

Effective Techniques for Teaching About Other Cultures and Legal Systems

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Introduction

The first step in teaching students about other cultures and legal systems is to make sure that they understand their own. This task is significantly more complex than it sounds. Too often professional responsibility courses in the United States are simply descriptive (e.g., the organization of the bar, the rules of professional conduct, negligence and breach of fiduciary duty jurisprudence, the history and sociology of the legal profession, etc.). Many courses have as their primary goal assuring the students' success on the Multistate Professional Responsibility Examination (MPRE).¹ Thinking critically about the profession is, at best, a secondary goal.

Even in those professional responsibility courses in which a critique of the profession is a primary goal, the traditional curriculum is wholly inadequate as a tool for investigating the biases that imperceptibly cloud lawyers' perceptions. Each of us views our chosen profession through the lens of our personal experiences. Race, ethnicity, gender, religion, and sexual orientation play a critical role in how we see the law, the legal profession, and legal education. No matter how reflective we try to be, it is often impossible for us to judge how these traits shape our perceptions and influence our judgment. As a professor of professional responsibility, I have devoted a great deal of energy to bring this peculiar form of psychological blindness to the attention of my students. Lawyers in the United States have long held pinnacle positions in politics, business, and education and possessed unmatched access to powerful individuals and organizations. Without being sensitive to the link between their personal

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¹ For a description of the MPRE, see <http://www.ncbex.org/multistate-tests/mpre/>.

experiences, on the one hand, and their perceptions and judgments, on the other, they risk serious errors in understanding. These errors in turn diminish their ability to counsel their clients wisely and comment intelligently upon pressing issues of public policy. To accomplish my goal I have supplemented the traditional curriculum with readings drawing upon the discipline of psychology. Compiling the readings is no longer as daunting a task as it once was. There is a growing body of literature applying insights from psychology to the process of decision-making by lawyers.²

A Curriculum-Based Methodology

Developing a curriculum to force my students to think critically about the U.S. legal profession and to acknowledge the biases that shape their thinking is the very first methodology that I employ to teach them about other cultures and legal systems. The second methodology is also curriculum based. I teach three distinct professional responsibility offerings: (1) a traditional U.S.-centric legal ethics course; (2) a contextual course, focusing on business and international practice;³ and (3) a seminar focusing specifically on transnational legal practice.

Two very different approaches – integration and segregation – work quite well for both the traditional and contextual courses.⁴ In the first, an international perspective is integrated into the subjects selected for study through readings supplementing the casebook. For example, in analyzing how the three-year, post-graduate structure of legal education affects the class, racial, and gender stratification of the U.S. legal profession, I am able to broaden the discussion by assigning readings directed to the problem of stratification that exists in many

² E.g., Donald C. Langevoort, *Taking Myths Seriously: An Essay for Lawyers*, 74 CHI.-KENT L. REV. 1569 (2000); Richard W. Painter, *Irrationality and Cognitive Bias at a Closing in Arthur Solmssen's The Comfort Letter*, 69 FORDHAM L. REV. 1111 (2000).

³ A contextual course is one whose organizing theme is a particular practice area. See Mary C. Daly et al., *Contextualizing Professional Responsibility: A New Curriculum for a New Century*, 58 LAW & CONTEMPORARY PROBLEMS 193 (1996).

⁴ For a comprehensive set of suggested topics and resources, see Mary C. Daly, *The Ethical Implications of the Globalization of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the Twenty-First Century*, 21 FORDHAM INT'L L. J. 1239 (1998).

foreign countries, even though the point-of-entry is quite different (e.g., law is an undergraduate course of study, tuition is virtually non-existent, and there is no LSAT hurdle to overcome). In thinking about their career trajectories many U.S. law students predict that they will work in the legal departments of businesses, both small and large. The high professional status accorded in the United States to in-house counsel with its concomitant insistence on counsel's exercise of independent professional judgment is thus a topic of interest to them. Their appreciation of that topic is deepened through readings discussing the low professional status of in-house lawyers outside the United States where salaried lawyers are frequently regarded as incapable of exercising such judgment.

