International Association of Law Schools
Educational Program

Effective Teaching Techniques
About Other Cultures and Legal Systems

Le Centre Sheraton Montreal
Montreal Canada

May 30, 2008

LexisNexis has provided a grant to support global participation in this Conference
IALS Conference:
Effective Teaching Techniques About Other Cultures and Legal Systems
The International Association of Law Schools Programme on “Effective Techniques for Teaching about Other Cultures and Legal Systems”, was planned by an international group of legal educators: Noor Aziah Haji Mohd Awal, Universiti Kebangsaan, Malaysia; Norman Dorsen, New York University School of Law, United States; V.S. Elizabeth, National Law School of India University, India; Chuma Himonga, Faculty of Law, University of Cape Town, South Africa; Carl C. Monk, IALS President, United States; Flávia Piovesan, Catholic University of Sao Paulo, Faculty of Law, Brazil; and Francis SL Wang, Kenneth Wang School of Law, China.

This programme follows on the IALS conference in China in 2007, “Learning from Each Other: Enriching the Law School Curriculum in an Interrelated World”. That conference was ‘premised on the belief that ordinary legal problems admit of many solutions, which may be equally functional and, in context, culturally appropriate’.

The idea of the educational programme is to begin a processing of learning from each other on teaching about other cultures and legal systems, with difference as the intended recurring theme for our deliberations. The critical questions of this theme are: In teaching about other legal systems, is it worth considering whether there are different elements depending on whether the teaching consists of lectures, seminars and or clinical teaching? Should there be differences in teaching techniques (large or small) depending on the subject of a course, for example, administrative law, corporations, trusts and estates, taxation, human rights? Might differences in teaching about other legal systems vary depending on the degree of difference between the legal systems? Might, for example, a law teacher teaching about the New Zealand system (which is common law) follow a different path than in teaching about Germany or France systems (which are civil law)? And how would systems that are neither civil nor common law, for example, Islamic and indigenous African systems fare under this lens? Could it be that there is, in fact, no substantial difference in how one teaches about other systems, whatever their nature? Where or how does culture fit in? And are there teaching techniques or approaches that will be applicable to all cross system teaching or only in certain types of cross system teaching?

Colleagues, ladies and gentlemen, on behalf of the International Association of Law Schools, I invite you to engage in these questions and welcome you warmly to this one day educational programme.

Chuma Himonga, University of Cape Town, South Africa. Chair, Planning Committee for the International Association of Law Schools Educational Program on “Effective Techniques for Teaching about Other Cultures and Legal Systems”
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(PAPERS ARE LISTED IN ALPHABETICAL ORDER BY COUNTRY)
In Search of Commonality: Argentine and Chilean Law Professors Discuss Law Teaching and Research

Marcelo Alegre
University of Palermo

1. Introduction.
These notes do not touch directly the issue of effective techniques for teaching about other cultures, but a closely related theme: sharing teaching experiences between law professors of different countries. I want to reflect on a recent meeting between Argentine and Chilean Law Professors. This experience may be of some interest for our educational program because it was an effort to build links between two legal systems which have much in common but also differ in many relevant respects. A global understanding of legal teaching should start with an acquaintance of legal cultures closer to us. In other words, the regional is a natural starting point for the global.

The meeting took place in Santiago de Chile last April. For two days, 30 law professors and researchers from 8 universities of Argentina and Chile discussed the challenges posed to researchers and teachers by the new realities of the market of legal services, the new technologies, and the current state of Latin American young democracies. These were some of the issues debated:

2. Market or Democracy?
A heated discussion revolved around the function of Law Schools. Is it the primary duty of a Law School to form professionals for the market? Or, instead, is the function of Law Schools to form university graduates, but not necessarily to teach abilities and skills demanded by the market? As would be predicted, a middle point was reached. It would be irresponsible for Law Schools to ignore the new requirements of the markets for legal services. On the other hand, the market that we should have in mind is the market of the next 40 or 50 years, not the market of the next few years. A lawyer is not a product, in the sense of many other activities, where a product is defined to be consumed or bought immediately. Lawyers who get their diploma this year will be active for the next four or five decades (perhaps more). This enhances the need of focusing on those skills that may strengthen the flexibility of lawyers to face a changing world.

In Latin America there is a well studied trend according to which the legal profession as a whole is losing societal and political influence. The space originally occupied by lawyers is now being claimed by economists, sociologists, and professionals from other disciplines. How should law schools readjust their mission? Some scholars think law schools should
strengthen their competitive advantages, focusing on the knowledge of the law and the
development of legal skills, and weakening the focus on interdisciplinary studies. Others,
in contrast, note that although lawyers have lost their exclusive access to governmental
roles and although today is not necessary to be a lawyer to act as a public intellectual, still
there are thousands of lawyers acting inside the state and occupying positions of
leadership. They think, therefore, that Law Schools should enhance the teaching of
allegedly extra legal stuff, like moral and political philosophy, economy, sociology,
history, etc. Some professors even think that the core subjects (like Torts, Contracts or
Criminal Law) should be “illuminated” by perspectives from other disciplines.

4. What does innovation mean?
Law teaching tends, in our region, to be hostile to changes. Law is being taught more or
less in the same way today as it was 50 years ago. Teaching is dominated by the lecture
method (the Professor speaks for 2 o 3 hours, and the students listen or make minor
questions). Although we are all aware that there is something wrong with the way we
teach, we don’t exactly know what changes should be favored. Modern pedagogy seems to
show that methods of teaching that are deemed to be very efficient (like the Case method
or the Socratic Method) in fact are only small improvements compared to the Lecture
Method. Students retain 5% of the content of a lecture, and perhaps 10 or 15% of what is
taught under the other methods. The two more efficient ways of teaching, are, on the other
hand, very expensive. They are the methods of “Learning by Doing”, best exemplified by
the Legal Clinics, and “Learning by Teaching”, in which students prepare and teach a
subject to other students.

5. Accreditation and relevance of legal research
For the last two decades various Chilean law schools have being hiring full-time professors
who teach and do legal research. A similar trend is developing in Argentina. An important
question is, by what standards should their work be evaluated? One institution assigns
points to each publication according to the prestige of the journal where the work is
published. Furthermore it only assigns points to publications in Anglo-Saxon journals. The
problem is that this ranking may be biased against certain type of research, for example
research about local problems, and may create a disincentive to publish in local journals or
periodicals, diminishing the impact in the national or regional contexts. Nevertheless, there
is much to be said in favor of a ranking with international standards. First, it makes it more
probable to have links with important universities abroad. Second, it helps to open job
opportunities for professors. As always, an intermediate position (combining national and
international impact) appears as the most attractive.

6. Democracy in the Classroom?
Professors disagreed on the exact combination of authority and inclusion to be achieved in
the classrooms. Some emphasized the need for a clear recognition of the authority of the
professor, who is the person who knows the subject. Others, instead, defended a less
ambitious picture of the professor, as one who needs to learn with the students. There was, nevertheless, a practical consensus regarding evaluation. In Latin America there exists a long tradition of oral examinations without any recourse to revision of the grades. The participants in this event agreed that we should migrate to a system of written exams, and that students should have access to a discussion of the grades with the instructor.

7. Conclusion.
These were some of the issues discussed in this meeting. The professors were enthusiastic about repeating the event every year. The next gathering will take place next April in Buenos Aires, including perhaps professors from Brazil and Colombia. Chile and Argentina are quite different legal and political cultures, but a lesson from this meeting is that there is enough commonality among our law schools to make it a worthy effort to continue debating our problems and sharing insights and experiences. A feasible goal would be to share teaching materials, produce some joint classes (through the internet), and to explore the possibility of some joint research project.
Effective Techniques for Teaching about Other Cultures and Legal Systems

An Introduction to the Experience of the
University of Buenos Aires, Argentina

Mónica Pinto
University of Buenos Aires Law School

1. The situation in main Argentina’s universities

Because of its geographical situation in Latin America and because of the legal migration of the colonial period, Argentina shares with other Latin American countries the continental system of law; it is a civil law country. There are not many differences in the structure of our legal systems. Certainly, political reasons are behind the great number of amendments introduced, for instance, in criminal procedure in Peru and in Colombia in the 90’s.

Our universities, including the private ones, are open to foreign students - mainly in the postgraduate studies which, at home, mean the equivalent of a JD – but this fact does not amount to showing a true expression of other legal systems.

There are no many possibilities of trying to recreate the diversity of the world and its legal systems in the Argentinean public university. The experience is mostly theoretical.

2. The enriching experience of international moot courts, exchange programs, summer programs

There is no society without law. Legal rules are social grammar. If there is no grammar, there is no language\(^1\). Law is a language; sometimes a foreign language; very difficult to be understood.

We have access to our human world from and through a given culture. This code is the cultural context of legal systems. Teaching other cultures and legal systems helps raising cross-cultural awareness.

In the 90s, the policy of economic liberalism and the fact that the local currency was pegged to the dollar facilitated the access to traveling

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At the University of Buenos Aires Law School we took advantage of the situation and decided to encourage our students to participate in international competitions like the Philip Jessup International Law Moot Court Competition sponsored by the American Society of International Law, the Inter-American Human Rights Moot Court Competition organized by American University, the Jean Pictet International Humanitarian Law Moot Court organized by the International Committee of the Red Cross and in the Willem C. Vis International Commercial Arbitration Moot.

All of them require the training in the oral system and, in fact, to master a foreign language. These simulated international tribunals, like the true ones, work in a way familiar to the common law system but decide through judgments that are closer to civil law systems.

Both the facts of the different cases and the personal exchange during the competition allowed our students to enriching their perception of the world as one in which diversity is paramount but not yet crystallized.

At the same time, the participation in exchange programs provides the opportunity to some of them to learn by themselves the different approaches of different legal systems. Living in a foreign country also helps developing a perspective on one’s own culture and society; identifying the places of overlap and the sites of divergence, the differences in learning and work styles, in communication styles.

To be successful, international exchanges require us to delve deeper into understanding our own motivations, needs, and creativity, as well as those of our counterparts from other cultures.

In the same context, summer programs provide an opportunity to engage local professors and to ask for syllabus with materials and approaches related to the country or region in which the program is developed. Students become a compact group, coming from the same country, and the exchange with local students – allowed to participate in the course – and with local professors is very much interesting.

As in the case of exchange programs, the negotiation of summer programs requires to take into consideration the “transnational/international” issue.

We are the host institution in the summer programs managed by Southwestern University and Stetson University. In both our students can participate at least in one course and our professors are part of the faculty.

3. Theoretical approaches to sensitive issues

The increasing number of international tribunals – meaning the access to a third party instance for the settlement of disputes – allows raising some issues that can be argued from
opposite standpoints. Syllabus and the corresponding cases and materials can be built with the goal of showing as much points of view as possible.

Among other techniques, role-playing of situations that prove to be controversial and very sensitive supposes research, legal writing and oral arguments to be deployed with some persuasion.

International lectures, visiting faculty as well as other exchange methods help in being open-minded and receptive to the higher values of other cultures.

The academic offer of UBA Law School this year – March to December 2008 – in the second cycle of studies – where students can make their own choices on a credit basis – include the following seminars: The rights of indigenous peoples, Emblematic cases decided by the United States Supreme Court, Globalization, social order and social movement, the Principle of Equality in Constitutional Law: The case in Argentina and Germany (taught by Jan Sleekman, visiting professor), International Business Transactions, E-commerce, Technology, Markets and Law; Money Laundering; Transnational Organized Crime; Crimes against humanity and Holocaust; International Protection of Human Rights; International Protection of the Rights of the Child; Decent Work and ILO regulations; Culture and Law: The Challenges of Social Change and Cultural Diversity; Identity and Diversity; The Sources of Hebrew Law; From Auschwitz to ESMA [a clandestine detention camp during the last military dictatorship]: the Philosophical Approach to Genocides;

4. Some preliminary remarks

The previous two pages are a very partial – because non exhaustive – presentation of some practices that we have developed at UBA in order to train our students in a complex world in which diversity is crucial. The exercise has not proven to be easy. The changes that have to be obtained are of a cultural nature; they need time and cannot be decided in a normative way. Both, students and faculty, have to be more flexible and open-minded. That takes time and needs a very firm political will.
Effective Techniques for Teaching about Other Cultures and Legal Systems
Creating the Conditions for Cross-Cultural Sensitivity: An Australian Law Dean’s Perspective

Professor Michael Coper
Dean, ANU College of Law
Australia National University

Introduction: confessions of a Dean
I do not know how many Law Deans are able successfully to combine the demands of 'deaning' with a regular role in the classroom; I am not one of them. In my first year as a Dean, in the first full flush of optimism and naivety, I did continue to teach: half a compulsory course in Australian constitutional law, a whole elective course on the High Court of Australia, and one-to-one supervision of four honors theses. But it nearly killed me. And I am sure that neither the students nor the law school benefited much from my over-ambitious attempt to be all things to all people. So I resolved to focus on deaning, confining my classroom appearances to occasional celebrity guest spots or emergency rescues.

In thinking, therefore, about effective techniques for teaching about other cultures and legal systems, I want to take a peculiarly decanal perspective. At first sight, this might seem odd; if he does not teach, let alone teach comparative law, what would he know (I hear you say) about effective teaching techniques? Well, in this now familiar International Association of Law Schools (IALS) '3-5 page' format, I thought I would take the opportunity to try to articulate the kind of contribution that might be made to effective teaching about other cultures and legal systems through the leadership role of the Dean, especially in relation to creating the conditions in which this kind of teaching might flourish.

1 Dean of Law and Robert Garran Professor of Law, ANU College of Law, Australian National University, Canberra, Australia; Board Member, International Association of Law Schools.
2 See the wonderful array of papers on 'the three most important things about my legal system that others should know' from the inaugural IALS conference at the Kenneth Wang School of Law in Suzhou, China, in October 2007 (Learning from Each Other: Enriching the Law School Curriculum in an Interrelated World) at http://www.ialsnet.org/meetings/enriching/papers.html (viewed 5 May 2008).
3 This is not an essay generally on ‘deaning’, as to which see in particular the Leadership in Legal Education Symposium series published by the University of Toledo Law Review, the latest of which, Symposium VIII, may be found at 39 U.TOL. L. REV. (2008).
Staff, students, and ethos
At least three things occur to me as important in encouraging cross-cultural sensitivity, especially as I think of my experience at the ANU College of Law: the quality, mindset, and diversity of faculty; the curiosity, engagement, and diversity of the student body; and the 'ethos' of the law school. Let me say a little about each of these in turn.

Faculty recruitment
Recruitment of quality staff is a necessary precondition for a quality law school. Traditionally in Australia, this has been translated into a pre-eminent focus on the quality of a candidate's scholarship—no guarantee, as we know, of the candidate's capacity for effective teaching, or of the candidate's empathy with the collective goals or spirit of the institution. The importance of these broader factors is being increasingly recognized, though sometimes in a more mechanical way than their deeply intangible nature deserves.

As a Dean, I look for multiple characteristics in candidates for academic positions. I would never downgrade the importance of exciting, cutting-edge legal scholarship, especially if it has the potential to make a difference and contribute to a solution, or a range of solutions, to some pressing legal, social, or political problem. Indeed, many would see this kind of intellectual capacity as necessary, even if not sufficient, for inspirational teaching. But one must also explore other, personal qualities. One might, for example, look for tolerance and open-mindedness; genuine empathy for others; and a natural affinity with the values of collegiality. These kinds of qualities are good indicators, not only of a person who is likely to make a good contribution to the law school's collective endeavor, but also of a person whose teaching might be informed by a real interest in other legal systems, other cultures, and other solutions to common problems.

I am talking here of the general 'ambience' of the law school—no substitute, obviously, for recruiting expert comparativists, with deep knowledge of other cultures and legal systems, and preferably from their own personal experience. This diverse individual expertise in turn enriches the law school as a whole, as staff and students alike absorb the global influences of colleagues from many lands. How this manifests itself in the curriculum raises wider questions of substance and process; very few law schools are as spectacularly transnational, for example (and to mention the law school in the city of our conference location), as McGill University's Faculty of Law. But the point I am making, from my

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4 I am sure that there are more, and I look forward to responses to this paper.
5 With the important caveat that my observations are necessarily a mix of the actual and the aspirational.
6 In this brief paper, I do not enter into the debate about the relative merits of mainstreaming comparative perspectives into all courses versus quarantining comparative law into a specialist course or courses, but these approaches are not of course mutually exclusive, and there are options in between. My decanal philosophy adumbrated in this paper, however, and the general trend towards internationalisation of legal education, sit more comfortably with a pervasive rather than a fragmented approach.
decanal perspective, is simply that the effective teaching of other cultures and legal systems requires, in the first instance, the right people to do the teaching, in the right environment, with the right mindset.

International students
Nothing earth-shattering so far. What about the student mix? No doubt other cultures and legal systems can be taught effectively to an entirely local student body; indeed, the greater the parochialism of the composition of the student body, the greater the need. But the environment for effective teaching of other cultures and legal systems will be greatly enhanced by an internationally diverse student body.

Given the national character of the ANU College of Law, the majority of our students come from parts of Australia other than the local jurisdiction (the Australian Capital Territory); but it is the international students—whether in Australia on a semester exchange arrangement or for the purpose of undertaking the local degree in its entirety—who really diversify the student body. It is a truism to say this, but the international students at the ANU College of Law, who come from over 30 different countries, expose their domestic counterparts (and vice versa) on a daily basis to different backgrounds, different experiences, different cultural norms, and different assumptions. Again, this aspect of the 'internationalization' of legal education provides a supportive and empathetic context for the effective teaching of other cultures and legal systems.

The ethos of law reform as a driver of comparativism
The third, and I think perhaps the most important, aspect of creating an environment of cross-cultural sensitivity is the ethos of the law school. Different law schools will have different missions, and there is no single right vision for all law schools in all contexts at all times. Some law schools will be more internationally focused than others, and for many that will be an important part of their ethos. This international focus may be part of a deliberate strategy to prepare students for transnational practice, or it may be part of a broader intellectual commitment to a concept of law without boundaries. But I want to mention a more particular aspect of our ethos at the ANU.

