

Effective Techniques for Teaching about Other Cultures and Legal Systems

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This is my first year teaching at an American law school, but I am by no means a newcomer. I have turned to full-time law teaching as the culmination of a long and deeply satisfying career in international intellectual property law, a career that included extensive periods of time living outside the United States. In fact, I have spent well more than half my working life “abroad,” mostly in Geneva, Switzerland, where I worked for the World Intellectual Property Organization (WIPO),¹ but also (in descending order of time spent) in Sri Lanka, the United Kingdom, Cyprus, India, Jordan, and China. As a result, other cultures and legal systems have been just as much my norm – perhaps even more so – than American culture and the U.S. legal system.

Although my experience is certainly not unique, it does make me relatively different from most U.S. law faculty. My international and cross-cultural expertise is my “value added,” and when I accepted a teaching position at the William Mitchell College of Law, it was with a great desire to incorporate that added value into my teaching. Almost two semesters later, my efforts at mastering effective techniques for teaching about other cultures and legal systems are still best described as works in progress, but to my relief, I have also had some success. Since I am privileged to have had a great deal of international and cross-cultural experience, I attempt to make as much use of it as I can in the classroom: in the themes I strive to develop, the questions I raise, the discussions I encourage, and the readings I assign. To the extent my techniques are effective, it is because they are based on the power of personal experience and the issues, stories, anecdotes, and observations that they permit me to weave into my teaching.

¹ The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations. It was established in 1967 with a mandate to develop a balanced and accessible international intellectual property system and to promote the protection of intellectual property throughout the world through cooperation among member states and with other international organizations. WIPO’s headquarters are in Geneva, Switzerland. The organization currently has 184 member countries.

In the fall semester, I taught (and will teach again next fall) Comparative and International Patent Law (CIPL). The course consists of two components: an exploration of the patent treaty system; and an analysis of the impact of that system on national law by comparing similarities and differences in the legislation, jurisprudence, and practices of various countries. There is no course that better parallels my professional career and which I am better suited to teach than CIPL. From the summer of 2002 until the summer of 2007, I was the director of the Office of the Patent Cooperation Treaty (PCT),² the principal registration treaty in the field of patents. Moreover, with experience spanning three decades as a WIPO official, a Fulbright professor, and a USAID and Asia Foundation consultant, I had many opportunities to work closely with developing countries on aspects of their intellectual property laws and policies. I was accordingly privileged to have been directly involved in, or to have had first-hand knowledge of, many of the recent developments in patent law that form the basis of CIPL.

In short, my experience permits me to introduce many personal stories into my teaching. I do not do so, however, just to be able to tell “war stories” or to add variety to the classroom. I believe an important role of international and comparative law is to enable students to comprehend the “other,” to be able not only to recognize that different countries may perceive the same issue in different ways, but also to understand why the perceptions differ and to accept that our own national perspective may make as little sense to a law- or policymaker in another country as that country’s policy may make to us.

In recent years, the policy positions the U.S. Government has adopted in international patent meetings have often differed significantly from the positions of other countries. In my capacity as PCT director and WIPO official, I was frequently involved in meetings marked by a disparity of viewpoints between the U.S. and developing countries as well as between the U.S. and the majority of the industrialized world. While such occasions were generally tense, unpleasant, and difficult from a policymaking perspective, they tend to provide excellent classroom fodder. By asking students to read U.S. statements or accounts of such meetings, and then describing my own perceptions, recounting some of the discussions that took place behind

² The Patent Cooperation Treaty (PCT) was concluded in 1970 and entered into force in 1978. It currently has 139 member countries. The treaty makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an “international” patent application. In 2007, nationals of member states filed almost 160,000 international applications.

the scenes, and exposing the students to accounts from other countries, most students quickly grasp that what the U.S. may perceive – and what they may simply have taken for granted – as a reasonable and logical policy position may not be a perspective shared worldwide. Indeed, what the U.S. may deem reasonable, students realize may even be seen as a threat elsewhere. From such a point in the discussion, it is a relatively simple jump to ask students to focus on why such differences exist, and to identify the sorts of factors that tend to inform the development of differing national perspectives. The final jump is ask students to reflect on whether, in the face of potentially conflicting national self-interest, they believe divergent policies and perspectives should be reconciled, and if so, how. It is interesting – and probably appropriate -- that students who strongly advocate a particular policy position rarely change their minds on the superiority of their point of view, but they seem to find it easier to envision complex solutions that take into consideration other viewpoints, and they tend, at least for the duration of the classroom discussion, to view the policy debate as less of an “us vs. them” conflict and more of one with the goal of achieving commonality of perspective.

In the area of comparative patent law, China and India are outstanding countries on which to focus classroom attention. This is so for at least two reasons: both countries are undergoing enormous change in their intellectual property cultures; and the perceptions many students have about the countries’ patent systems have not caught up with the current reality.

China and India are both in the throes of a significant patent shift. For a long time, neither country viewed patent protection as serving their national self-interest. Although India’s current patent system dates back to its days as a British colony, it was largely viewed with hostility as a matter of policy and ignored as a matter of law. China did not possess a patent law until the mid-1980s, and patents, which are essential instruments in individualistic, market-economy countries, seem out of place in Confucian, communal cultures. Much has changed, however. The creation of a thriving market, a vibrant industrial base, and a growing consumer class in both countries has made the establishment of a strong patent system an important byproduct of the countries’ growth and development. A culture of patent protection and enforcement is rapidly emerging, but few U.S. students are aware of it. Students still tend to view China and India as major patent infringers and most would see little interest in advising their future clients to seek patent protection in either country.

Exploring the changing patent system in China and India is important, therefore, not only because it provides an opportunity to correct student misperceptions, but also because it allows students to see how patent law and policy often reflect evolving national attitudes about self-interest. Patent law is especially suited to this type of analysis because attitudes toward patent protection so closely mirror cultural attitudes toward property, ownership, individualism, and entrepreneurship. As countries develop economically and begin to engage in innovative research and development, citizens perceive that they have interests to protect. As a result, patent law begins to become relevant not only to the country's economic well-being, but also to the country's emerging business class. Patent protection ceases to be a tool that serves only foreign economic interests.

I have been fortunate to view this change personally in both China and India, and my experience with both countries' patent offices, major corporations, and leading law firms gives me many stories and case histories to tell. The stories give life to raw data and add a personal dimension to legal analysis. While teaching with stories alone is no doubt insufficient, stories make other cultures and legal systems less daunting and more accessible. They give both a face and a context to the "other."

While my professional life may be somewhat unique, my ability to include personal experience and personal stories in my teaching is not. We all have stories worth telling. Stories are a tested, effective, and humanizing way to communicate knowledge. We should all be encouraged to add them to our storehouse of teaching techniques.