to rebuke Trump if he launches more attacks on federal judges in the future.

Our democracy’s vitality stands on the separate but equal powers of our three major pillars of government: the executive, the legislative, and the judicial branches. Allowing the judicial branch to be undermined, weakened, and sawed-off by overzealous politicians such as Trump, may cause our cherished democracy to crumble. Democracy is fleeting; ask the millions of Americans who have served our country in the military thousands of miles from U.S. shores. To ensure that our beautiful, shining example of democracy retains its necessary character, we can

⁸ Brent Kendall, *Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict’*, WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>

⁹ *Washington v. Trump*, 2017 WL 462040 (W.D. Wash.)

¹⁰ *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017)

and *must* take steps to uphold the sterling reputation of the federal judiciary. As law students, lawyers, and citizens of this experiment in democracy and self-governance, it is our responsibility to keep the ship on course.

In the words that follow, we will encourage law students and other interested readers to take action in their personal and professional lives, action designed to ensure that our judicial branch retains its well-deserved reputation of excellence and ability to administer justice effectively. As current and future members of the legal profession, we have a great deal of experience with the federal judiciary, and a keen understanding of how that branch operates. We are in a position to intelligently comment on the judiciary, and to educate other folks with less knowledge on this integral branch of government.

Law students in particular are in an advantageous position to learn, firsthand, about the federal judiciary. As a result, law students can use their knowledge to establish a legitimate opinion as to this branch. Combine that legal knowledge with a young person's keen ability to comprehend the pulse of popular civil society, and you have yourself one hell of an advocate. Law students can use this knowledge to help their friends, families, and neighbors understand that our federal judges are some of the most honorable, intelligent, and dedicated public servants on the face of the earth. We do not simply honor the federal bench by virtue of their powerful positions; instead, we honor federal judges because of their exceeding levels of competence and diligence, and because these folks have dedicated their careers to upholding a fundamental premise upon which our democracy is based: the rule of law.

So, how can law students gain this knowledge, other than through reading opinions issued by these Judges? I would encourage law students to seek out an externship with a federal judge. The educational benefits you will inure from a federal judicial externship are plentiful, and cannot fully be explained here. Additionally, having such an externship will certainly not hurt your post-graduation job prospects and interviews either.

More importantly, though, a federal judicial externship will give you a behind-the-scenes view of a judge's chambers. And if you are lucky, you might get to know the judge a bit personally. Even if you aren't so lucky, you will get to see how a federal judge conducts her business. You will notice immediately how your judge is an intellectual powerhouse. You will notice how your judge is an expert in many areas of law, and if she has limited experience with a particular type of case, you will see how she dedicates a great deal of time to learn that area of law. You will notice how your judge interacts with the parties to her cases, treating *every* party with respect and impartiality, from the *pro se* prisoner in a habeas case to a wealthy corporation in a patent case. While your judge will treat the parties with dignity, she still be sure to hold them to the task – as judicial resources are limited and our judges' time is extremely valuable.¹¹

Most importantly, however, you will bear witness to how your judge holds an unbending desire to uphold the rule of law, even in the face of her political or philosophical views that may tempt

¹¹ The observations made here are those of one of your Editors. We recognize that not all judges are the same, and experiences may therefore vary. However, we are confident that after observing and interacting with several members of the federal bench as law students, we can say that overall, federal judges are genuinely dedicated public servants who deserve our respect.

her to rule otherwise. This dedication to the rule of law is what makes federal judges so special and so important. In times like today, where hyper-partisan politics threaten the interests of so many, judges whom strictly adhere to the rule of law are the gems of our democracy. Judges whom uphold the law and are not swayed by public opinion or thinly-veiled threats from the Executive branch are exactly the types of judges our democracy requires. The principle of judicial impartiality is fundamental and should be celebrated. In that sense, Judge Robart's decision, based on the facts, the law, and the arguments before him, was appropriate. Learning rule of law values directly from a federal judge and her law clerks will guide you in your career, and will promote your ability to help educate less knowledgeable individuals about the federal judiciary.

The rule of law, in its most basic sense, means—to this author at least—that no one is exempt from the law, even the King; as U.S. Supreme Court Justice Neil Gorsuch repeatedly stated during his confirmation hearings: no one is above the law, not even the President. You will learn from your judge that stretching the facts and applicable law to fit one's preferred outcome in a particular case is no kind of justice at all, and how this tempting practice must be avoided entirely. When one of your editors served as a federal judicial extern, that editor learned these principles, and intends to impart them upon that editor's future colleagues, family, friends, and other interested folks. We will stand by the federal judiciary and will be able to make forceful arguments in support of that cause. You can join us in this cause, and can strengthen the force of your own arguments by seeking out an externship with a federal judge.

Law students, please take this invaluable opportunity to learn—firsthand—from a federal judge just how integral impartial judges are to our system of government. Armed with this knowledge, you will be able to support our judicial branch in your studies, internships, and careers. Moreover, you will be able to dissent from a judge's decision, but in a way—unlike our President—that challenges the judge's reasoning, rather than by assaulting the judge's personal character and background. As the future of the legal profession, we have a unique opportunity to play an important role moving forward in how our judicial branch is viewed by the American public, as we will be the ones presenting important cases and controversies to the federal courts.

Law students, we have a duty to assist the broader public in understanding that our federal judiciary deserves its long-held sterling reputation. We should be champions for our ancestors who argued, fought, bled, and perished in the name of preserving American democracy – a system that depends ultimately on our adherence to the rule of law. We are now equipped to advocate for future generations of Americans by strengthening the legitimacy of our judicial branch, as our descendants deserve to share in our American blessings. Together, we can ensure that our judicial branch will continue to serve the American people with impartiality and efficacy, even in the face of truly unfortunate and irresponsible attacks on members of the federal bench.