At the ANU College of Law, we have endeavoured, in addition to the more traditional aspiration to achieve excellence in research and teaching, to build an ethos of commitment to law reform and social justice, in our scholarship, our teaching, and our community

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See Afshin A-Khavari, The Opportunities and Possibilities for Internationalising the Curriculum of Law Schools in Australia, 16 LEGAL EDUC. REV. 75 (2006); Michael Coper, Legal Education in Australia and Japan: Changing Conceptions of Lawyering and the Impact of Globalisation, Address to the Japan Association of Law Schools, Chuo University, Tokyo (May 2007) (on file with the author).

4 Are there, nevertheless, any universals? See the challenge posed in the final paragraph of this paper, and Michael Coper, Legal Knowledge, the Responsibility of Lawyers, and the Task of Law Schools, 39 U. TOL. L. REV. 251 (2008).
'outreach' activities. This has developed particularly over the past five or six years, and has partly been a process of marshalling, harnessing, and rebadging the things that drive (and perhaps give meaning to) the work of my colleagues, and fuel the motivations of our students, in any event. The initiative culminated last year in the appointment of our inaugural Director of Law Reform and Social Justice, who will have a wide brief to stimulate, coordinate, and facilitate the infusion of this ethos into the curriculum (including practical measures such as clinics) and more generally into our collective mindset.

The relevance of this in the present context is simply this: it is difficult to imagine the success of a reformist ethos in the absence of a close interest in, and a pervasive knowledge of, other solutions to common problems. Such an ethos therefore goes hand in hand with a comparative perspective, in the curriculum and beyond.

**Conclusion**

I have talked in this merely allusive mini-paper about the general conditions in which effective teaching about other cultures and legal systems might occur, not about the pedagogy or techniques by which that teaching might be made effective.

The presence of those general conditions is no guarantee that effective teaching and learning will occur in the classroom, nor is it the case that brilliant teaching and effective learning may not occur in the absence of these conditions. However, attention to the general environment in which the teaching occurs, and the broader issues that may shape (or at least percolate down to influence) what happens in the classroom, may assist in adding another dimension to the teaching and learning experience. It may assist, for example, in achieving real depth as well as breadth of coverage, and in avoiding the assumptions that sometimes afflict the teaching of comparative law, such as the assumption that one's own legal system is the norm and that other systems are exotic variations.

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11 The notion of an institutional 'ethos' is admittedly somewhat amorphous, even elusive. It cannot be imposed, but must enjoy widespread support and develop organically. A potential downside is that predominantly like-minded faculty may be tempted simply to reproduce themselves through the recruitment process, thus limiting diversity and dissent. However, the 'law reform' ethos is not, I think, a brake of this kind, but rather a broad rubric within which debate is vigorous and unconstrained.

12 I will be particularly interested to learn from others, however, about whether they think that there are techniques for teaching effectively about other cultures and legal systems that are different in kind from the techniques applicable to effective teaching generally. It will be useful, I think, to address the issue of effective teaching at both levels, if only to tease out what is distinctive, or distinctively challenging, about teaching about other cultures and legal systems.
It might also assist in understanding the difficult debate about cultural relativism, and in thinking about whether there are (and identifying them if there are) robust absolutes and universals that define both good legal systems and good ways of teaching about them. Now, there's a challenge!
The Legal System in Arab and Muslim Countries

Dr. Mariam H. Al-Khalifa

Ex. Bahrain University President

Kingdom of Bahrain

It is my pleasure to participate with you in order to have some insight look to the “Effective Techniques for studying other Cultures, legal Systems and methods of legal education in the world to day”.

It is truly outstanding opportunity for me as an Arab scholar coming from the hart of the Muslim and Arab Cultures to slightly emphasize on the Arab and Muslim Countries’ Legal System, which you might consider as supportive approach to deeply study and assess our Legal System if you wish.

I personally as the majority of my colleagues’ scholars in our region believe that the impact of education, legal, economic and scientific studies has very active rule now days in our cultures and legal system in many ways.

For example if we look to our Legal System, we will find a variety of difference between the existing situation and the past; also, we can say the same for economic education impact due to many reasons as well due to the efforts of our qualitative graduates our economy have been growing, and the education impact really effect every sector in our society public or private.

As a consequence, the impact of the educational system in the Kingdom of Bahrain in particular the University of Bahrain as Governmental entity provides great importance to make available to the society graduate students with the capability to develop, enhance, and enrich economic and legal systems etc… and capable of dealing with the information
challenges that face our nation in this time in history, especially since globalization and modern communication systems have transformed our world into a global village.

It is worth mentioning that in nineteenth and twentieth centuries the westernization of the law in many subject matters have occurred in the law of Muslim countries manly was based on Napoleon Code; also, was the codification of subjects which has not undergone that westernization; than the elimination by some Arab countries of special courts that were previously responsible for the application of Islamic SHARIA.

Furthermore, the rules taken from the Romano-Germanic or Common law families were preferred. Constitutional law, administrative law, private and commercial law, procedure, labor and criminal law all were westernized in many Muslim countries and still till date; nevertheless, in these subjects there are now slight provisions still showing traces of Muslim law itself.

As we all know education is the choice of the future, science and education have had a profound effect on human life and its development; also, history has proven that the advancement of nations and people is directly allied to the advancement both in education and science and their ability to keep pace with development. Therefore, from my personal experience as former president to the University of Bahrain from year 2003 to 2007 for example our College of Business Administration at the University of Bahrain has just completed updating and modernizing its academic programs in line with the latest academic developments taking place in the world around us and with the changing needs of our society. Also, the College continues to be committed to teaching excellence, research, and community service.
All the Bachelor Degree programs in the College build upon a series of competency courses that form a solid and relevant worldwide business foundation. We strongly believe that the programs offered in the college of Business or in the College of Law as such other Colleges within the University are solid but modern, strong but respected, careful but practical, exhaustive but useful.

Furthermore, our programs are recognized globally. They are intended to prepare graduates for responsible roles within a variety of organizational settings.

In addition, graduates are well equipped to continue their studies in postgraduate degree programs in any of the numerous administration, legal, and commercial fields in any educational institution around the globe.

It is evident that today we are experiencing the beginning of a new era, in which information technology and tele-communication systems are changing rapidly. This change is reflected on the development of all aspects of life in general. It has become certain that we participate in this change in order to ensure a successful future for our nation.

The Kingdom’s education strategy, it has taken the responsibility to multiply the use of information technology in its broad since not only for and between the educational institutions but at the work places and local residences; and the objective being to gain the optimum benefit from the diverse educational resources available worldwide. In this respect, the use of the internet plays a key role in our society today.

Furthermore, the Kingdom of Bahrain party to mainly all the United Nation specialized agencies, and to a great number of the international conventions and agreements which are considered as an integral part to our legal system long time ago.
To conclude, kindly allow me to say that Middle East and Arab countries cannot stand in isolation of the international community neither the *vice-versa*. At present there is significant hope that such parity of esteem will ever materialize.

For this reason, the study of Islamic law and legal system for Arab and Muslim countries from the international and comparative standpoint is and will continue to be worthwhile for a long time to come.
Human Rights Education in Social Context, The Case of Palestine
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Effective delivery of human rights education across difference starts with an examination of human rights philosophies and a conscious connection of philosophy to social context.¹ Using Palestine as its backdrop, this paper suggests that a particular understanding of human rights education as hermeneutic dialogue can best respond to educational endeavors that engage colonialist contexts through an anti-colonialist lens.

The Rule of Law, Dispossession and Justice
Law has something of an ambiguous and uncomfortable existence in Palestine. On the one hand, law represents an instrument of humiliation and colonialism. Using law as a primary instrument of control over decades, foreign states have sought to both perpetuate and legitimize their domination over Palestine and it people through a process of “lawfare” or “the resort to legal instruments, to the violence inherent in the law, to commit acts of political coercion, even erasure.”² During the mandate period, for example, British authorities presented colonial law as “benign and neutral” by constructing a "colonial-type legal education, uniquely adapted to legitimize British colonial legal policy in Palestine at the time.”³ Such legitimizing efforts often presented the rule of law as objective, beneficial, neutral, transferable, “civilizing” and a “natural” part of development. In the process, however, law was harnessed to dispossession and control over the indigenous population.

¹I have drawn upon my experiences as co-Director of Karama, The Initiative on Judicial Independence and Human Dignity, in Palestine to reflect on effective teaching across difference. Karama is a partnership between The Institute of Law at Birzeit University and The Faculty of Law at the University of Windsor.
³Geremy Forman and Alexandre Keda, “Colonialism, Colonization, and Land Law in Mandate Palestine: the Zor al-Zarqa and Barrat Qisarya Land Disputes in Historical Perspective” in Theoretical Inquiries In Law (July 2003).
The Israeli occupation of the West Bank and Gaza Strip adopted the color of law as justification for its own control and dispossession. The occupation experience has been well documented by various Palestinian and international commentators with Raja Shehada’s book, *Occupier’s Law*, remaining one of the best chronicles of how Israeli authorities regulated virtually every aspect of Palestinian individual and collective lives through lawfare. The occupation’s devastating socio-economic impact on Palestinian development has also been well documented.4

After the election of a Hamas majority to the Palestinian Legislative Council, the international community imposed sanctions against the Palestinian Authority and generally justified these sanctions as the unavoidable application of national anti-terrorism laws crafted to denounce and prevent violence against civilians. Sanctions inflicted their own silent form of violence, “a different kind of war”5 against the Palestinian people. The economic fallout was devastating and the sanctions added insult to injury because they were directed against an occupied population that should have been able to seek protection from the international community. Against this context, human rights efforts funded or otherwise associated with ‘Western’ organizations lost significant credibility.

Law and legal education have become disassociated from justice in Palestine and are sometimes regarded, to an extent, as instruments of oppression rather than forces that support human rights and dignity. Yet, there is a strong desire for the rule of law and access to justice as a means to individual and collective security. Having endured lawlessness and anarchy for years and increasingly concerned that disputes are solved through violence and corruption, Palestinians want to live within a state where no one is above the law and where all are secure in the knowledge that they are considered equal in dignity and in rights. Human rights and human rights education, properly conceived and delivered, therefore remain high priorities for the justice sector.

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Human Rights Education, Colonialism and Cultivating Legitimacy

Before engaging in human rights education, it is important to contemplate the normative conceptual framework through which the entire education enterprise will be funneled. Relativism is beyond consideration not only because it constitutes, in Charles Taylor’s phraseology, “a pretend act of respect,” but also because it appears inherently inconsistent with cross-cultural and/or international education endeavors in so far as relativism’s fundamental premise is that people cannot speak to each other across difference.

Universalism holds an immediate but ultimately incomplete appeal. It adopts a normative stance which can respond effectively to “state of exception”\(^6\) practices and discourses that routinely deny human rights to a specific group and thereby dehumanize that group but nonetheless rationalize the repeated denial as exceptional or extraordinary. However, universalism can cajole actors into diminishing differences and believing that they operate within an apolitical framework which, in the colonialist manner, invites assumptions of neutrality, masks power and imposes agendas through claims to sameness.

Various scholars have sought to dissolve the universalist-relativist divide by redefining the debate.\(^7\) Proponents of this position aim to move beyond an understanding of universalism that pits international law versus local values. Culture/local, on this view, does not represent an exception of international law’s universality. Rather, culture or the local pervades universality. Some have applied this principle to specific contexts while the doctrinal manifestation of this position can be found in the principle that states have an obligation of ends but not an obligation of means.\(^8\) The challenge in developing human rights content and methodology across contexts is to consider how and under what circumstances the obligation of means might differ while meeting the same ends. Can, for

\(^3\) See for example The Committee on Economic, Social and Cultural Rights, *General Comment No. 9: The Domestic Application of the Covenant* E/C.12/1998/24.CESCR.
example, the concept of human dignity have different content in different contexts without collapsing into relativism? How do we agree upon content across differences, or, indeed, is agreement desirable or even possible?

My own thinking in this area has been influenced by Hans Georg Gadamer’s hermeneutics which posits all acts of understanding (and hence education) as situated acts which take place and are shaped by local contexts. Yet, one can transcend the local through authentic engagement with another. Ultimately, Gadamer’s work represents an invitation to humility derived from an awareness of historicism. Both the notion that one can capture transcendental truth and the claim that one can create it *ex nihilo* symbolize arrogance. Instead, one can seek to cultivate truth/meaning/understanding through engagement with other perspectives. In this way, both skepticism or cultural relativism and imperialism are avoided. The possibility of working towards shared truth remains, thereby ousting skepticism. Even though meaning derives from its time and place, it can be shared across time and space, thereby ousting cultural relativism. At the same time, one side of the equation – self versus other – does not seek prominence. On the contrary, engagement through difference requires that both self and other expose themselves to risk and change, thereby seeking to avoid imperialism. Ultimately, this means that one enters educational encounters in different contexts by regarding the experience as a process which involves self-discovery as well as the potential to impact others rather than conceiving of it as a package to be delivered from one location to another.
How to Deal with Different Legal Cultures while Teaching International Business Transactions?

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Since three years, I am pleased to teach International business transactions to students from various parts of the world. As we know, most of the time, international business transactions bind parties from different countries, from different legal cultures and from different backgrounds. On the basis of that reality, I have developed some techniques which seem effective. Thus, the purpose of this paper is to share these teaching techniques with other colleagues.

Methods of teaching

The course named International business transactions that I teach has two major stages.

The first one consists of mandatory readings followed by lectures in order to pass down some fundamental materials to students. The lectures cover the following subjects: jurisdiction and choice of law; international delivery and International commercial terms; price and international payment; penal clause; exclusivity clause and non-competition clause; force majeure and hardship; forum shopping and settlement of disputes. Each subject is taught during a class of three hours. Thus, at the end of these lectures, students should have acquired the accurate knowledge that can enable them to draft the various clauses of an international commercial contract.

The second stage of my course is an occasion for students to try to draft the main provisions of an international commercial contract.

At the beginning of any academic year, I write some facts which describe the results of an international commercial negotiation occurred between two parties. Since those parties are in principle established in different countries, they are likely to have different cultures and to operate in different legal systems. Therefore their contract should take those realities into consideration. Generally, I have different sets of facts and I make sure that parties involved are located in various parts of the world. In other words, facts submitted to students imply that they should deal with different legal systems and different cultures.

On the basis of those facts, students are invited to draft one of these two types of international contracts: a contract for international sale of goods and an international
master franchise arrangement. Such drafting is performed by students in groups of two or three. Each group is carefully formed so that it is a mix of students of different genders, of different origins and of different cultures.

After three classes of three hours each and before four other classes remaining, the facts are distributed to students. In principle, any set of facts should be the basis of one single contract. Nevertheless, for the purpose of this exercise, two teams are in charge to draft a suitable and well balanced contract. Since commercial negotiations are ended, the mandate of each group of students is then to draft a fair and balanced contract while wisely protecting the interests of the party that they are acting for.

In the present instance, concerning a contract for the international sale of goods, one team drafts a contract on behalf of the seller and on the basis of the same facts, the other team drafts another contract on behalf of the buyer. Regarding an international master franchise arrangement, one team drafts a contract on behalf of the master franchisor and on the basis of the same deal reached by the parties, the other team drafts another contract on behalf of the sub franchisor.

**Directives concerning the work to be done by students:**

Students have five weeks to draft their contract. Since at least two legal systems are involved in any deal agreed by the parties, the drafters should make sure that the clauses contained in their contracts comply either with the relevant legal systems. They are supposed to be aware that the infringement of some mandatory provisions in force in those relevant legal systems could invalidate one or many of the clauses included in the contract drafted. In addition, such requirements show them the necessity to occasionally rely on the expertise or on the advices given by local lawyers who are more familiar with the rules of law in force in the legal systems involved.

Contract drafted by students may not contain technical clauses (for example clause regarding the quality or the description of the goods). It should merely be focused on provisions, which are relevant or necessary to secure the interest of both parties. In consequence, the length of the contract should not exceed five pages (on paper 8½x11).

In addition to a set of provisions contained in the required contract, each group of students should write an explicative report. To write or to draft a contract means to choose words and tools that will hopefully lead to the wished contract. Therefore, the aim of that report is to set out the reasons of contractual choices made by the team. The group should also explain its silences on certain points for which one could have expected some provisions. The text of this report should not exceed fifteen pages. Such report shall include all useful references and be introduced as a research report, with a table of contents and footnotes.
Students have five weeks to draft their contract and to write the explanatory report. After that time, the contracts and the reports are due and handed over to the professor for grading. For this purpose, the professor keeps the reports and one copy of the contracts drafted. Then he makes sure that every team receives the contracts drafted by the other groups. The agenda of the next classes is to discuss about each of the contract drafted. On that occasion, the drafters can improve their choices through the comments made by their mates and by the professor.
Effective Techniques for Teaching About Other Cultures and Legal Systems
Teaching Comparative Law in the Post-Conflict Context

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The idea that comparative law is useful for law students generally is well-established. Indeed an understanding of comparative methodology is said to help in matters which range from the prosaic – how to better aid a client in a contracts dispute with a party in another jurisdiction – to broader notions of Europeanization or Internationalization of private law, transjudicialism and transnational legal processes. And, while there is no single correct approach to teaching comparative law, there are broad areas of consensus – at least among comparativists themselves – about how comparative law should be taught. For example, it is now commonplace that a contextual approach which takes into account legal cultures is a necessary part of any comparative methodology. This paper takes those well-established uses and teaching methods for granted but seeks to transpose them out of the context of stable societies where they have been most often discussed and into the unstable, and specifically post-conflict scene where an analysis of the uses of comparative law is in a fledgling stage. It argues that comparative law is not only useful in the post-conflict environment but is in fact an urgent need in terms of promoting curricular and indeed social reconstruction. It also outlines some of the special considerations which should be borne in mind when teaching from a comparative perspective in this context.