In the second, legal ethics in international law practice is assigned as a separate, discrete topic. The reading materials constitute a mini-course, focusing on the subject areas similar to those explored in the context of U.S. practice (e.g., confidentiality, conflicts, regulation of the practice of law, etc.). This approach has both psychological and pedagogical value. It confers intellectual legitimacy on the topic by classifying it as a unit of knowledge worthy of distinct study. It allows for concentrated analysis and discussion as opposed to the sometimes hit-or-miss methodology of integration.

Neither approach is intrinsically better than the other. I find that determining which one to adopt is a function of the likely practice profile of the students. The first approach is more likely to benefit those students whose career paths will focus principally on U.S. law and U.S. clients. Their encounters with foreign law and lawyers will occur occasionally, for example, in drafting a will for a client who owns property outside the United States, obtaining evidence from a foreign jurisdiction, or negotiating a contract for foreign goods or services. The second approach works to the advantage of those students whose career paths will be less U.S.-centric. Lawyers practicing in firms with sophisticated commercial practices or the legal departments of global securities, services, and manufacturing companies come immediately to mind as benefiting from a more concentrated study as students.

Unlike the traditional and contextual professional responsibility courses, my seminar offering in transnational legal practice is not U.S.-centric. Its curriculum is built along a four-part continuum: (1) the effects of globalization on economy, the legal profession, and legal education; (2) the system of licensure and discipline in the United States and foreign jurisdictions; (3) an introduction to the adversarial and inquisitorial legal systems; (4) an analysis of specific topics from a comparative perspective such as lawyers' codes of professional conduct, confidentiality, independence, and voluntary associations. It concludes with readings on the future of transnational legal practice. It also includes a set of hypotheticals and a document supplement.

There are many other ways to organize the seminar readings. What is critical, however, is to include as many readings as possible by foreign academics, lawyers, and judges.⁵ To expose the students to other cultures and legal systems successfully, they must see and hear authoritative voices in those cultures and systems. The mediating voice of scholars from the United States and common law countries cuts against authenticity.

Non-Curricular Methodologies

Supplementing the curricular methodologies with non-curricular ones is critical. In an ideal world, U.S. and foreign law professors would co-teach classes. Visiting foreign professors are probably the most effect tool for exposing U.S. law students to other cultures and legal systems. Their voice is the voice of “the other” in our classrooms. Monetary restraints as well as incompatible academic semesters pose serious scheduling challenges for most law schools, however.⁶ A second option is to create a virtual presence in the classroom

⁵ Two formidable obstacles make achieving this goal extremely difficult. First, very few U.S. law students are fluent in a foreign language, making it impossible for the overwhelming majority to read foreign texts. Second, the number of foreign legal texts translated into English is limited. Some useful materials may be found in the *International Journal of the Legal Profession*. However, it too tends to be U.S.- and common law-centric. See <http://www.informaworld.com>.

⁶ Some law schools have minimized the scheduling challenges by offering concentrated courses spread out over 3 or 4 weeks rather than the standard 13 or 14 week semester. The monetary challenges are more difficult to meet. Visiting foreign professors generally expect to be paid a

through the use of technology. While technology holds the promise of virtual presence, it needs a great deal of refinement. Streaming a lecture from a foreign country poses a number of technical problems. Even when it works well, the interaction between the students and the professor is stilted, and lecturing is the standard method of communication. Furthermore, time differences limit the hours such courses can be offered and consequently the countries from which foreign professors can be recruited.

In light of these budgetary and pedagogical challenges, the technique most likely to succeed is the deployment of foreign lawyers in U.S. classrooms as guest lecturers and panelists. In large urban areas, locating these lawyers will not be difficult. They are likely to be practicing at major corporate law firms or in-house legal departments. Some of them will be active in professional associations, especially in initiatives aimed at liberalizing the admission of foreign lawyers or shaping the contours of their practice areas, such as cross-border litigation, trusts and estates, or securities law. Outside of large urban areas, foreign lawyers may be more difficult to find. Checking a state's roster of foreign legal consultants may be helpful. There may also be resources much closer to home. Many law schools offer LL.M. programs that attract foreign lawyers. These law students are eager to share their knowledge with U.S. law students and would welcome the opportunity to speak on a variety of topics in both courses and seminars. Finally, students should be encouraged to take advantage of summer and semester abroad programs in foreign countries, especially those offering opportunities for internships.

salary that will cover the costs of their travel, housing, meals and "walk-around" expenses. Many also expect an additional payment, similar to an honorarium.