America's Role in International Law in the Age of Trump

"From this moment on, it's going to be America first...we will make America great again."¹² As I heard these words from the newly sworn in 45th President of the United States, my heart and soul began to crumble, along with my hopes for the future. It wasn't that I did not want our country to succeed but I feared that what was to come would jeopardize our relationship with other countries. As a law student who is interested in international law, I felt as if this new administration was going to diminish the role we played in the international field. The new agenda would be America first and everyone else could fend for themselves. So, if this was the new approach, how would I, and others like myself, play a role in this new way of thinking? How would the shift of administrations affect our lives, but most importantly how would it affect our laws? Therefore, it is important to understand in what ways international law may change and how we can address these changes that are to come for at least the next four years.

There are many people out there that may not think international law to be of great importance. There may be other areas like criminal law, corporate law, health law, that professionals might think have a higher priority. But international law affects every area of laws in our country. It affects trade, immigration, business and just the way that we as a country behave towards other countries. For years, the United States has played a significant role in the creation of international legal structures, including treaties, regional agreements, and institutions, that have helped promote stability, prosperity, and the peaceful resolution of disputes within the international community. But this role might start becoming jeopardized with the sovereign way of mind of the new administration.

Two months into the new administration, there has already been an impact on international law and the international legal system.¹³ Some of President Trump's executive orders have had a bearing on immigration and human rights and they impose dramatic restrictions on asylum and other immigration protections in the United States.¹⁴ For example, the 1951 Refugee Convention compels governments to observe the principle of non-refoulement.¹⁵ It prohibits parties from expelling or returning refugees to territories where their lives or freedom would be at risk.¹⁶ The Border Enforcement Order violates this agreement by directing the Department of Homeland to expand "expedited removal" to the maximum extent possible.¹⁷ But this type of executive order was able to be stopped momentarily by attorneys who knew that international law matters, as well as federal judges who noted that this type of order would potentially be a breach of international obligations imposed onto the United States.

What other hits to international law can be expected from the new administration? International trade agreements and global trade systems are also at risk.¹⁸ Terminating agreements pertaining

¹² *Inaugural address: Trump's full speech*, CNN (2017), <http://www.cnn.com/2017/01/20/politics/trump-inaugural-address/>.

¹³ Charles Norchi, *Trump's Impact on International Law: A Great unravelling?*, GLOBAL GENEVA (2017), <http://www.global-geneva.com/trumps-impact-on-international-law-a-great-unravelling/>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

to international commerce and trade may have a tremendous impact to our nation's economy. If the United States were to detract itself from the global economy, other countries like China, would fill that gap.¹⁹ For example, if the United States were to withdraw itself from the World Trade Organization, this would affect the ability of American companies to access foreign markets.²⁰ It would also make American companies vulnerable to customs, duties, tariffs and regulatory barriers, and global trade and commerce would become much more unpredictable.²¹

Additionally, the Trump administration has made remarks that it will most likely attempt to undercut more ratified treaties which impose international legal obligations on the United States.²² Both domestic law and international law are not clear on how a country can withdraw itself from these legal obligations. If this were to be done, it would be a first, and other countries would want to follow similar behaviors, and the power of international law would be undermined.

This belief that international law is not important to the way this nation is ran boils down to three points. First is a historical image, essentially a founding myth, of America as untethered in its fate from the rest of the world.²³ Second is an implicit belief that America's security and economic interests, in the sea, or the environment, or armaments, can all be achieved largely through American actions alone rather than the sum of the actions of all of the world.²⁴ And third is the idea that the United States can protect its interest through its power alone, without the need to rely on international rules and international law.²⁵ These beliefs are just wrong. Historically, America's "prosperity and security depend on a body of international law developed over the course of centuries that help to govern international trade, intellectual property, global health, international financial flows, arms control, and nuclear nonproliferation, human rights, environmental protection, and other areas. Without international law, today's global economy could not function, nor could the world successfully fight newly emerging diseases, control cross-border criminal activities, or preserve the peace among the major powers."²⁶

This is where we come in. Students, attorneys, judges, politicians, and people who care about the consequences the world will have because of our actions as a nation. We need to care about the areas that are governed by treaties and other forms of international law. Without international treaties, agreements, and laws that address these issues, there would be no reliable way to promote the peaceful and beneficial behavior of all the countries in this world. It is important that we do not let our country go into a narcissistic direction. If America goes in this direction, not only will our national security be profoundly damaged, so will America's decline

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Jeffrey D Sachs, *The high costs of abandoning international law*, BOSTON GLOBE (2017), <https://www.bostonglobe.com/opinion/2017/03/05/the-high-costs-abandoning-international-law/OXGzXIJP3th3Fc9EGNsXTN/story.html>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

in global leadership be confirmed and accelerated.²⁷ International law exists to ensure a measure of predictability in an otherwise anarchical international system.²⁸

Will we know exactly what role we will play in international law these coming four years? No, but it is important to keep in mind and know what can happen. As a student going into the real world, I stand nervous on what is to come, but I am also hopeful that as a nation we will do what is right. Now more than ever, it is imperative that students like myself who are interested in social justice stick together to protect the rights of not only other individuals, but other countries as well. Only then will America be great again.

²⁷ *Id.*

²⁸ Norchi, *supra* note 12.