The Impact of Conflict on Legal Education

One obvious way that war impacts on legal education is in terms of ‘bricks and mortar’. Teaching facilities, libraries and academic records may be damaged or destroyed. Another obvious impact of war is on personnel. Law teachers, students and administrators may be killed or injured or forced to migrate. When war does end, casualties, dislocation and traumatic experiences ensure a host of difficult psycho-social issues. While dealing with grief, anxiety and anger is at the forefront of people’s minds (while some repress war memories), the conflict may also serve as a defining moment for the university and its population. Indeed war experiences are often enshrined in monuments. For example, a

plaque outside the Law Faculty at the University of Sarajevo states: “To all the students and workers in the Sarajevo Law Faculty killed in combat and in workplaces during the war of liberation and defense. They gave their lives for defending the independence, integrity and sovereignty of Bosnia and Herzegovina.”\(^3\) As well as remembering the dead, such monuments – commonly built in British and Commonwealth universities following the First and Second World Wars - can celebrate heroism, victory (or loss) and imbue the rebirth of universities after war with heroic, almost mythical qualities.\(^4\) Indeed, in wars education is often seen a “second front” and attempts to maintain normalcy are seen as heroic and patriotic.\(^5\) How staff and students stand down from this battle after conflict, however, and how pedagogical patriotism can be squared with social reconstruction, is a very real question.

Less obvious than the direct physical and human impact of war is the impact on the law school curriculum. It is an obvious point perhaps, but war changes law and law schools must grapple with these changes. This applies even to victorious parties. The allied powers in World War II, for example, saw topics such as administrative and international law emerge in importance and demand a place on the curriculum after the war. Of course, change will be most drastic for the “losers” and in cases of wholesale regime change or international intervention. It should also be noted that post-conflict law brings with it certain legal problems which may never have been dealt with in peacetime and for which expertise – including comparative and international law knowledge - is lacking. These include war crimes trials and property restitution for returning refugees and internally displaced persons. The question asked in the next section is, given the tremendous physical, human and programmatic impact of war, can law schools successfully recover?

**Can law schools recover?**

While there are of course important variables – including the existence of a secure environment and the amount of international assistance – there are numerous examples where law schools have technically reconstructed in terms of rebuilding the physical plant and getting enrolment back up (indeed post-war enrolment often exceeds pre-war enrolment). Unfortunately, it is harder to find law schools which have done a good job with respect to social reconstruction, at least in the context of ethno-political conflicts.\(^6\) Indeed

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\(^{3}\) The memorial is dated 6 April 2002, author’s observations, January 2005.

\(^{4}\) War memorials in the Anglo-American world – including those located in universities – are the subject of extensive scholarship; see, for example, M. Connelly, *The Great War, memory and ritual : commemoration in the city and East London, 1916-1939* (Woodbridge: Royal Historical Society/Boydell Press, 2002).


\(^{6}\) Social reconstruction has been defined as “a process that reaffirms and develops a society and its institutions based on shared values and human rights.” It calls for a broad range of activities to address the
law departments often hamper larger reconstruction or reconciliation efforts. They may do so in several ways which range from discrimination in admissions to a broader failure to inculcate a culture of peace and reconciliation.\footnote{On peace culture, see D. Adams, \textit{UNESCO and a Culture of Peace. Promoting a Global Movement} (Paris: UNECO, 1995).} One of the failings in terms of the latter issue is chauvinism in the selection and presentation of substantive law taught.

Scholars of nationalism and conflict have for some time identified how historical narratives can promote difference and particularized identities. These narratives entail myths of ethnic, religious or linguistic purity, ethnogenesis (which people was there first) and superior civilization.\footnote{C. Hedges, \textit{War is a Force that Gives us Meaning} (New York: Random House, 2003) at 64.} Myths of victimization also make an appearance as the excesses of one’s own side are forgotten and “cultural life is directed to broadcast the injuries carried out against us”.\footnote{Though rarely are nationalist teachings so explicitly imported into the legal curriculum as in Nazi Germany, where the three year law programme “was modified to incorporate coverage of the cornerstones of National Socialist thought; race, soil, blood, Teutonic history and folklore.” [M. Lippman, \textit{The White Rose: Judges And Justice In The Third Reich} (2000) 15 Conn. J. Int'l L. 95 at 109].} In such cases, those who peddle ethnic or nationalist myths seek to essentialise and reify a certain identity and in turn to exclude others from that identity. Myth peddlers are often historians, politicians, journalists and writers. Unfortunately, lawyers and law teachers also join those ranks.\footnote{On links between cultural identity and globalised law see N. Kasirer, “Lex-icographie mercatoria” (1999) 47 Am. J. Comp. L. 653. On “sustainable diversity in law” see H.P. Glenn, \textit{Legal Traditions of the World} (Oxford: Oxford University Press, 2000) at 333.} Law, of course, can be a cultural marker as much as folklore, a flag or an anthem. And this is not necessarily a bad thing, even where there is an ethnic connection. Attachment to the Quebec or Scottish legal systems, for example, can help sustain a healthy legal diversity in the world.\footnote{On “sustainable diversity in law” see H.P. Glenn, \textit{Legal Traditions of the World} (Oxford: Oxford University Press, 2000) at 333.} It is often forgotten, however, that law as an identity badge can also serve to exacerbate conflict. It can be a symbol or an instrument of division in ethnic conflict, and not only where law is discriminatory or blatantly contrary to international norms as in an apartheid regime, but, in some circumstances, in the promulgation of ordinary legislation such as a civil code. Law as a cultural marker can, like folklore or language, be manipulated into a divisive force.

There is a discernible pattern in ethno-political conflict in how law is used and how it is taught. For example, law departments in South Ossetia (which \textit{de facto} split from Georgia in the early 1990s) teach only Russian law, as that self-declared Republic wishes to join the Russian Federation. No attempt is made to teach Georgian law or to teach law in the Georgian language. This is despite the fact that some ethnic Georgians continue to remain in South Ossetia and that a negotiated settlement with Georgia is the only long-term solution to factors which led to conflict in the first instance. See H. Weinstein & E. Stover, \textit{My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity} (Cambridge: CUP, 2004) at 5.\footnote{See G. Smith \textit{et al}, eds., \textit{Nation Building in the Post-Soviet Borderlands: The Politics of National Identities} (Cambridge: Cambridge University Press, 1999).}
the conflict. The same is true in Nagorno Karabakh (which broke from Azerbaijan in the early 1990s) where only Armenian law is taught. The foundational documents of many would-be independent states reaffirm the message that the existence of statehood is based on ethnicity, even though these provisions exist side-by-side boilerplate liberal constitutional clauses. For example, the Constitution of South Ossetia declares that the Republic is “building its relations with the Republic of North Ossetia-Alania on the basis of ethnic, national and historical-territorial unity and socio-economic and cultural integration.”\textsuperscript{12} Similarly Nagorno Karabakh’s independence declaration recalls the “Armenian people’s striving for unification as natural and in line with appropriate norms of international law”.\textsuperscript{13} It appears law teachers involved in these ethno-political conflict rarely express a critical view of such legal instruments, at least on their “own side”. Needless to say, this legal chauvinism is mirrored in the law schools of Georgian and Azerbaijan, where the legal principles on self-determination for aspirant peoples are downplayed.

Even where a legal order is somewhat fixed, as in Bosnia following the 1995 Dayton Agreement, the emphasis of teaching in law departments can fail to recognize that legal order. Thus it is reported that Bosnian law departments de-emphasize state level constitutional law or legislation, and focus instead on the entity level and specifically the three de facto territories –Bosniac, Serb and Croat - the Federation, Republica Srpska and Brcko.\textsuperscript{14} In the Bosnian city of Mostar, there are two law departments, one ethnic Bosniac and the other ethnic Croatian. Despite their proximity to each other, the two departments generally avoid contact and rather seek contact with ethnic confreres in more distant Faculties.\textsuperscript{15} Similarly at the University of Banja Luka, an ethnically Serb law department ‘imports’ visiting lecturers from Serbia, rather than looking to, for example, the better staffed but ethnically Bosnian University of Sarajevo.\textsuperscript{16}

Law in these ethno-territorial examples is used as a proxy and metaphor for continued ethnic conflict and continued “resistance”. Not only are the foundational documents of new or would-be states (declarations of independence, referenda results and so forth) stressed as being legal and natural, the disappearance of prior laws is also seen as

\textsuperscript{12} Article 8 of the \textit{Constitution of the Republic of South Ossetia} (8 April 2001) [unofficial translation on file with author].

\textsuperscript{13} \textit{Declaration on the Proclamation of the Nagorno Karabakh Republic} (2 September 1991) [unofficial translation on file with author]. The passing of “laws” can be a powerful symbol, even when there is not only \textit{no de jure} right to pass the law but also \textit{no de facto} power. A good example is the proclamation of a constitutional law for a “Republic of Kosovo” in 1990 by Albanian members of a provincial assembly, acting in secret [N. Malcolm, \textit{Kosovo: A Short History} (NYU Press, 1998) at 347.


\textsuperscript{15} \textit{Law Faculty Review}, \textit{ibid.}, at 38. This is not surprising given ethnic splits in ‘feeder’ schools.

\textsuperscript{16} Interview with an ABA-CEELI Liason Officer in Bosnia on 24 January 2005.
progressive (being the laws of the “occupier” for example). In these cases, nationalist legal visions are reified and legal pluralisms denied. In much the same way as myths are spread about language (the disintegration of Serbo-Croatian along with the disintegration of Yugoslavia) and history (myths of victimization), law serves as both a symbol and an instrument of division.\footnote{G. Smith, et al., supra note 8 and Hedges, supra note 9 at 32-33.} As one author studying ethnic conflict in Sri Lanka puts it: “At the heart of ethnic conflict is a belief in the existence of cultural and ethnical purity, and a concomitant fear of mixing and borrowing. Hybridity…has to be suppressed and becomes the site of anxiety.”\footnote{N. Silva, ed., The Hybrid Island: Culture Crossing and the Invention of Identity in Sri Lanka (London: Zed Books, 2002) at i.} Unfortunately, once this reification of culture, ethnicity, race or religion takes place – manifested through law and other social sites - it becomes difficult to stand down without losing face.

**Bringing in Comparative Law**

Even with this thumbnail sketch of the impact of war on law schools and the generalised failure of law schools to contribute to social reconstruction, the role for comparative law should be self-evident. First, comparative law can provide a vehicle to discuss notions of pluralism and respect for other cultures. Second, it can draw students and faculty away from a parochial, nationalist, essentialist (‘law is…’) focus and towards broader notions about legal convergence (or simply respect or comity), comparative constitutionalism and transnational legal processes in the human rights and other arenas. Few, however, have recognized the link between comparative law and recognitions of legal diversity on the one hand, and peace on the other, though as the noted comparativist Patrick Glenn (a Montrealer it should be pointed out given our pluralistic host city) notes, “[a]cting positively to sustain diversity in law should improve communication between lawyers of the world. It should enhance the prospect for peaceful settlement of disputes, enhance the legal mission.”\footnote{Glenn, supra note 11.} This diversity in legal learning requires a cosmopolitan approach to law, with comparative law and international law at its heart, and every effort should be made to ensure that these subjects are on the post-war curriculum. It is heartening to note that the International Association of Law Schools (IALS) has implicitly enshrined some of these principles in its Charter. Thus the Mission of IALS includes the goal of “foster[ing] mutual understanding of and respect for the world’s varied and changing legal systems and cultures as a contribution to justice and a peaceful world” as well as “contribut[ing] to the development and improvement of law schools and conditions of legal education throughout the world”\footnote{Charter of the International Association of Law Schools, Section 1 (a) and (d), 18 August 2005.}.
How precisely comparative law should be introduced to a post-conflict law school—materials, teaching techniques—is a matter for another paper and further research, but in closing I would stress that post-conflict education should not be unduly pathologised. As one expert on education and conflict puts it: “there are grave omissions—or contradictions—in the curricula of both stable and conflictual societies, omissions which contribute to a continued acceptance of war.”

Outsiders engaged in legal education reform after war must be aware that seemingly stable societies have not got it all right. One need think only of the neglect in some Canadian common law departments of this country’s bijural traditions or the fact that in many British law schools comparative law is not even on the curriculum, to realize that pluralism is not yet embedded into the fabric of legal education in the western world. As in all legal and social reconstruction efforts, the importance of humility on the part of outsiders must be underlined.

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Cultural Differences and Legal Perspectives  
Measuring Intercultural Interactions and Outcomes at the Summer Law Institute – Kenneth Wang School of Law, Suzhou, China

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Over the years, psychological studies comparing East Asians and Westerners reveal, in a variety of ways, a statistically significant difference between the two groups when it comes to perceptions of rules and relationships.\(^1\) For instance, studies have shown a greater proportion of East Asians tend to organize information about objects by their relationship to each other, rather than by categories devolved from abstract attributes of those objects.\(^2\) Westerners showed a statistically significant difference from East Asians in the way they perceive objects in relation to their environment.\(^3\) These studies point to a cultural tropism towards organizing information, developing rules and interacting with the environment in ways which vary between Westerners and East Asian cultures. Such tendencies are reinforced by testing, even in what may be believed to be “culture free” exams. For example, a student wishing to join the Chinese Civil Service must take the Civil Service Examination given at the end of November every year. The following is a sample question in the exam meant to test logic.

What is the next number in this sequence?
256, 269, 286, 302, ( ? )

\(^2\) Liang-hwang Chiu, “A Cross-Cultural Comparison of Cognitive Styles in Chinese and American Children,” International Journal of Psychology 7, 235 – 242 (1972). This early study showed three objects to the children. The first two were a picture of a chicken and the other grass. Then a third picture was a cow. The children were asked which picture would they put the cow together with – the chicken or the grass. The study results showed a statistically significant portion of the American students preferred to group the objects in a “taxonomic” category (chicken and cow – animals) whereas, Chinese children preferred to group the objects by relationship (cow and grass – cow eats the grass). Also, see Nisbett at 140 – 141 for other studies.
\(^3\) Taka Masuda and Richard E. Nesbitt, “Attending Holistically vs. Analytically: Comparing the Context Sensitivity of Japanese and Americans,” 81 Journal of Personality and Social Psychology at 922 – 934. This experiment showed underwater scenes to Japanese and American university students. Each scene contained a “focal” fish – one which was larger, brighter and with more movement than anything else in the picture. The scene also contained other fish (though smaller, slower and not as notable as the focal fish), rocks, plants, frogs, snails, etc. After observation, each group of students was asked to write down what they had seen. American and Japanese students made approximately the same number of references to the focal fish. However, the Japanese students made more than sixty percent more references to the other objects in the picture than the American students. In addition, while each group made approximately the same number of references to the active moving animals in the scenes, the Japanese students made nearly twice as many references to the relationship with the background objects than did their American counterparts.
Typically, a western reader is trained to look for differences in values of each number, seeking a pattern like Fibonacci numbers, or prime numbers. Westerns are less likely to consider the relationships of the digits internally within a number. The correct answer lies in quickly discerning those internal relationships and applying them.

The tilt in East Asian cultures towards organizing and processing information according to internal relationships, rather than by external categories defined by abstract rules. Western legal systems focus most acutely on principles of law, while the traditional Chinese view is that such abstract principles are too mechanical and devoid of substance. Rather, the emphasis has been on conflict reduction and stability.

Some have argued that these differences stem from fundamental philosophical differences in the foundational philosophies of East and West. Others believe that these variations stem from the differences in language. Others cite the traditional Chinese cultural emphasis on hierarchy. It’s not that all East Asians coming from a traditional Confucian influenced cultures think one way and Westerners think another. That is patently absurd, and the studies do not support that. The results of the studies do assert that between like groups of East Asians and Westerners, a statistically significant difference does exist as to how each group on the whole reacts to relationships, categories and patterns.
and rules. The difference reveals a tendency in a culture, not a guarantee of certain characteristics in every individual. Regardless, these deep differences exist.

There is a growing scholarship examining the interplay between cultural variations and legal perceptions and judgments. From the early works of Michael Saks and Robert Kidd⁹ building on the work of Daniel Kahneman and Amos Tversky¹⁰ the trajectory of this research has been the exploration of a variety of legal subject matters employing the schema of heuristics and cognitive biases to challenge the rational actor assumptions of law and economics proponents.¹¹ These heuristics and cognitive biases prove to be informed by cultural variations creating an uneven perception and application of the law. Such uneven perceptions and applications of the law create a disequilibrium in attempts to universalize the concepts of law and the rule of law.

These differences and their implications for the principles of causation and culpability in tort law are explored by Levinson and Peng in their ground breaking work “Different Torts for Different Cohorts”.¹² This study demonstrated how cultural differences between American and Chinese subjects skew decisions on causality, culpability and foreseeability in legal judgments.¹³ It was built on Peng and Knowles’ work which demonstrated how East Asian subjects made judgments of causality and responsibility based more upon the consequences of the action (fatal injuries versus superficial injuries), as opposed to American subjects who made their judgments of causality and responsibility based more upon the intentionality of the actor rather than the consequences of the action (intention versus accidental infliction).¹⁴

Measuring Outcomes

Each year for the past four years we have brought together Chinese law students with their colleagues from the United States and Europe at the Kenneth Wang School of Law in Suzhou, China for a three week skills course on International Business

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¹³ Id.
Informed by the research in cross cultural psychology, we have embarked on using the various tools available to researchers to measure the differences and outcomes of the program.

Similar to Kubler-Ross’s 5 stages of death and dying, Dr. Milton Bennett created the Developmental Model of Intercultural Sensitivity (DMIS). This framework grew from Bennett’s observations that individuals when confronting cultural differences react in a predictable manner as they gain intercultural sensitivity or competence. He categorizes this path towards cultural competence as a linear progression through two primary phases each with three separate stages. The two primary phases are ethnocentric and ethnorelative. This model has assisted us in structuring our Summer Law Institute to provide an experience which fosters an intense intercultural experience for our students. Below is a description of the model along with our observations of how the students in our program progress through these stages. It has been a helpful model in calibrating the outcomes of our efforts.

