

IALS EDUCATIONAL PROGRAM

Effective Techniques for Teaching about Other Cultures and Legal Systems

Friday, May 30, 2008

Montreal, Canada

Aliza Organick, Associate Professor of Law

Washburn University School of Law

Topeka, Kansas

U.S.A

Abstract

The Internal Law of Indigenous Peoples as a Source of Study in Comparative Law

In an era when law schools in the United States are becoming increasingly aware of the importance of studying other legal systems and trying to gain a deeper understanding of how those legal systems function, it is once again ignoring the value of the internal law of the sovereign nations that exist within its borders as a source of comparative study. Of the over 250 tribal courts that currently exist in the U.S., all are different. Each Indigenous nation reflects not only its own history and culture, to one degree or another, but is also a reflection of its own experience in dealing with federal government. Because of this inextricable relationship between tribes and the federal government, there is a very deep and rich legal and cultural history that is being ignored in U.S. law schools.

Historically, law schools have diminished the important role that culture plays in our legal system and it has particularly marginalized federal Indian law and the internal law of tribes. For example, federal Indian law is generally taught as a seminar or perspective course at law schools, and is usually taken by students with an active interest in the subject matter. However, it is not a course that is required, nor is it a subject matter that is incorporated in any significant way into the standard law school curriculum. Even

more marginalized is the internal law of Indigenous nations. Diminishing the role that culture plays is not only a disservice to our students but also, and perhaps more importantly, the people they serve.

Increased globalization requires that we incorporate non-Western legal systems into our comparative legal systems courses. Traditionally, when we think of teaching comparative law, we look to legal systems outside of the U.S. and, even then, we look predominately at Western legal systems. Although there has certainly been increased movement to study and incorporate non-Western legal systems into our comparative law curriculum, it is a relatively recent phenomenon.

It is not enough to simply compare and contrast legal systems. Without the cultural context we cannot fully understand a people, much less their philosophy of governance. However, U.S. law schools continue to largely ignore the many tribal legal systems in the United States. American law schools adhere to the standard curriculum, which teaches a two-sovereign state, thereby ignoring the third, Indigenous sovereigns that exist throughout the United States. By asking students to recognize a three-sovereign legal system that includes Indigenous Nations, we are asking them to recognize that these third sovereigns exist. This challenges their traditional knowledge of the American legal system. However, when we ignore the legal systems of domestic tribal sovereigns the effect is to undermine their importance and ultimately to devalue tribal cultures. Therefore, not only is it important to teach about tribal legal systems, it is also critical to teach about the cultures that created those systems.

Over the last four years, I have been challenged to create and implement a tribal court clinic within an existing clinical program. I have had to do so in a law school

where there has been only a limited history of teaching federal Indian law and no history of teaching tribal law. Therefore curriculum design has been enormously challenging. In order to achieve a thoughtful curriculum design, it is necessary to provide students with a framework for federal Indian law and policy, including colonialism, as well as how each tribe has chosen to develop its internal law and tribal courts. Students must also understand the relationship between each tribe and the federal government. In order to teach students how to competently navigate any legal system, they must learn about the culture of that system. The same is true of tribal court practice.

In addition, meaningful curriculum design also necessarily requires that students understand how important it is to develop connections within each tribal community. This furthers their understanding of each tribe's unique cultural history and also teaches students to humanize their clients and increase cultural competency. Exploring another legal system forces students to evaluate the formal structures of their own legal system. It also forces them to understand that their cultural lens may not be sufficient and that in order to be a more effective advocates for their clients, they must leave the comfort zone of their own experiences and be open to another world view. For the most part, students are willing to do so; they just don't know how, and law schools don't do a good job of teaching them to be more culturally conversant. In the clinical setting, we strive to expose students to the importance of recognizing how and why cultural proficiency is so important to their representation of clients from the initial client interview, to client counseling, case development, and ultimately a positive resolution of their cases.

Teaching culture in the law school classroom is enormously challenging. Teaching culture to law students in a clinical setting poses additional challenges in that

we are not solely teaching the theoretical components of cultural competency, we are asking students to put them into practice. Law school provides no framework for students to do this. One way that law schools can introduce all law students to the cultural component of legal theory and practice is by teaching the three-sovereign system and by providing a cross-cultural practice opportunity such as practice in tribal communities.