**Ethnocentricity** - The first three stages of intercultural sensitivity revolves around ethnocentricity where one’s own culture is perceived as “central to reality”. With the exception of a few students from heritage families or who have lived or studied for a period of time in another culture, most of the students in the program are new to the intercultural experience. They predictably exhibit the following behavior patterns:

**Denial** – This is the initial stage where one avoids the other culture by maintaining a psychological and/or physical isolation or avoidance from another culture. This is

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15. The Summer Law Institute is a multi-institutional undertaking. It is formed by 3 partner schools which are primarily responsible for the administration of students entering the program from their jurisdiction. Cornell University Law School is the American partner, Bucerius Law School is the European partner and the Kenneth Wang School of Law is the Chinese partner. In addition, the institute is supported by four cooperating institutions – University of California – Hastings College of Law, Tsinghua University Law School, Pacific/McGeorge School of Law and the University of Milan School of Law. Each institution provides faculty and students. Financial support for the program is shared by the Wang Family Foundation and the Zeit Stiftung Ebelin und Gerd Bucerius. The Summer Law Institute at the Kenneth Wang School of Law is now the largest and most complex summer program in China. Each year it hosts approximately 100 law students. 50 are from various law schools in China (this past year over 34 Chinese law schools were represented). The other half is split between American law students (this year representing about 14 different American law schools), and European law students (this year representing 8 European law schools).

16. Elisabeth Kübler-Ross, *On Death and Dying*, Macmillan, NY, 1969. These stages are - Denial, Anger, Bargaining, Depression and Acceptance. It should be noted that Kubler-Ross emphasized that these stages are not necessarily linear nor do all individuals experience all of them. She did claim that people experience at least two of these stages when confronted by significant personal loss.

commonly observed with foreign students on University campuses. The foreign students tend to cling together, either - if they are in sufficient numbers - their own country natives, or if not in sufficient numbers – other foreign students. Sensitive to this problem, and aware that “old habits die hard”, we instituted a variety of measures to encourage our students to get past this stage.

For example, with housing we offer the western students a choice of a single at the University’s dormitory or a double at the University owned hotel. The doubles will pair a Chinese student with one of the western students. We’ve observed that the western students, in particular American students, have a more expansively defined sense of personal space. The natural tendency has been for them to choose a single. However, the singles are located in the foreign student dormitories which while blessedly air conditioned does not have the normal hotel services (towel and bed linen change) but does have an 11 pm curfew. It is also a longer walk from the dorms to the law school. When confronted with these factors, most western students choose the double room in the hotel. To further encourage interaction, the students are divided into teams – normally 4 Chinese, two Americans and two Europeans to a team. Each team represents a client and competes with another team. By structuring the living accommodations and teams in this manner we have created a situation where students (Chinese, European and American) have no choice but to interact.

Defense – At this stage one recognizes cultural differences, but one’s own culture is perceived to be the only legitimate one. A “them vs. us” attitude represents this stage where the psychological mechanisms of “denigration”, “superiority” are initially experienced. Finally, the mechanism of “reversal” may be observed. This is where everything in one’s own culture is denigrated and the other culture is superior.

As a result of the interactions, many of the students quickly enter into the “defense” stage. The “them” vs. “us” denigration and superiority attitude is seen (particularly among some of the American students) at the first assignment. This assignment calls for drafting a memo analyzing the legal consequences of an international sales transaction. The fact pattern is complex and ambiguous. Because of language and their training, Chinese students, while more knowledgeable on the specifics of the applicable law, do not do as well as their western counterparts (particularly American students) in spotting many of the issues. This at times leads to viewpoints in which the Chinese students conclude that the western students do not know the law and are poorly trained. Whereas, some of the western students complain that the Chinese students do not analyze the problem and simply leap to the first conclusion of law. Unfortunately, a small number of students can not move beyond this stage, and their discomfort reflexively exhibits itself in negative denigrating behavior. These students can cause a great deal of unease among their colleagues as well as faculty. On very rare occasions we have had to dismiss a student from the program.
Minimization – This stage is represented by a homogenized view of all cultural differences. There are no significant differences between cultures. “We are all human beings with the same needs”, “We all want freedom”. The vast number of our students after the intense three weeks of cultural interaction arrive at this stage. Their perspective of each other’s culture has been changed to now minimize any differences. “People are the same the world over.” For the overwhelming number of the Chinese law students, the program would be the first time they have ever encountered a westerner. Their viewpoint is not dissimilar. “Westerners are a lot like Chinese”.

Ethnorelative - The second phase of the model is ethnorelative. Bennett again divides this into three stages.

Acceptance – this initial stage of the ethnorelative phase has one accepting that one’s own culture exists in a world of equally valid other cultures. It does not foreclose value judgments. Rather, these judgments are not ethnocentric. One is curious and respectful of other cultures and cultural differences. We hope to move some of our students to this stage, where their world view of themselves and their Chinese, American or European colleagues are now less judgmental from a cultural perspective. Our hope is for them to accept that different views exist and their perspective is just one of many other valid world views. Not many students arrive at this stage after the three week program. Those who do generally have had intercultural interactions before the program. Some are able to build on their prior experiences. Each year a few western students who have studied in China have observed that even though they may have spent a semester or a year in China (normally studying the language), they had a more engaged and rewarding experience in the three weeks where they actually had to work with their Chinese colleagues. They felt that they gained a much more meaningful insight into the people and culture as a result of the way the program was structured.

Adaptation – in this stage one’s cultural perspective has expanded to incorporate another cultural perspective, and one has developed a pluralist appreciation of another culture. A person at this stage will be able to alter one’s behavior to that appropriate in another cultural context. There is not enough time within the three weeks to have someone just beginning an intercultural experience to arrive at this point. However, for some of the students who have had significant prior interactions, the intense three week experience will reinforce behavior sensitivities which will assist them to progress to this level.

Integration – the final stage of the ethnorelative phase is where one’s view of self is expanded to a self identity which moves in and out of different cultural perspectives. This stage is not any better than the prior one of adaptation. It is a stage more commonly experienced by those who self identify as culturally marginal – expatriates, minority groups, etc. Given the youth of most of the students, with the exception of those from heritage families, most students do not approach this stage.
Working with the U.C. Berkeley Culture and Cognition Lab and its director, Prof. Kaiping Peng, we have been studying the outcomes of the program over the last four years. We tested two sets of issues in this study. The first issue we tested was for cultural differences, and how members of different cultures view themselves, their relations with others, and their judgments of legal issues. We examined whether these groups react to cultural values and legal judgments in similar ways. This set of questions builds upon the existing scholarship in the field, and establishes the base line of cultural differences to help us to address the second issue.

The second issue we tested in this study focuses on the effects of cross-cultural interactions and learning: How do culturally diverse people respond to cross-cultural learning? What factors affect the outcomes of cross-cultural learning? By focusing on quantifiable data in this study, we can empirically test some of the most fundamental questions in cross-cultural education.

Informed by the existing scholarship, we predicted that Americans would be more individualistic in their judgments of values and to be more legalistic in their judgments of legal cases while Chinese would be more likely to endorse collectivistic values and to more likely to choose equitable rather than technically correct legal judgments. We also predicted that cross-cultural legal education would fundamentally alter students’ value orientations and their ways of judging legal questions, but the magnitude and scores of these effects were the subject of the empirical tests we devised.

For the legal judgment questions, we presented the students with four factual scenarios which represent common examples of legal disputes. The scenarios are designed to approximate varying types of legal cases. All these cases were tested in a previous cross-cultural study on law and psychology (Levenson & Peng, 2004) that had shown cross-cultural compatibility and validity. Students were asked to evaluate a variety of situations.

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18 We must emphasize that the “results” reported in this paper are very preliminary, as much work still needs to be done in analyzing the accumulated data.
19 A 2x2 Culture by Time Between Subject Design was utilized in this study. Both groups received the test before and again after, the cultural training.

Subjects were presented with two forms of questionnaire; both forms were matched to test the same psychological variables in questions. Materials were created in English with consideration for cross-cultural understanding of the concepts. The survey was translated into Chinese and translated back into English by separate translators. The authors resolved the few discrepancies that emerged.

We used the most famous individualism-collectivism scale as a measurement of cultural values (Triandis et al, 1988). Individualism, as a psychological concept, is defined by three behavioral components - emotional distance from one’s in-group (e.g., parents, siblings, relatives, etc.), personal goals having primacy over in-group goals, behavior regulation by attitudes and cost-benefit analyses, and little avoidance of confrontation (Triandis et al., 1988; 1990). Collectivism, on the other hand, is defined by family integrity, a homogenous in-group along with strong in-group/out-group distinctions, the self being defined in in-group terms, and regulation of behavior by in-group norms, and hierarchy and harmony within an in-group. Previous research has shown that individualism-collectivism affects people’s self-concept, (Triandis, McCusker, & Hui, 1990), conflict resolution, (Triandis et al., 1988), and attribution (Morris & Peng, 1994).
While the study is continuing, preliminary results confirm the cultural differences found in prior studies, even though the subjects in this study have legal training. American law students were more individualistic in their self-image than their Chinese counterparts. The concentration on self revealed itself in legal judgments made by the American students that tended to assume more individual control of circumstances, and contrasted with the responses of the Chinese students, who tended to assume individuals had less ability to act on individual free will. 20 Given that base line, we looked at the second issue – the effects of cross-cultural training on our students.

In the Suzhou study, we tested the base line difference between the two cultural groups by examining Chinese students and the American students' responses in a before and after test. We found that before cultural interaction and training, there were indeed cultural differences on individualism-collectivism, such that the American students were measurably more individualistic (M = 3.73) than the Chinese students (M = 3.36).

We then tested the cultural difference after the cultural interaction and knowledge training. We found not only that there were changes, but that the difference was somewhat reversed. While both groups had moved towards each other, the American students' responses had become even less individualistic (M = 3.33) than those of the Chinese (M = 3.49)!

20 Once again, we designed two forms for the same kind of legal scenarios. The first kind of scenario involved individual responsibility and the second kind concerned group responsibility. Form A was administrated at Time One before cultural interaction and knowledge training and Form B was administrated at Time Two after cultural interaction and knowledge training.

The first case in Form A described psychological research indicating that the perceived moral culpability of an actor affects a lay person’s casual determination. Mark Alicke conducted studies in order to show that when multiple potential causes are present, people most frequently select the most morally blameworthy cause as the likeliest cause. In Alicke’s studies, when presented with a hypothetical fact pattern relating to a car accident, subjects cited the driver (the actor) as the primary cause of the accident more frequently when his reason for speeding was to hide a vial of cocaine than when it was to hide his parents' anniversary gift. Perceivers also consistently selected the actor as the primary cause of the accident despite the presence of other causal factors, such as an oil spill or tree branch blocking a traffic sign. Alicke described this effect as Culpable Causation, “the influence of the perceived blameworthiness of an action on judgments of its causal impact.”

The second case in Form A teased out cultural differences in causal explanation. In a series of studies testing cultural differences in attribution, Peng and his colleagues (Morris & Peng, 1994; Morris, Nisbett, & Peng, 1995; Peng & Nisbett, 1997) used descriptions of recent mass murders committed by either a Chinese or an American as the stimuli, and asked American and Chinese college students to explain these events. They found that Chinese indeed place more weight on situational, social, and global causes, as compared with American students. Such cultural differences were also shown to exist in people's counterfactual reasoning about the cause and effect relations of mass murders, as well as in the media reports in a Chinese newspaper (The World Journal) and an American paper (The New York Times). Such findings are significant as well as provocative, because social psychologists and cognitive psychologists have long argued that there is a strong universal tendency for people to attribute behaviors of humans and objects to internal dispositions of an individual or object, which has been called the “correspondence bias.” It is well documented that such a bias exists even when situational influences are obvious, leading to the so-called “fundamental attribution error.”
We note that the difference between the two groups narrowed by more than 56% (from .37 to .16). This demonstrates a pronounced movement by both groups towards the mean. What was most compelling was the movement among the students – American students’ attitudes of individualism moved three times as much as the Chinese students. We theorize that this large movement owes much to removing the American students from their original environment and placing them in an entirely different cultural setting. The movement of Chinese students to a more individualistic self-perception demonstrates the effects of cross cultural interactions even when remaining in one’s original environment, but interacting with a different population. This measurable change occurred within a three week period of intense multi-cultural interaction. We expect an even greater movement in students who engage in a longer program or have greater opportunities for education abroad programs.

These preliminary “results” will assist in focusing our continuing research. That research will enrich our understanding of how culture and perspectives of law are intertwined. We, as teachers of the law, must inculcate in our students a sensitivity to the vagaries of cultural influence on the legal perspectives and outcomes in this interrelated but diverse world. The research suggests that such a sensitivity can be fostered by intense cross cultural interactions in a simulated real world legal environment where students from different legal and social cultures must work with each other. It is one way of preparing our students for the world they will inherit and shape.
Teaching International Economic Law in China Law Schools: 
A Personal Experience

Haicong Zuo

Introduction
International economic law is the newest law discipline in China law schools. Since the discipline is not mature and developing very rapidly, the teaching of that discipline is quite challenging. The course is internationalized and may reflect whether the western ideology and norms can be accepted by Chinese professors and law school students. In the presentation the author will explore the teaching in three aspects: concept and structure, basic ideas and teaching techniques.

I. Concept and Structure of International Economic Law
In China there are more than 30 kinds of international economic law textbooks. The mainstream concept about international economic law in China is much broader than that in Europe, United States and Japan, but similar to the concept of international business transactions in the United States.

Few professors among whom the author is have divided the international economic course into two distinctive parts: narrow international economic law and international business law.

In the narrow international economic law part the main contents include the law of WTO, IMF system, World Bank system, Basel accords, FTAs, bilateral investment treaties, bilateral taxation treaties and trade laws of main trade partners. The law of WTO may be half of teaching load in the part,

In the international business law part, we discuss the Unidroit Principles of International Commercial Contracts, CISG, Incoterms 2000, Hague Rules, Warsaw Convention, London Institute Cargo Clauses, URC, UCP, International factoring, international loan agreements, international business guarantee, Intellectual properties conventions, joint venture, etc.

The above-mentioned understanding and structuring of international economic law is helpful to my students. It conforms to the well-established conceptual division between public and private laws since the Roman times.

Normally the course only occupies 3 or 4 hours each week, 54 or 72 hours in total, so the schedule is quite concentrated.
II. Basic Ideas of International Economic Law

As usual every China law course has an introduction chapter. International economic law is not an exception. In the chapter we talk about the concept, structure, basic principles, sources and history of international economic law.

A. Basic ideas in narrow international economic law part

International economic law is a new branch of international law, emerging with the establishment of the Bretton Woods Institutions. It consists of a body of rules regulating economic relations between nations. Its basic principles include economic sovereignty, non-discrimination, reciprocity and mutual benefit and reasonable market access. Among its sources, domestic trade laws are elementary source, international conventions are mainstream one and international customs are marginal.

The basic ideas in international economic law are comparative advantages in economic perspective and free trade versus reasonable trade protection in political economic perspective. These ideas help understanding international economic norms. Since China has been benefiting from globalization and multilateral trading system, students can accept these ideas naturally.

Other basic ideas are concerned with sustainable development and developing country perspective. We talk about the harmonization of economic development and environmental protection. We defined China as a responsible stakeholder and developing country.

B. Basic ideas in international business law

International business law or new merchant law is an older separate branch of international law than international economic law. Although it originated in medial lex mercatoria, modern lex mercatoria or new merchant law emerged during the end of 19th century and early period of 20th century. It regulates transnational business transactions between private individuals. Its basic principles are party autonomy, good faith, etc. international business usages are principal and central source, while international business treaties are important one, international restatement and model law are supplementary.

The basic ideas are uniform law and autonomous body of law. We emphasize the purpose and aim of international business law is to have a comprehensive, systematic body of law, which applies uniformly to international business transactions and separated from domestic business law. The body of uniform law should develop mainly by international business community by codifying usages and restatements by international businessmen themselves.

Since China is quite active in adopting international usages and conventions, students are easy to agree with these ideas. We also advocate China should revise Article 102 of the
General Principles of Civil Law, and replace it by a new clause which is friendlier to international usages and practice.

III. Teaching techniques in international economic law

In the course I combined the conceptual analysis with case study.

A. Conceptual analysis
This approach is traditionally the main teaching style in China law schools. Teachers emphasize the concept and structure of the discipline, as mentioned before. When teaching concert legal issues, teachers always refer to concept, characteristics of certain legal relations, rights and obligations of parties, logic rationale of the rights and obligations.

Besides that I also make comparison with domestic business law and public international law when discussing specific legal issues. For example, when teaching the formation of international sale contracts, I refer to China Contract Law and require students find the differences and similarities between the CISG and China Contract Law.

B. Case study
In WTO system although panel and the Appellate Body reports only binds disputed parties, they can create reasonable expectations for WTO members and constitute de facto precedents, so the teaching can not neglect the huge case load of the WTO. Thanks to the website of the WTO, students can get the jurisprudence easily by access to internet.

In business law teaching we have to deal with some leading cases judged by courts in UK and the United States because these cases are so influential all over the world. For example we have to refer to the Liverpool case in teaching the Hague Rules, the Sztejn case in discussing fraud exception of letter of credits.

Since China courts, including the Supreme Court already made lots of international business judgments and the CIETAC arbitrated many business cases, we also always make reference to these judgments and arbitral decisions.
IALS Conference:
Effective Teaching Techniques About Other Cultures and Legal Systems
Effective Techniques for Teaching about Other Cultures and Legal Systems
Teaching Experience at the Faculty of Law, Masaryk University

Věra Kalvodová
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The education of students in the area of foreign legal cultures and legal systems, as well as in the area of foreign legal orders should be a standard component of the studies at law faculties. Despite varied integration processes, law has always been tied up with specific social, economic and political conditions of the given state and the state’s unity with a certain legal culture and legal system. Nevertheless, legal cultures evidently influence each other and often blend together, which is particularly apparent in the case of Continental and Anglo-American legal cultures. As a result of migration and behavioural norms, which stem from the immigrants’ original, often fundamentally different, legal cultures are more or less transposed into “home” legal systems. Therefore, the understanding of law as a normative system in a wider context and the successful performance of legal professions is significantly connected to the knowledge of law, its development and function, which goes beyond the knowledge of the nation’s own legal order and system.

The Faculty of Law at Masaryk University implements the education of its students in the above mentioned areas at several levels.

A very traditional and important component of the study programmes particularly at the Central-European law faculties is the study of ‘Legal Theory’. In the case of the MU Faculty of Law, the ‘Legal Theory’ course is one of the compulsory courses in the first year of studies and constitutes thus the basis for the study of individual legal disciplines. Moreover, the ‘Legal Theory’ course also covers the issues of so-called large legal systems. Using the comparative method, students are introduced to the foundations of legal cultures out of Europe, to the differences among them, for example, regarding the sources of law, the role of a judge, the importance and influence of other normative systems (religion, morality) etc.

The next level in gaining knowledge of foreign legal systems and orders are specialised courses taught by “home” teachers in either the Czech or English language. It is currently possible for the students to choose a course from a broad range of selective courses, which are all comparatively oriented. The following courses can serve as examples: ‘History of European Legal Thought’ (i.e. Continental law versus common law, Continental legal thinking versus jurisprudence, the root of European legal thinking, the main ideas of modern European legal thinking), ‘Constitutional Systems’ (a comparative overview of contemporary constitutional systems of the USA and European countries), ‘Comparative Political Science’ (comparison of selected political systems of USA and European countries), ‘Public Administration in the Czech Republic and Europe’ (the main European public administration systems), ‘Basics of Polish Law’ (a course taught in Polish, with the
focus on selected problems of constitutional, administrative, financial, criminal, civil and commercial law). The range of courses also reflects on the development of modern communication technologies and the effect of law in cyberspace. For example, students show a great interest in the ‘Normative Systems in Cyberspace’ course, which covers the classification of normative systems, Islamic law and information networks, or the ‘Critical Legal Theory’ course where the current problems of Continental and Anglo-American Law are discussed.

The grasping of foreign legal systems would be of course impossible without direct contact with “native” lecturers who can use their great expertise to present information, get involved in discussions and answer students’ questions. Therefore, there is a strong tendency at the faculty to offer as many such opportunities as possible either in the form of lectures and seminars taught by visiting professors or via specialised courses. A programme of courses taught by visiting professors in other languages than Czech was started last year and received great publicity amongst students. The programme’s main purpose is to offer a wide variety of intensive courses in the length of a minimum 12 teaching of hours, with the focus on selected problems of a legal system, legal order or a branch of law. These courses are included in the faculty’s study programme and students are awarded credits for the successful completion of the courses. An example of such a course is the ‘Legal Cultures of the World’, which was taught last year and focused on the specific features of various legal cultures. The course offered a comparative perspective both to the general concepts of law and to particular nuances of the Czech, Belarusian, Indian, Iranian and Australian systems of law. The course hosted distinguished lecturers from the respective countries who presented authentic analyses of their legal cultures.

An example of another very successful project is the ‘School of Austrian Law’, which offers a unique opportunity for students with a good command of German to acquire the knowledge of Austrian private law. The best students in this programme are also offered traineeship positions at Austrian firms. This project is implemented in cooperation with Wirtschaftsuniversität in Wien.

Additionally, students gain knowledge of foreign legal systems and orders as part of their Czech law studies. For example, this is typical within criminal law studies where I am one of the teachers. In teaching the criminal procedure it is necessary to make a comparison particularly with the Anglo-American procedure. Although the Czech criminal procedure is by its nature a Continental type of procedure, its development since the beginning of 1990s is characterised by the gradual acceptance of certain Anglo-American juridical institutes in the Czech procedure leading to the creation of a sort of mixed type of procedure. For example, the deflection from the criminal procedure, the introduction of certain elements, which empower the contradictory nature of the procedure etc., are all evidence of the blending of the Anglo-American and Continental criminal procedure principles. Therefore, when teaching this branch of law, it is necessary to explicate to the students the origin of some juridical institutes, draw the students’ attention to the similar and different features of the Continental and Anglo-American criminal procedure and to the specific influences the different principles may have on the practical application of this
branch of law, etc. A further demonstration of the influence that Anglo-American law has had on Czech law is the development of a penal system within Czech criminal law whereby the concept of alternative penalties and the restorative justice principle were introduced. Furthermore, it is also, for example, worth comparing Czech law and Islamic law. A large number of similar instances of comparisons can certainly be found also in the relation to other branches of law.

Apart from direct teaching, students are encouraged to acquire knowledge of other legal systems and orders also via other methods. The prerequisite for the graduation at the MU Faculty of Law is to pass the state final exam, which also consists of the Diploma thesis defence or Bachelor’s thesis defence in the Bachelor’s degree programme. The theme of the thesis can either be selected from the list of proposed themes offered by individual teachers or students propose their own themes. The theme proposals are in the majority of cases explicitly aimed at the international comparisons. Furthermore, the comparison of foreign legal orders is a standard component of the theses where the primary focus is on Czech legal issues. An appropriate proposal of the thesis theme may thus induce students to develop a deeper interest in the above mentioned area; the students are motivated towards systematic research and study of foreign resources.

With regards to the teaching methods and approaches, it can be argued that obviously there must be certain differences in teaching law within individual legal systems. This is evident from the case of common law and Continental law where the differences in the sources of law partially require a different teaching approach. While in the case of common law the teaching approaches rather take the form of clinical teaching by means of case law, in Continental law, on the other hand, the main focus is on the text of the legal code, its interpretation and application in the specific context. Nevertheless, it is evident that a higher importance is placed upon the practice of the courts also in the Continental law, which gets reflected in the law education.

In my opinion, the education regarding other legal cultures within the studies at the “home” law faculty requires no specific methods in comparison to the education regarding the nation’s own legal system. The focus should be rather on creating an appropriate combination of traditional teaching methods, i.e. lectures and seminars, with the more modern teaching approaches making use of information technologies. The Faculty of Law at Masaryk University uses a highly effective information system, which enables a wide use of e-learning. The development of e-learning has been one of the main focuses of the university over the past five years and it has become the most popular form of teaching among the students as well as the younger generation of teachers. The applications within the information system allow the creation of interactive curriculum, the distribution of study materials, the submission of seminar papers, student-teacher discussions, as well as student forums and other activities. For example, the above mentioned courses such as ‘Critical Legal Theory’ and ‘Normative Systems in Cyberspace’ make full use of the information system tools. E-learning does not replace the direct teaching methods and face-to-face student-teacher contact. However, it appropriately complements the traditional
teaching methods and also gives the students the opportunity to be fully prepared for lectures or seminars.

Furthermore, the ‘Public Health Protection’ course taught by a visiting professor from the U.S.A. has received wide publicity among students as a result the fact that the course has brought about new teaching approaches. The students discussed a specific topic with the students at the John Marshall Law School in Chicago via the Internet telephony mechanism of Skype.com.

My aim was not to provide a complete overview of all the possibilities that the faculty offers to its students. My intention was rather to present a few specific examples, which would demonstrate the approaches our faculty takes in the education of students in this very important field.

In conclusion, I would like to sum up this paper by stating that the acquisition of knowledge of other legal cultures, systems and orders takes a high precedence at a time of the cultures influencing each other and blending together. And law faculties thus play a key role in the process.

Abstract:
The aim of this paper is to present the teaching experience in the area of foreign legal cultures, legal systems and orders at the Faculty of Law, Masaryk University, Brno, Czech Republic. The author of the paper discusses the specific possibilities in the education of students in the given areas, as well as teaching methods and approaches that are used and developed.
The effective methods of legal teaching in Georgia

Ketevan Meskhishvili

The methods of legal teaching is different and individual in every country. It greatly depends on the legal order and legal traditions of the state, also on the level of the legal preparation of the society and the system of education. Between this conditions it is worth to mention the legal family the state belongs to. The differences between the effective methods of legal teaching is apparent especially in continental Europe and common law states due to in such states functioning legal order.

In the states of continental Europe exists the written, codified legislation. A judge is independent in his activity and is subject only to the constitution and law. The citizens can’t be released from the subject responsibility, because of lack of knowledge (ignorance) of legislation. It means, that not only layers, but also citizens are obliged of getting closely acquainted with legislation. Because of this reason, in the states of continental Europe the level of teaching of the legislation is higher then in common law states.

In states of common law there is attached the especially importance to the teaching and analyzing of the court practices.

Regarding the existing teaching methodologies in Georgia:

The legal education in Georgia on the level of undergraduation is very low. The pupils are delivered only the general information on the legislation of Georgia. For enrollment in the universities the university entrants are not required of the general legal education. Proceeding from this reason, the legal education at the Georgian Universities begins from zero. This circumstance greatly determines the teaching methodologies at the higher schools of Georgia.

Teaching methodology impacts also the three level system of education - Bachelor, LLM and PHD.

On the level of Bachelor’s teaching, at the first and second year the students are giving the general legal education. At the first level of education the preference is given to the theoretical lecturers, mainly to the Doctors of Law. The students study their legal materials from text – books and presentations prepared from their lecturers. Under guiding of the lecturers there are taking place discussions and debates between students on the given legal materials. During the 3 and 4 teaching years the students study the legal subjects basically. They consider the legal materials in details. They get acquainted with the court practice. On the mentioned level of teaching there are used the following methodologies of the legal education: - the individual reading of law, it means, that every student reads the law
independently, then takes place the debates between the students on the subject how rightful they have understood the substance of the law; - the expertise of the law in hierarchy, it means verification of legislation in accordance with primary legislation; - the composition of drafts of laws, it means, that the lecturers nominate the topics, students choose one of them, then get familiar with the practice of other countries in the chosen field and write the bill.

The teaching methodology in LLM differs from the Bachelor’s teaching methodology. On the second level of teaching the great importance is attached to the legal practice. Because of this reason the lecturers in LLM mainly are the practicing lawyers. The LLM students work on the materials taken from the different instances of the courts. The students decide the cases in written form and then they try to prove the rightfulness of their decisions orally. Sometimes the debates turn into the moot courts. The arrangement of moot courts at the lectures is already the tested teaching technology in Georgia. The student’s job is not only the solving of cases, but also composition of them. On the same level of teaching there is used the comparative methodology of legal research. The LLM students get familiar with the experiences of the foreign countries. They read also the foreign literatures and the decisions of international courts and then they debate and argue them at the lectures. At the same level of teaching there is encouraged the scientific – research. The LLM students have the opportunity to gain the credits via participation at the scientific conferences, preparation and publishing of the scientific articles.

On the ground of all the above mentioned one can be conclude the effective methods of legal teaching are quite different in Bachelor’ and LLM:

1. **Bachelor**
   - The teaching of the legal materials from text-books;
   - The arrangement of debates on the materials taught;
   - The individual reading of laws;
   - The compositions of the bills;
   - Getting familiar with the foreign literature and practice;
   - The preparation of the legal materials and the presentation of them;

2. **LLM**
   - The research of the court materials;
   - The generalization and analyzing of the court practices;
   - Taking decisions on the ground of the materials of the finished cases of the courts.
   - The preparation of treaties, administrative acts and other legal documentations and the practicing of their petition;
   - The comparison of the legal practice and the acting legislation;
The preparation of the referats on the elected legal themes and there presentation;
Writing of the scientific articles and their presentation;
The arrangement of the moot-courts and the participation in them.
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Transgressing to Teach: The ‘Becoming’ Law Teacher

Dr. Shashikala Gurpur, Principal, Symbiosis Law School, Pune, India

“To begin always anew, to make, to reconstruct, and to not spoil, to refuse to bureaucratize the mind, to understand and to live life as a process – to live to become…”

Paulo Freire

The title of this paper is inspired by the book ‘Teaching to Transgress’ by bell hooks, writer, teacher, and insurgent black intellectual. She posits education as the practice of freedom. According to her, the most important goal of the teacher is, teaching students to transgress the racial, sexual and class boundaries to achieve freedom.

The focus of this paper is the self-reflection of this author while transgressing various boundaries defined by the conventional teaching approach, in the light of experiences. Experiential teaching as much as experiential learning is the inseparable component of an electrified, energized classroom. Here, effective teaching is bound up with authenticity in the voice, non-verbal and verbal communication skills and a deep learning. The teacher who transgresses the given boundaries is an evolving, ‘becoming’ teacher, whose being gets dynamic by experiencing the freedom. The transition may have striking similarities with the ultimate boundary-transgressing ‘Avadhoota’ phase of any great teacher (Acharya) in Hindu tradition or the wise silence of the Zen master as the ‘witnessing self’.

What happens to the teacher while transgressing such boundaries? How does such a teacher overcome the traps of culture, gender, nationality and arm chair intellectualism? What is the impact?

The author has attempted to narrate the transgression of boundaries from ‘being’ to ‘becoming’ a law teacher, in the multiple intertwined contexts: of culture, gender, age,
profession, nations, demography and disciplines. The author does not intend to claim this as the ideal, objective and exhaustive account. For the purpose of distinguishing each transition, the following sub-heads are used:

_Liminality in Law teaching⁵:_

Hailing from a rural area and having observed archaic methods of cattle-selling, the author has used some experiential examples while explaining ‘offer’ and acceptance’ in dramatizing the quiet conversation between the seller and the buyer. In the annual cattle-festivals in the villages, the buyer and the seller interface each other in an expression-less setting, where the two cover their hands under a towel. The signs of offer and acceptance are communicated by pressing each other’s corresponding number of fingers under the towel. The method of defining Privity in a huge market is unique.

The said example was a very engaging and entertaining entry point than reading out the sections of the Bare Act or rendering the by-hearted definitions from Anson’s Law of Contracts. This provided insights on the non-formal law, thereby dispelling the superiority perspective in a literate, modern context. It would also serve as an example of transgressing urban literate bias yet critically reconstructing the legal understanding of both the worlds. Many such examples are traceable in tribal methods of dispute settlement, informal struggles against injustice, family business practices and so on. Transgressing the classroom to enter and experience the community, would enrich and simplify a law teacher.

_Transgressing the cultural, national and senior citizenship boundaries:_

Cross-cultural landscape is difficult to navigate due to the complexity of issues and emotions involved. The author has undergone the transition in personal domestic context alongside the professional sphere. The complexity is further enhanced by the themes around which such experience has intensified.

The author recalls the conversation: ‘Imagine those embryos, what if they are flushed out’

It was the center of imitation, humorous criticism being a suggestive theme for the morning coffee break in one of the European law schools where the author had engaged in teaching in the mid 90s. They were referring to their researcher-colleague’s emotional outburst while referring to the interconnected issues of disposal of long term frozen embryos and their right to life.

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⁵ Liminality refers to being at a boundary or threshold. The term is used in Cultural Studies, to denote identity – transition. In this case, it refers to Author’s specific context of transcending the rural-urban identity threshold
Another angry and emotional outburst was by the undergraduate boys in their tutorials, where they vehemently supported ‘unborn person’s right to live’. Their reasons were in their heart and in faith, as much as in the selective favorable information that they had gathered. The author was not surprised to understand why abortion was outlawed in the said legal system.

Having come from a nation-state which aggressively campaigns for population control (termed as ‘family welfare’), where abortion-availability was then advertised indiscreetly, where the fate of an unwed mother can be most cruel than a tortured war prisoner, the author’s emotions and approach were context –specific. The context was politically pre-defined, though physically left behind. Bordering on skepticism and being judgmental (even to label it as ‘fundamentalist’, ‘too archaic’, ‘against the female autonomy’), the author had to transgress these socio-political bias and cultural mind blocks to understand and accept ‘other’ ways of knowing and believing and therefore, their advocacy. Only then, the classroom could neutralize to release the power of engaged learning, than distanced disturbed climate of extreme disagreement. A student later narrated how the author’s approach had melted the rigid stance of some of her classmates into a meaningful enquiry. In addition, the practice of individual talk-time of the author with the students had revealed the physical and learning challenges in some mature students, only to the surprise of other colleagues.6

Further, the author has experienced a wise transformation of respecting the choice of the mother and of learning to respect the choice of those who oppose abortion, for whatever reason. The transformation is in understanding and accepting one’s own limits. It is evident in all the following contexts.

In the same University, the author had taught development, human rights and gender courses. The site was the community/extension center. One of the themes was Domestic violence. The understanding of domestic violence in such an advanced country was shocking, as the author had gathered from the local counseling specialists7. Based on the feedback and data from the counselor, the author engaged the group in a consciousness-raising pedagogy. The experiences were pooled based on dialogical and group discussion methods. It centered on recall of problems faced and the solutions derived or proposed. Results were amazing. In every class, there were at least 4 out of 10, revealing their own experience of being the targets of such violence. Those who had divorced in their late fifties sharing the ‘empty nests’ lamented the time taken to muster their self-esteem somehow, to make that crucial decision to be freed from the agonizing past. Some had none to care for them and the extension center was the ‘blessing’ by facilitating a solidarity

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6 Interaction with the student had revealed that the poor response from a certain mature student was due to her challenged hearing.
7 Dr Colm O’ Connor, 1997, Family counseling Center, Cork, Ireland - Interviews
network. The approach and awareness of CEDAW\(^8\) were perceived as empowering. The author was invited to their special community occasions and meeting.

Thus was the birth of an idea, of understanding and tackling domestic violence as the violation of human rights.

**Pedagogy in Consciousness-Raising:**

When the author returned to India, the idea was shaped, with the help of an advocate-social worker friend, into a gender and law consultancy and training center.\(^9\) As a preventive measure, the center had organized various legal literacy programs. One such instance was introducing fundamental rights (e.g. themes of exploitation, custodial violence) in a role-play mode to the teachers and social workers in a paralegal program in order to create barefoot lawyers. The center continues to work on its agenda. The author has mainly used the ‘pedagogy of the oppressed’\(^10\) and, ‘consciousness-raising\(^11\)’ approaches in a variety of training sessions in order to deconstruct the law for lay people and often, to challenge stereotypes that disempower them. In all such cases, the basic premise was the experience that the participant/trainee has shared or disclosed. The long term outcome is amazing, as some of the trainees including trainee students and entrepreneurs have attained a higher social mobility and economic empowerment by practicing and following up on their lessons. The CEDAW and the international learning brought closer to them in the vernacular language, have rendered meaningful fruits in enabling these girls, women and families. It has dispelled the fear and disbelief in law. It has strengthened the democratic cause by bringing law closer to the beneficiary.

**Transgressing the Boundary of Disciplinary Studies:**

The author has further attempted to transgress the boundary of disciplinary studies while teaching law in a media school. The additional teaching in Political communication, international communication, Film and Audience studies, and cultural studies - has brought a rich perspective in transgressing the disciplinary boundaries. The engagement brought many lessons on the limits of the law and the power of communication in dispute resolution as much as in the blindness of the media to the law. It brought home the lessons

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\(^8\) The UN Convention on the Elimination of All forms of Discrimination Against Women, is hailed as the international convention on Human Rights of Women.

\(^9\) Ms Merlyn Martis, Director, DEEDS, Mangalore, India – during 1999-2000


\(^11\) It is an interactive collaborative process where collective experience sharing results in collective meaning-making. Catherine MacKinnon, who sees ‘consciousness-raising as the major technique of analysis, structure of organization, method of practice, the theory of social change of the women’s movement’, its importance and practice are emphasized by many feminist legal thinkers, as cited in Katharine T.Bartlett and Rosanne Kennedy (eds.), 1991, *Feminist Legal Theory*, Westview, Oxford, pp.381-383 at 381
on media advocacy as an effective resistance or strategy of struggle, feeding the community and feminist engagement of the author. The use of reportage analysis and movies to enable students to ‘see’ or ‘spot’ rights’ issues was a great technique. The understanding of non-state actors and the location of the media within the state was enriched too. The research projects on Global Media Monitoring\textsuperscript{12} and furthering of a cross-fertilized gender-media and rights literacy program have brought rich dividends. The most interesting teaching occasion was teaching the concept to a group of trainee pastors. Their liminality had transformed to merge in liberation into a new awareness.

Further, the author has offered resources in various teacher training and refresher courses. The noteworthy experience was of locating the emerging issues of IPR, technology and policy, where the author had presented the relevant scientific developments to set a background and justification for law and policy.\textsuperscript{13}

**The Rainbow, Symbiosis and the ‘Becoming’:**

The rainbow of these experiences has etched a new identity, a different self-definition to the author as the ‘becoming’ teacher – the teacher determined to evolve than remain rigid, determined to broaden the horizon by opening up to life long learning. It has given the courage to differ, dissect, deconstruct and to stand alone as a critic as one perspective informs the other. The possibility for an uncompromising stance on the face of injustice has infused new life and passion from time to time, in the otherwise monotonous ritual of teaching. It has rendered a compassionate approach, to ‘become the other\textsuperscript{14} and to convert the pedagogy into an enjoyable, participatory and empowering learning experience.

At present, the ‘becoming’ cumulative experience of the author culminates in the Symbiosis Law School’s leadership role. The Law school redefines quality as the combination of passion, compassion and innovation\textsuperscript{15}. Being in the company of leading management institutions, the human resource management principles carefully nurture the excellence in legal education here. A strong social agenda, international outlook and incorporation of best practices characterize the credo. It is an experiment in justice education\textsuperscript{16} with a constant urge to excel in teaching, learning and research.

As a Law teacher, in the newly defined globalization-corporatisation context, the author has engaged in an empowering pedagogy, both for the peers and the students, to evolve it

\textsuperscript{12} This was taken up by Asian Network of Women in Communication headquartered in India, in 2000, sponsored by WACC, London
\textsuperscript{13} UGC sponsored Refresher Courses for College Teachers, Mangalore University, India, Various (2001)
\textsuperscript{14} Gust A.Yep, *supra*
\textsuperscript{15} As expounded by Dr SB Mujumdar, Chancellor, Symbiosis International University, Pune, India
\textsuperscript{16} National Knowledge Commission, *infra*
into a self-directed learning experience. Recently, the author has attempted to inculcate community-based legal research and team projects with multiple opportunities for learning, while teaching courses on Law and Social Transformation and Research Methodology to the Post Graduate students. Further, she has adopted participatory methods including case discussion/simulation in Jurisprudence and Media Studies. Here, the quality enhancement is synonymous with inculcating life long learning, cooperative learning, deep learning, learning from real-life situations and transgressing the limits\textsuperscript{17}. Limits of all sorts are visible in a rigid approach to law teaching. These are transgressed by a sound understanding of law teaching and to adapt to new approaches to learning. The Law school facilitates a semantic democracy in such understanding, being a far away home to many international scholars, who too have their share in the enrichment of the Law School.

The author hopes that these insights would inspire a law teacher to cultivate self-questioning and ‘becoming’, which could electrify the classroom even in the most exacting situations. Only then, could one ‘…live life as a process…live to become’,\textsuperscript{18}

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\textsuperscript{18} Paulo Freire, \textit{supra}, Note 3, emphasis added to denote an ongoing evolution.
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Effective Techniques for Teaching about Other Cultures and Legal Systems

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In the context of globalization that has been going on since the 1990’s in the wake GATT and WTO we see on the one hand an attempt to change the legal cultures and systems by directly importing from the advanced western countries – European or American – into the less developed countries in the name of modernization. (Modernization being equated with westernization) On the other hand we can also see the efforts to learn and understand how these other societies function within their legal and social context. This has led to efforts to study other cultures and legal systems. How one can successfully do this is the issue before us – the law teaching community.

In a multicultural society like that in India this has been an imperative even before this period of globalization began. There is not only a diversity of language, culture, religion and customs one can observe in addition the diversity in laws and legal practices. One area that this difference can be observed is in the context of the teaching and practice of Family Law because of the fact that when it comes to the question of marriage, divorce, succession, inheritance etc the law that is to be applied will depend on the religious identity of the parties concerned. Another context is that of the special protection and recognition granted to the laws and customs of the Scheduled Tribes¹ living in different parts of India but found in majority in the seven North Eastern States.

We can therefore see that there are different contexts in the Law School curriculum which involve the teaching about other cultures and legal systems. For me, personally, this requirement occurs both when I teach history to law students and in the context of teaching women and law related courses. This may even be a necessity for the Constitutional Law teacher since the Indian legal system follows the Common Law system which has developed in a different cultural and historical context – England in the medieval period.

Before I discuss how I go about teaching about other cultures and legal systems in the courses I teach I thought that I would briefly discuss how it is done in the context of Family Law and Constitutional Law. The Indian Constitution has been interpreted to mean that laws that were prevalent before the commencement of the Constitution will continue to be valid so long as they are not inconsistent with the Constitution.² As a result the

¹ Under the Fifth and Sixth Schedules of the Constitution in keeping with Article 244 of the Constitution under Part X provides for administration and control of these regions inhabited by the different tribes in accordance with their laws and practices.
² Article 13 of the Indian Constitution
British administrative practice of following the “Mohammedan Law” for the Muslims and the “Hindu Law” for the Hindus has been recognized and continued and in a sense safeguarded by the Constitutional Provision in Article 25 which guarantees the Right to the Freedom of conscience and free profession, practice and propagation of religion. This in practice means that to the followers of each religion will be applied the laws supposedly derived from their religious texts in the matters of marriage, divorce, adoption, succession, inheritance etc unless they have married under the Special Marriage Act enacted in 1956.

Thus, when one is teaching family law in India one is required to know the laws of each of these communities, and also to be familiar with the history of the development of these communities and their customs and legal practices. Family Law in India is thus generally taught by using a comparative method with the help of charts and tables so that the students can learn about these diverse laws with greater clarity and sensitivity. There are as many as six different practices that have to be taught.

Teaching History to law students in this context is particularly aimed at providing the historical context and background to this diversity of laws and their continuity into Independent India. The History 2 course is designed to fulfill this objective. This is particularly necessary in the context of India because of the troubled creation of the nation – in the background of communal conflicts which led to the creation of India and Pakistan. Pakistan was created on the grounds of religious identity. In fact this polarization is in part the result of the colonial laws and legal system. From the great diversity of practices and laws that existed were created these monolithic communities that are now seen as homogenous even though there were a variety of customs prior to this period in the history of the subcontinent. This understanding of the process that created these identities is extremely important for India today because of the growing hostilities perpetuated by the electoral politics within India and the global developments outside.

To enable students to appreciate the diversity of the cultures and laws and to respect this difference the two papers on history that are taught in the National Law School are designed to make possible the learning of the history and culture of these different communities before they study the two papers on Family Law. In fact the second history paper is entirely oriented to studying Legal History – the objective being not to simply study the institutions and laws that are currently in India. The focus of this paper has been to provide the student with an understanding of how and why these communities emerged

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3 Hindus, Muslims, Christians, Parsis, and Jews. By virtue of the practice established during colonial times Buddhists, Sikhs and Jains are included in the category of Hindus and Hindu law is applied to them. Some of these laws may be by way of legislation like the Hindu Marriage and Divorce Act, the Indian Christian Divorce Act etc, others are said to be derived from custom and religious practices, especially in the context of deciding what is a valid marriage for Hindus and in the context of marriage, divorce, succession etc for Muslims.
as completely different and separate with homogenous identities through the legislative actions and judicial decisions in colonial India.

The teaching of the Women and Law related courses, especially for a course on Women, Law and Development or Violence Against Women I have depended on the study of the history, culture and legal developments in both Western Countries and those in Africa. This method is especially adopted to study those issues for which there are no laws in India or the responses of the state are found to be inadequate. For e.g., for the course on Violence Against Women I relied heavily on the laws and remedies available in the United States of America and in the United Kingdom. This was particularly necessary given the fact that prior to 2005 there was no specific legislation to the address the question of Domestic Violence, especially providing for civil remedies. Studying the support services and police and judicial responses in available in many of the American States was useful for appreciating the need for a similar legislation and provision of appropriate remedies. These studies also helped me to enable the students to appreciate the fact that domestic violence was not culture specific but more universal, though its manifestations might be culture specific, in character as a result of the unequal power relations between men and women and society. This enables the students to understand that the nature of gender relations in the Indian context are not unchangeable and also that the status of women can be improved through the intervention of the law and also by empowering women economically, politically and socially as it has happened in other cultures.

While teaching the course on Women, Law and Development it was extremely useful to draw upon the experiences of women in Africa, in particular. This is because of the fact that there are very similar problems and similar colonial history. Thus, studying the remedies that the women’s movements there have found to their problems was encouraging and useful. I say this with particular reference to the women’s networks that were organized in South Africa for example. When possible we have been able to bring in the teachers from those particular cultures to interact in the classroom and provide their perspective on these issues. This has been largely facilitated by the faculty exchange programmes that use to be in place then. These methods make it possible to argue for law reform and enforcement of fundamental rights without antagonizing or alienating communities.

In the absence of the faculty from those cultural contexts it has been useful to include the writings by scholars from those cultures so that one can get a more sensitive and nuanced understanding of these practices without being judgmental. In fact the Supreme Court of India has often employed the same strategy in dealing with cases of women from the Muslim community in order to provide relief to them. The Supreme Court in the Daniel Latifi and the Shah Bano case examined the Muslim cultural practices and interpreted more liberally the laws and, thus without directly imposing what would have appeared as
an alien concept, creatively introduced remedies which are in keeping with the constitutional values.

It is thus possible to teach about other legal cultures and systems by adopting either the comparative law approach or a more effective method of studying the cultural and historical context of the other legal systems using the knowledge for advocating change within one’s own legal system. Because if there is anything one learns from such an approach it is that legal cultures and systems are not fixed and permanent but are constantly evolving.
That the Indian Legal System (ILS) is primarily a Common Law based system is perhaps the first lesson that is taught to the students who seek admission to the LL.B. Course in a Law School or in a Law Faculty across the country. Once again, this is perhaps the only lesson that continues to be taught to a law student for three or five years respectively depending upon the stream that he/she has joined.\(^1\) Nothing more, nothing less. At best, while teaching the subjects like Administrative Law and Constitutional Law, the teacher teaching any one of these subjects does give some examples thereby comparing the principles, policies, conventions and institutional arrangements in the United Kingdom and in India. To my mind, quite honestly, a student seldom learns anything worthwhile except learning a few things like the British Constitution is an unwritten constitution and everything is based on conventions or at best the Indian Parliamentary System is based on the British Parliamentary System and further that the concept of ‘Rule of Law’ is primarily linked with the name of a British Professor A.V. Dicey. Lastly, that the Common Law System is perhaps the best legal system in the world as most countries follow this particular system in its entirety. While I was a LL.B. student, atleast I did not learn anything more than that in the classroom with respect to other cultures legal systems. Most often my queries to my learned teachers invited ridicule or at best some frowns. Quite honestly, the practice continues till date.

However, when I joined as a law teacher, I desired to go little further than the most-often repeated statement that “the Indian Legal System is primarily based on the Common Law System.” Though the subjects like Administrative Law and Constitutional Law were not my areas of research, I tried to read and then inform my students about other cultures and legal systems. And quite surprisingly that also evoked sharp interest in the minds of the young learners. To my mind, when a class teacher, while teaching a particular subject or a

\(^1\) In India, we have two major streams of professional legal education, that is, the traditional **Three Year LL.B. Degree Course** and the **Five Year B.A., LL.B. (Hons.) Integrated Degree Course**. I may add here that the latter course is being run in twelve National Law Schools as well in some of the law faculties in their separately established law departments.
particular topic, paints a comparative picture, students show lot of interest. Let me go in little more detail in the context of the Indian legal system in particular.

As a matter of fact, Indian civilization and Indian legal system have multi-dimensional facets that have inherited in themselves the glorifying aspects of many civilizations and legal systems. Cultural diversity spreading across the Indian boundaries makes our legal system as one of the most unique systems in the world. As mentioned above, though the Indian legal system is primarily a Common Law based system, however, the system carries within itself some of the distinct features of different religions and cultures existing in our country.

There is no denying the fact that teaching Indian law involves a creative blend of comparative teaching as many Indian laws owe their origin to the laws prevailing in other countries and jurisdictions. And I have no hesitation to say that a teacher who does not teach his/her subject by way of making a comparative analysis of the various provisions of law, then he/she is not doing justice with the subject.

As I recount my personal experiences, the first subject that I was asked to teach, when I joined as a young lecturer way back in the year 1986, was the Law of Contract. As is well known, the Indian Contract Act, 1872 owes its origin to the principles of the English law of contract. As a student of the law of contract, one thing was amply clear to me that in order to teach law of contract in a classroom, the provisions of the English law of contract had to be referred to quite frequently and that the same were to be followed by discussion of some of the prominent cases decided by the House of Lords in England. Therefore, besides referring to the various decisions of the House of Lords, I always made almost each one of my students know about the significant contribution made individually by the distinguished English judges like Lord Justice Dennings, M.R., Lord Justice Bowen, Lord Justice Peacock, Lord Justice Eisher, Lord Justice Pollock, and Lord Justice Diplock. I also used to discuss with my students of contract law that how the path-breaking decisions pronounced by these far sighted judges-cum-jurists paved the way for development of the law of contract in England and how those decisions also enabled the courts in India and some of the distinguished judges in India to pronounce identical decisions thereby leading to the development and growth of the law of contract. Thus my first experience taught me the importance of having knowledge of other legal systems as an effective technique beneficial for law teaching in India.

During the span of twenty years as a law teacher, I also got the opportunity to teach the subjects like Administrative Law, Company Law, Consumer Protection Law, Human Rights Law, Information Technology Law, Law Relating to International Organisations, Partnership Law, Public International Law etc. etc. And every time I went to the class, there was one thing or another in my armory to make a comparative study of the provisions with the ones available in the statutes of the other jurisdictions and I must say that the same
evoked a deep interest in the minds of my students who in turn used to cite many more
examples that they had read themselves or even had heard from their seniors or from some
of the other teachers. That not only made the environment in the class more interesting,
interactive and lively, it also propelled both me as well as some of my bright and
inquisitive students to read and learn more about other cultures and legal systems.

One of the most important areas of study that involves teaching of law by focusing o the
study of other cultures and legal systems is the study of religious and customary law of
India. India being a secular country where all the religious communities are governed by
their respective personal laws, the task of teaching becomes all the more onerous. This is
more particularly true in case of the Muslim community as the Muslim religion did not
originate in India. The teaching technique involves the complete study of the culture and
its effect in shaping the customs and laws regulating the religious laws. In the post-modern
and post-globalised world when India has emerged as one of the major players in the world
affairs, the importance of study of various other legal systems becomes all the more
important as we plan to produce lawyers who are conversant with the principles of law,
practice and policy prevalent in other parts of the world.

Though in India the teaching curriculum in law does not include the studying of cultures
and legal systems on individual basis, however, the law teaching primarily blends teaching
of the Indian laws with a comparison with other cultures and systems. That sometimes
proves to be of enormous benefit to the students.

On joining as the founder Vice-Chancellor of a newly established Law University, one of
my top priorities was to introduce the study of comparative legal systems at the under-
graduate level. My main objective of introducing comparative studies as compulsory
course was to make the students aware of the various cultures and legal system. Though
the task was onerous owing to lack of literature and trained faculty, however, considering
Indian’s role as major global player, the teaching of it becomes very essential. Even the
National Knowledge Commission of India also has emphasized the importance of
Comparative Law as a compulsory course.

In addition to the course of comparative law as a study of Legal system, the study of public
and private international law also becomes more significant. Realizing this, I have made an
additional effort in imparting blended teaching of International law along with the study of
legal system. Apart from purely academic pursuits, the important tool of effective
techniques teaching other cultures and legal system is through the mode of projects and
seminars.

Comparative Law as discipline provides various tool to the students to carry out
comparative law research. The study of comparative Law has assumed importance due to
globalization and especially the role of India as important market player. As regards
instructions of Comparative Law, though the methodology can vary but my technique is primarily based on power point presentations and extensive research as the topic is in its initial stages as the compulsory course. The most effective way of studying other cultures and legal system is by undertaking research study to enhance the knowledge base on various cultures and legal systems.

Coming to effective techniques for teaching about other cultures and legal systems, I have no hesitation to say that a teacher who does not teach his/her subject by way of making a comparative analysis of the provisions of the law being taught by him/her with the provisions of the laws available at least in some of the known jurisdictions is not justifying himself/herself. The same logic and substance is applicable, more particularly, to the student community also for the simple reason that in the modern era of globalisation and liberalization, a student of law, be he/she is in the field of litigation or consultancy or corporate law practice has to think and many a times act beyond the national boundaries. Cross border issues and disputes certainly require an advocate or a legal professional not only to know but also to demonstrate his knowledge, expertise, experience and skills regarding his acquaintance with the provisions of the laws in the neighboring jurisdictions.

While I am writing about the significance of teaching about the other legal systems and cultures, I must reiterate that one of the prominent techniques for teaching about other cultures and legal systems is to give the foreign exposure to the students. Although in the case of developing countries like India, Pakistan, Bangladesh, Nepal, Bhutan etc. etc., it may not be possible to send all students abroad, it is nevertheless, possible to arrange for the lectures and seminars by distinguished internationally known experts in the respective fields when the visit the developing countries. However, that could be possible on a very limited scale and that too in the limited law schools and that too on the basis of the personal rapport between the chief executive officers and the teachers in developing countries. The second way is to enable the teachers in a law school or a law faculty to go abroad for a limited period to get acquainted with the foreign legal systems and cultures. By way of this, the teachers concerned shall be able to impart instructions to the students about what they learnt and what their students out to learn by way of studying about their own legal system and then probing as to how their legal system could learn some lessons from the neighboring or even from the advanced legal systems from across the world.

Thus above mentioned are some of the ways we can impart knowledge about various other cultures and legal systems in the world that is the need of the hour.
Effective Learning and Teaching of Legal Education in Law School of INDONUSA Esa Unggul University

Fachri Bey and Wasis Susetio
INDONUSA Esa Unggul University

As the one of fast growing private university in Indonesia, recently INDONUSA University has around 8000 students, including 1200 students of law school. Since established by 2001, faculty of law of INDONUSA University has been concentrating in certain programs are: Business law, Legal Practice, and International Law. However, we realize that we have to upgrade and enhance our capability and facilities based on professional measures, particularly, as an international campus.

In term of globalization process in education, INDONUSA Esa Unggul University has been working hard to prepare and adapt workplaces demanding which tend to be an internationally request in knowledge, skill and global cultural dimension. Those dimensions are carried out through curriculum and teaching method. There are three pillars which are applied in our program that called: SPIC, as follows:

1. Scientific aspect – Research and Library
2. Practical aspect – Training Based Cases/LKBH, Internship, Moot Court
3. International Culture aspect – Doing regularly comparative study (for the last semester students), particularly in ASEAN Countries, such as: Malaysia, Thailand, Philippine, Japan, and Singapore, and Multi Cultural Out Bound Training

Ad. 1.

By considering that Indonesian law students has undergoing tight competition in finding a job, hence we realize that our education program must focus on the aims of education of law which have at least three objectives:

1. How to link up and match, between curriculum and jobs requirement in legal field
2. How to make effectively program to improve legal science among student based on research program for students
3. How to elaborate local or national legal perspective by adopting international horizon of legal education in Indonesia

To support our objectives, we have established a supporting so called INDONUSA Continuing Law Education (ICLE). The ICLE has duties, as bellows:

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1. To develop a scientific culture, mainly, among the lecturer to improve their skill in teaching by undertaking research, writing academic journal, and presentation

2. To facilitate lecturer as well as student to easily find their references in certain

By improving our horizon and skill, we invite some foreign visiting professors who are able to deliver international module related to updated issues, particularly, about International Business Transaction. They come from various countries, such as: UK, France, Germany, Japan, Malaysia, Singapore, Thailand, USA, etc

They would be placed in lecture class, seminar, or panel discussion. We have some join research with our foreign professor and make collaboration to do lecturer exchange.

Ad.2.

To understand law, we realize that we should deal with the reality of live, so law is a matter of practicing. Therefore we provide many ways to introduce legal aspects by teaching practical matters and also take students along with their lecturer to visit certain state institutions, such as: Constitutional Court, Supreme Court, Parliament (public hearing session), Correction house, UN branch office, to get directly lesson and practical experience in order to broaden their knowledge. Besides visiting, we also doing research on related issues of correction house, such as: the rights of children prisoner. furthermore, we serve legal counseling for the prisoner with regards their legal problems. And we do fostering program for street children (abandoned)

Afterward, to enhance student’s skill, student also is placed to do internship in some law firms, NGO, and state institution, such as: General Attorney, Court, and Police offices.

In the context of University mission regarding community development, we also have work in helping disaster victims, such as: tsunami, earthquake, cyclone, flood, eruption, etc. This mission has an objective to enhance our social sense.

Furthermore, we also have a Public Legal Aid Service Agency which consists of lecturer who also doing legal practice, such as lawyers, judges, or prosecutors, and the last semester students who are doing their final project or dissertation. In PLSA, we serve our counseling about criminal law, private law, environmental law. Sometimes, we also invite the high rank police, minister, or other government officer to deliver their speech in our forum of PLSA
Ad.3.

In term of the implementation ASEAN Free Trade Agreement (AFTA) in the South East Asia Countries, we introduce practically to students about the culture of member of state, and also international culture, in particular, international business people manner.

Additional program:

1. To thrust student’s motivation, we provide training of leadership, achievement motivation training, entrepreneurship, communication skill, etc,
2. To monitor effectively junior students hence the senior students will be doing Mentoring
3. English Law Club, due to non native speaker, the university with collaboration to George Masson University, provide regular English Law Club, every Wednesday
4. We join The Deans forum (State and Private) to make same perception and unify our curriculum in order to fit the state regulation and market needs
5. We also promote our curriculum to senior high school
6. Our curriculum of faculty of law has been accredited by Ministry of Education
7. And our University held ISO 9001-2000 for the quality assurance, so the students will be served better off
EFFECTIVE TECHNIQUES FOR TEACHING ABOUT OTHER CULTURES AND LEGAL SYSTEM

I Nyoman Nurjaya  
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It is conventionally stated that basic purpose of law is to keep social order and protect legal order in maintaining law as a tool for social control and ordering of society (Patterson, 1950). In doing so, another function of law is remains improved to be an instrument of orderly change namely social engineering (Friedman, 1975). In the development of complexity society such goal of law then questioned whether the role of law could also be improved as an instrument for maintaining and strengthening social integration within multicultural Nation State of Indonesia? And what is the effective method and techniques can be utilized for transferring knowledge about other culture and legal system in the process teaching courses at universities?

Anthropological studies with regard to the function of law as system of social control within society have primary been conducted by anthropologist (Black, 1984). It is, therefore, recognized that anthropologists offered more significant contribution in relation to the development of concept of law as instrument of securing social control and legal order within the dynamic life of society. It is because anthropologist focused upon micro processes of legal action and interaction; they have made the universal fact of legal pluralism a central element in understanding the working of law in society, and they have self-consciously adopted a comparative and historical approach and drawn the necessary conceptual and theoretical conclusion from this choice (Griffiths, 1986).

In this sense, law has not been studied by anthropologist the only as a product of logic abstract of a group of people that mandated particular authority, but largely as a social behavior of society (Llewellyn & Hoebel, 1941; Black & Mileski, 1973; Moore, 1978; Cotterrel, 1995). Hence, law has been studied as product of social interaction which
strongly influenced by other aspects of culture namely politic, economy, ideology, religion etc. In other words, law has been observed as part of culture as a whole integrally with other elements of culture (Pospisil, 1971), and studied as social process within society (Moore, 1978).

In the perspective of legal anthropology the form of law has not been the only legislation that shaped and enforced by the Government namely State law. In the life of society it could also be observed the existence of religious law, as well as folk law or indigenous law or customary law as legal fact within human interaction, include self-regulation/inner-order mechanism which play an urgent role mainly as tool for securing social and legal order or social control within society. Therefore, it is confirmed that law as a product of culture comprises those of folk law, religious law, State law, and self-regulation/inner-order mechanism as well. This is the so called legal pluralism situation within the dynamic life of society (Griffiths, 1986).

The anthropological study of law focuses its study to the interaction between the law and social and cultural phenomenon which take place in society, as well as the work and function of law as instrument of social order and control within communities. In particular words, legal anthropology refers to the study of cultural aspects which associate to the legal phenomenon of social and legal order within society (Pospisil, 1973). Hence, legal anthropology in the specific sense refers to the study of social and cultural processes in which regulation of rights and obligations of the people has been created, revised, interpreted, and implemented by the people (F. von Benda-Beckmann, 1979). In this respect, law as it is functioned for maintaining social control and order could be State law and other sort of social control mechanism which emerge and exist as living law within communities namely folk law or customary law, or indigenous law, and especially in the multicultural country of Indonesia the so called hukum adat or adat law.

What has been outlined above shows that basic of law is naturally lied down in society itself. Therefore, law and society including its culture has a mutual relationship, interact each other, and can not be separated if we do want to obtain better understanding
about law comprehensively. In his words, Hoebel (1954) said that law should be studied as part of culture integrally with other aspects of culture such like politic, economy, social structure, clan system, system of religion, etc. In this sense, we must have a look at society and culture at large in order to find the place of law within the total structure. We must have some idea of how society works before we can have a full conception of what law is and how it works. In other words, Friedman (1975) stated that law as a system particularly in actual operation is basically a complex organism in which structure, substance, and legal culture interact each other. Legal culture refers to those parts of general culture namely customs, opinions, ways of doing and thinking that bend social forces toward or way from the law and in particular ways. Hence, law expresses and defines the norms of the community.

In relation to the academic way of understanding about the life of law within society and its culture and legal system as well, the question then arise what is the effective method and techniques for teaching other culture and legal system for those of law students at universities, particularly at the Faculty of Law Brawijaya University of Indonesia?

Most customary adat law of communities in the region of Indonesia are in the form of unwritten law. Therefore, according to Ter Haar norms of law within adat communities could methodologically be identified through official decisions made by a person who delegated authority for making decision in the process of traditional adat courts (Hoebel, 1954). In legal anthropology technique, norms of the customary law could basically be investigated by using the three main ways as follows:

1. Ideological method namely abstract norms that could be recorded from heads of adat communities and other person that mandated to make authorized decisions;
2. Descriptive method that is by making direct observation concerning actual behavior and activities of community members of society when interact each others in the daily life; and
(3) Trouble-case method namely study of legal cases that emerged or taking place within community. The trouble-cases sought out and examined with care, are thus the safest main road in the discovery of law (Llewellyn & Hoebel, 1941).

In the teaching law courses transferring process about culture and the legal system to the law students can be equipped by media technology such like video film and photos that visualizing real situation and culturally activities of the certain community we observe and discuss in the classroom. Besides, technique of field observation by organizing a particular visit together with students could be an effective method in understanding about culture and legal system of communities in the region, as well as conduct an non-participant observation to the State legal institutions namely police departments, public prosecutor offices, State courts, and even prison and jail in the district level. The later technique provides direct observation in understanding on how system of the procedural criminal law operated and enforced by the law enforcement officials, and understanding real institutions culture established by Law Enforcement Agencies in the empirical level of State law.

In the sophisticated communication media world, it would be a modern presentation to utilize a teleconference technology during presentation in the teaching courses. I was personally under the impression when this sort of presentation practiced by Professor Nin Thomas from School of Law, Auckland University of New Zealand from the Kenneth Wang School of Law, Soochow University, China in the time of IALS Conference in the last October, 2007. A real teaching course about law of the indigenous people of Maori, New Zealand directly connected to Professor Lindsay Robertson at University of Oklahoma in the United States and his law students, to Professor Margaret Stephenson and her students at Faculty of Law University of Queensland, and to Professor Bradford Morse and his students at University of Ottawa, Canada.

It was a great and impressive presentation from my point of view. Indeed, in one hand, this sort of technology provides a lively and enriching way to teach comparatively, as students can watch and hear directly from the lecturer in the other country. But, on the other hand, it surely was very expensive one to use in conducting a teaching course for our
law students at Brawijaya University. In case, that technology of teleconference and the
cost needed to operate the conference can be arranged and handled by the faculty of law,
the language, mainly English, of teaching staffs and the law students will be a specific
problem and obstacle faced at the faculty particularly at Faculty of Law Brawijaya
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A discussion about the topic which has been proposed should start, in principle, from the analysis of the concepts referred to, or implied in, the title itself of this academic programme, i.e. ‘culture’ and ‘legal system’, since such concepts are far from being unequivocal or unproblematic if taken either separately or in their reciprocal relationships.

As far as the word ‘culture’ is concerned, especially if expressed in German (Kultur), this is a term which for an average European coincides with the ability to elaborate and comprehend in an harmonious whole one’s useful and largely symbolic knowledge – i.e. ‘culture’ is what a ‘cultivated’ human being brings with her/him. It was only in recent times that this word has come to be adopted, socially, in its anthropological meaning, i.e. the set of all notions, be they ‘material’ or symbolic, which belong to a people – i.e. ‘culture’ as a (quasi-)synonym of the French ‘coutumes’ or ‘moeurs’, the German ‘Sitten’ and the English ‘custom’ or ‘folkways’, let alone the originally Latin, ‘mores’, which still survives.

In its turn, ‘legal system’, with its equivalent expressions in other languages: ‘système juridique’, ‘Rechtssystem’, ‘sistema giuridico’ etc., comes to signify something which happens to differ according to different times, places and, indeed, cultures, in particular juristic cultures, which, again, diverge sharply about the definition of ‘law’ – in itself a perennially unsolved question in jurisprudence. In a typically positivistic vision, e.g. in a Kelsenian perspective, the ‘legal system’ may be meant as the whole set of enforceable legal rules, which actually form a ‘system’ per se (Losano 2002). In a sociological vision, in contrast, the term usually coincides with the whole of social actions or communications inspired by, or oriented toward, legal rules, and this set, again, is differently portrayed in its content by different authors, such as Niklas Luhmann (1974, 1981), Lawrence M. Friedman (1975) or William M. Evan (1990)

Finally, as far as the relationships between ‘culture’ and ‘legal system’, and the derivative expression ‘legal culture’, are concerned, this seems to be a “relatively new term”, as David Nelken (2007) says in the ad hoc entry of David Clark’s Encyclopedia of Law and Society. Symbolically, its use in jurisprudence is said to have begun with Lawrence Friedman’s renowned book devoted to the legal system “in a social science

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1 All these terms, in their turn, should not be taken as mutually interchangeable, as shown in a classical distinction between ‘folkways’ and ‘mores’ (Sumner, 1906).

2 The writer tried to highlight the differences, only apparently marginal, between the notion of ‘legal system’ offered by se three authors (Ferrari 2000).

3 With exceptions, such as Treves, 1947, and his references to the tradition of sociology of knowledge.
perspective” (Friedman, 1975), where a distinction was drawn between “external” and “internal” legal culture, the former referring to the social values and opinions that orient all actions addressed toward the legal system, and the latter referring to those ideas, concepts and practices which specifically belong to lawyers as a social group – a seminal notion indeed, which has anyway raised a number of critiques and given rise to a terminological discussion which has lasted for many years already (see Gessner, Höland and Varga, 1996; Nelken, 1996; Nelken and Feest, 2001).

I shall not venture into a terminological discussion, which would not fit in with the purposes of this paper. Still, I am convinced that pointing to the importance of linguistic questions, especially in view of teaching about ‘other’ legal cultures and systems is by no means useless. This kind of teaching is by necessity comparative, and language is by necessity the first step of any kind of comparison. Language is the most typical aspect of a culture, in that it expresses deeply rooted social feelings which often come prior to rational conceptualization: defining marriage as a mere ‘negozio giuridico’ (a legal transaction in general), rather than as a contract, as the Italian legal doctrine has traditionally done for decades, reflects an ethical conception that seemingly neglects the importance of the economic and financial side of the conjugal bond. Moreover, all branches of knowledge make use of, and communicate through, words reciprocally linked in more or less abstract wholes that should be understood unequivocally by audiences sharing a sense common to all the speakers involved. This is a sine qua non condition for a fruitful communication within any social group, especially so in the field of the social sciences which deal with largely artificial and symbolic materials. As a consequence, the definitions of such material are also largely artificial or, if one prefers, conventional – if not stipulative, at least explicative, i.e. constructed on the basis of meanings usually attributed to words in a social milieu (Scarpelli 1965, Jori 1976). Attributing the same meaning to the same linguistic expressions is vital for all kind of debates, including scientific debates, in view of avoiding confusions (for example between descriptive and prescriptive utterances, but not only that), which may lead straight to incommunicability.

4 It is interesting to note that for the term ‘Culture juridique’ of the 1988 first edition of the Dictionnaire encyclopédique de théorie et sociologie du droit edited by A.-J. Arnaud et al., the author, Giorgio Rebuffa, offered four different definitions (all directly or indirectly connected with positive law), to which Erhard Blankenburg felt it necessary to add a number of specifications in the 1993 second edition. Subsequently to this entry, the Dictionnaire goes further by offering five other entries, corresponding to as many different cultures juridiques (African, Chinese, Christian in both the Roman-Catholic and the Protestant version, Islamic, Jewish and Oceanic).

5 See a renowned example of stipulative definitions in the works of H.D. Laswell and his school (e.g. Laswell and Kaplan 1950).

6 A telling example may be found in a (though remarkable) work of Ch. Wollschläger (1988), devoted to a comparison between litigation rates in a number of European countries, where, with respect to Italy, the author seemed to confuse the proceedings held by the Uffici di conciliazione for settlements in court (Schlichtungsverfahren), may be as a result of a misunderstanding about the nature of the Ufficio di conciliazione which, let alone its name, was not a Vergleichamt called upon to settle disputes, but a court like all the others, called upon to handle ‘small’ disputes adjudicatively.
These preliminary remarks help introduce the main subject of my contribution which, as the title reveals, is addressed to suggest that teaching about ‘other’ legal cultures and systems should be inherently interdisciplinary. This is no surprise, in theory, since interdisciplinarity is invoked in a plethora of scientific and ‘political-scientific’ documents. Still, this point should always be underscored, especially with reference to legal studies, whose predominantly formalistic and ethnocentric leaning has never really been abandoned, so that any course that goes beyond the landscape of positive legal rules enforced in a single nation state is tolerated as a kind of pleasant extravagance and thus placed in a marginal position, if not drastically excluded from the scene once for all. This attitude has some arguments to spend, as we know. One must work hard and avoid distractions to achieve real acquaintance of both the content and the method of a legal ordering. Again, on an ethical level, some say that opening the mind toward alternative contents and methods might “trouble” the serene conscience of future jurists who are expected “to believe” in the legal order within which they will be called upon to operate. Yet, this attitude should be contrasted. On a cultural level, it is short-sighted, since it leads lawyers to ignore the substance of the social relationships upon which laws happen to impact. Then, on the level of the ethics of science, it is paradoxical, in that it implies the supremacy of ignorance over knowledge, as well as the idea that law is a faith, to be accepted as such and repeated through ritual formulae, rather than science and practice.

Interdisciplinarity in legal education displays several aspects, some of them preliminary with respect to law itself, be it viewed from ‘inside’ or from ‘outside’, in Hartian terms. One of such aspects is linguistic competence, not only in the sense – already mentioned – of semiotic consciousness, but, more simply, in the sense of the knowledge of more than one spoken language, let alone ancient languages which constitute their historical root. Not because knowing one or two foreign languages may cover the field of all possible linguistic and conceptual comparisons, which is obviously impossible, but because transposing concepts from one to another language is an extremely useful exercise which helps understand the complexity of comparisons, since these cannot rely on mere automatic operations. Nothing is more convincing than comparisons between civil law and common law: ‘propriété’ or ‘Eigentum’ do not have the same semantic intension of ‘property’ or ‘ownership’, whilst it may be decided, conventionally, to consider such terms as equivalent. Unfortunately, instead, linguistic competence is generally, and traditionally, not seen as an important element of legal education. Only recently, has English become part of the cultural background of many lawyers. Still, even forgetting that the universal diffusion of English brings with it the side-effect that English speaking lawyers tend to ignore foreign languages more than they did in the past, it should be stressed that the

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7 See, recently, the position paper of the League of European Research Universities (LERU) about doctorates (*Doctoral Studies in Europe: Excellence in Researcher Training*, Leuven, May 2007) (par. 10: “Scholarly communities should be interdisciplinary since there is no scientific milieu which does not need to look beyond its boundaries”).
English language which is universally spoken seems to be quite far from standard English, syntactically and lexically. It allows one to communicate more or less superficially within specific milieus (see, e.g., that of informatics), but it does not allow one to understand the profound sense of things or the convergencies and divergencies of different cultures in the way they express abstract concepts.

At this stage of the discussion, I shall confine myself to examining only two specific fields, i.e. legal philosophy and legal sociology, which seem to me to be of the utmost importance in view of an interdisciplinary approach to legal education.

Philosophy of law – or, if one prefers, jurisprudence – is highly relevant for future lawyers, especially as far as the analysis of legal reasoning is concerned. By legal reasoning I refer, on the one side, to the logical analysis and the interpretation of legal utterances and, on the other side, to legal argumentation. Both such perspectives, again, have to do essentially with language, either in its structure or in its pragmatic function. That lawyers – incidentally – should master either aspect may appear obvious and has been so for many centuries, also in civil law countries, until formalistic legal positivism has brought with it, jointly with the idea that rules have but one correct meaning according to the purportedly ‘unitarian’ logic of a legal system, also the sacrifice of rhetoric as a teaching subject. What especially matters, in view of the comparison between legal cultures and legal systems, is that law students understand fully the differences between a top-down and a bottom-up way of reasoning. One thing is to start from rules and another thing is to start from facts, leaving aside any question about how a fact should be ‘subsumed’ under a rule. Top-down reasoning is typical of European formalistic culture, which prescribes it to legal operatives. Bottom-up reasoning seems closer to a legal culture which combines formal and material elements – to speak in Weberian terms – and may seem more typical of common law systems, based primarily on custom and precedent, although formalistic currents may periodically prevail also in the common law world. Comparing these two types of legal reasoning helps law students to reach the heart’s core of different legal cultures. In particular, they will understand that referring to written laws as a prior, which is typical of civil law systems, is essentially a political choice (Scarpelli, 1965), obviously acceptable as such, rather than a logical necessity. They will also learn to “take facts seriously”, as William Twining (1990) said in one of his renowned books. De facto, both judges and lawyers, while dealing with concrete cases, start from facts rather than from rules. They contribute to construct, or rather re-construct, facts⁸, before ‘subsuming’ them under a rule which they will choose among different options. A post-factum choice, precisely. Taking facts seriously also helps to understand how legal systems

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⁸ That ‘facts’ are constructed in court, rather than ‘given’, is something that belongs to the common experience of practicing lawyers. Still, theories about how this comes about are still relatively insufficient, though with notable exceptions especially in the common law world (see Frank, 1949; Bennett and Feldman, 1981; Jackson, 1988, Twining, 1990). Recently, endeavours have been made to apply socio-psychological ‘constructionist’ theories to court interaction, seen as a kind of ‘narration’ (see, e.g., Amsterdam and Bruner, 2000).
change, not only through formal laws, but also through acts, either private or institutional, which purport to interpret the existing law, while in fact they create new law. It was a court of appeal that, inspired by a highly creative lawyer, introduced a new conceptual ‘category’ of damages – the so-called ‘biological damages’ – into the Italian legal system, which does not recognise either doctrinal writing or precedent as law sources. The consequence of all this is that, ‘technically’, law students should be seriously engaged, in small groups, in such exercises as comparing distinct modes of reasoning in different languages, factual analysis of concrete cases, commenting defense briefs, disclosing rhetorical devices, interpreting narratives, simulating trials, etc.

Coming to sociology of law, the most important point to stress is that, sociologically, law is a matter of communication. Legal rules themselves, be they customary or statutory, parliamentary acts or judicial precedents, are but messages which circulate in a discursive space, moving from one or more sources toward one or more receivers through one or more media, themselves institutional or non-institutional. Only the analysis of this incessant movement of normative messages helps understand fully the machinery – so to say – which regulates interpretative processes. Rules always display a degree of semantic uncertainty and vagueness since the beginning of their journey as messages. Even Kelsen and Hart, though they were positivist thinkers, admitted it openly. This degree of uncertainty is destined to grow, not to shrink, through interpretation, for a number of reasons. Firstly, those who receive a message will interpret it according to cultural codes which may not correspond fully to those of the framers. Secondly, the number of acts of interpretation will be multiplied by the appearance of new concrete cases, none of which will be ever identical to the others, as well as by the evolution of doctrinal writing – it may seem a paradox, but a rich and creative doctrine contributes to increasing the disorder of a legal system, i.e. to rendering it more entropic, in semiotic terms. Thirdly, legal communication is inherently conflictual, in that it springs from potential or real conflicts and develops through a series of conflicts. Two parties in court, plus their respective lawyers, will diverge in the interpretation of both facts and rules. May be the court, which is called upon “to reduce the complexity”, as Niklas Luhmann said, will opt for one of the competing positions. Still, it may also opt for a third solution and therefore add a new message which will go around, reaching an appellate court, other courts, other lawyers, etc. There is evidence that even openly recognised faults of a court may become precedents and affect future decisions.

Sociology of law, of course, is not only this. It is a perspective, an angle de vision, as Jean Carbonnier said, from which law can be observed. First and foremost, it is a discourse that, under the aegis of a theory, recommends ad hoc methodologies, differing from juristic methods, yet fundamental if one wishes to understand in which way social actions, practices, institutions and roles, directly or indirectly affecting or involving the legal system, actually interact with each other. It is not so important now to discuss about such methodologies in detail and wonder whether one should recommend quantitative techniques, addressed to describing wide social phenomena systematically through figures, or rather qualitative techniques, addressed to “understanding” (again in Weberian terms)
the “sense” of social actions through in depth observation. What matters is that the knowledge of such methods should be part of a lawyer’s cultural and ‘technical’ background and that the only ‘technical’ way to help students achieve full acquaintance of them is to engage them directly in field research, especially documentary analysis, during their law curricula.

About the utility of sociological methods (and, I shall add, of ‘sociological imagination’, as Charles Wright Mills said), there no real need to spend many words. Legal pluralism has been the dominant theme in jurisprudence for a long time already, and is especially so in our times, as a result of the challenges issued at the nation state both from above – reference to the ever-expanding sphere of super-national, international and transnational forms of legal regulation – and from below – reference to the ever-increasing claims of ethnic, religious, cultural or linguistic minorities, which are multiplied by incessant migrations. Sociological analyses allow one to better understand how messages transmigrate from one to another system, often through non-institutional ways, and to study, in vivo, the source and the development of cultural exchanges and cultural clashes, in this case converging with legal anthropology, which has coped with such phenomena since its 19th century beginnings.

It seems to me that sacrificing philosophical and sociological approaches in the study of law, as often happens, is heavily detrimental for interdisciplinarity, which should be at the core of legal education and inspire teaching in all law schools.

References


*Provisional text*
My name is Osama Naimat assistant professor of administrative law at Philadelphia University Amman-Jordan. In fact I am honored today to be among you and participating in this conference. The Judicial administrative System follows the lateen system where there is a court for administrative disputes which arises between the officials and the administration and that court is called High court of Justice issued by a law in 1992. The basics principles of the courts are the termination of the administrative decision and or the compensation. In Jordan there is no constitutional court.

Since I am a professor of administrative law, Please let me give a brief about my Law School (Philadelphia University). My Law School was subject to the evaluation by the British Quality Assurance Agency in cooperation with the Hussein Fund for Excellency 3 years ago where the school achieved the highest rank among the other schools. The core of the evaluation was the Self Evaluation Document which represented the following:

1) Teaching, Learning & Assessment Strategy

There are adopted strategies for teaching, learning, and assessment regularly reviewed by the Faculty to make knowledge work through accessible programs of teaching and learning.

It aims to support student in developing the knowledge, understanding, specialized practical professional skills, cognitive skills and transferable skills that will enable them to fulfill their intellectual and personal potential, in order to prepare qualified students to participate in society and to enter the market. It also aims to attract and retain highly educated and specialized academic staff, which will be actively engaged in teaching and research.

This is in addition to encouraging the academic research carried out by the faculty members and supporting the publication of their research work, as well as benefiting from their intellectual contribution insofar as enriching the content of courses, which fosters the educational process and being abreast of developments in the legal field.

The educational process is implemented through the following elements:

- Syllabus for every module
- Organize the progress of the educational process through designating a coordinator for each course, and preparing a file particular to each of the specialization module
- Review the module description and its outcomes and the modes of teaching and learning, and the criteria of evaluation that are adopted in a regular manner through the FSPC and the FSC, based on feedback from the students and the faculty staff and/or
concerned parties from outside of the faculty insofar as educational and learning policy and evaluation

- The compatibility of the specializations of the teaching staff with the courses that they teach, and benefiting from their academic output and professional experience in enriching the educational material.

2) Teaching & Learning Modes and Programs

A- Modes:

The faculty adopts the following teaching and learning modes based on the nature of the module and the outcome requiring presentation:

- Urge the students to read specific legal (legislative) texts and/or textbooks.
- The faculty has prepared the content of the program modules electronically, which is presented through PowerPoint and projectors. This content is available to the students at the faculty’s electronic Internet site.
- Tutorials
- Seminars
- Essays
- Assignments
- Role playing and Moot Court Trials. Two moot court trials are organized for the students in every academic semester.
- Invite persons who are specialists and/or professionals to deliver lectures and to have discussions with the students.
- Field visits to local quarters who are involved in the legal field:
- Multipurpose Room, which is used as a lecture room, and a hall supporting self-learning. Moreover, the students are assigned exercises and cases, and are left on their own to know the answers through researching the legislative and judicial encyclopedias that are available within the room and the law library. Support from teaching staff during special office hours, in order to guide students and offer them academic support.
- Organize and oversee the student self-learning groups

B- Assessment of Modes:

Traditional and electronic lectures given by teaching staff and visiting specialists are delivered to encourage the students to acquire subject-specific skills and thinking skills. Moreover, the faculty, insofar as the majority of the specialization modules, invites a person specializing in the subject of the course to deliver a lecture and/or conduct discussions. Most of the specialization modules include exercise solving assignments, through which we develop students for research skills in the legal field, and the ability to solve problems and how to present them.
Students are urged to follow the recent developments in law, judicial decisions and the use of learning resources. Likewise, tutorials and moot court trials make possible effective student participation in dialogues, discussions and teamwork, as well as building of the student’s personal abilities and confidence. This would also foster interaction with others in a team spirit. Through the moot court trial, students acquire the ethics of the legal profession and carry out the appropriate role, assume responsibility, and possess the skill in formulating judicial rulings based on the provisions of the procedural law.

The faculty applies a number of mechanisms to review and evaluate the modes of teaching and learning among which is:

- Questionnaires distributed among students and academic staff in order to get feedback on the suitability of the teaching and learning modes and the workload.
- Feedback from varied legal entities such as Jordan Bar Association, judges, legal jurists, Lawyers etc.
- Feedback from the student & academic staff committee.
- Feedback from students’ representatives.
- Statistical evaluation report.
- Reports of a colleague’s visit.
- Reports of coordinators on the evaluation of the process of education and learning.

C- Information and Communication Technology

- Activation and update of the faculty’s Website.
- Activation of the electronic mail service for students and academic staff.
- Electronic presentation (display) equipment available in the lecture rooms.
- Activation of the electronic module registration service (through the Internet).
- Prepare a multipurpose room, which contains 10 computers equipped with legal and judicial software and specialized law websites.

D- Strengths & Weaknesses

Strengths

- Continual review and evaluation of the educational process with the participation of many of a specialized professionals.
- Variety and integration of teaching and learning modes
- Support self-learning groups
- Academic guidance and monitoring students’ performance, and help students to exceed any academic obstacle.
- Contribution of the researches and experiences of academic staff, particularly, the practical and professional aspects thereof.
- Adopt a continual system for hosting specialized lecturers, and carrying out field visits.
Weaknesses

- The teaching load of the academic staff in addition to the responsibilities and activities of the committees.
- Material and technical obstacles, and the limited space of the faculty building.

3) Student Assessment

A- Modes:

The faculty adopts various modes of evaluation as follows:

- Written exams.
- Standard of researches and reports.
- Solving classroom and library exercises and assignments.
- Standard of role performance and delivery (based on the nature of the module).
- Degree of contribution and effective and intelligent participation in classroom dialogues and discussions.

The Faculty applies the procedures of written exams. The requirements for passing every module is a mark of 50%, and until a student fulfills the graduation requirements, he/she must get a cumulative average grade of 60% at a minimum. A specific form for examinations is adopted to measure all educational outcomes for every module. There is also a specific pattern for ideal answers as well as to the form of evaluating the research paper and others for the evaluation of the exercises’ answers. Usually a sample of the students’ answers (10%-20%) is sent to the external examiner attached with the questions form and the module syllabus for reevaluation.

B- Assessment of Modes:

The feedback from the varied resources of evaluation indicate that the moods of assessments are suitable and effective for the evaluation of students level of achieving the educational outcomes. Our confidence in the evaluation standards and procedures stemming from the fact that these standards are:

- Well-studied and are invariably adhered to by the academic staff.
- Continually reviewed and monitored in order to assure their non-deviation.
- Applying the external and internal examiner’s procedures.
- Coordinators’ reports and analysis of the exam results and the reports of the statistical evaluation.
- Feedback from the students’ representatives, professors and competent bodies.
Legal Education in Jordan

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Introduction:

The education system in general in the Arab world including Jordan does not further the development of students’ analytical skills, problem solving skills, critical thinking and innovation. Legal education is no exception. The need for reforming education within the region as a means to attain sustainable development is well acknowledged by the stakeholders in legal education as well as in the legal profession.

Characteristics and Problems of Legal Education in Jordan:

Several features characterize the legal education in Jordan among of which one should highlight the following:

1) Law faculties are a new phenomenon in the country. The first law faculty was established in 1979. Before 1977, Jordanian students graduated from law faculties in Arab capitals such as Cairo, Damascus and Baghdad.

2) Today, there are (12) law faculties in Jordan, (4) at public universities and (8) at private ones. While public law faculties suffer from the financial and bureaucratic problems of public universities in general, private law faculties belong to profit-tailored institutions which may pay less regard to academic quality than they do to profit.

3) The number of students is increasing. The student-faculty ratio is deficient. In fact, Jordan does not need all the existing law faculties because there are a considerable number of lawyers in the country.

4) As with most other disciplines, the admission of students at law faculties is based on their results in the High School certificate. Objective as it may be, the said
criterion does not necessarily preclude unqualified students from entering law faculties. Candidates do not sit for any special admission test. (Fine arts and physical education may be the only exception in Jordan.)

5) Students of law are undergraduates and therefore they are too young. The grades they obtain in their high school determine which faculties they can join. Therefore, they may find themselves studying law without being willing to be lawyers.

6) LL.B. programs are undergraduate programs.

7) Pursuing a two-year post graduate professional certification program supervised by the Jordanian Bar Association is required for legal practice. It is open to law graduates holding at least LL.B degrees.

8) The curriculum is largely standard in public and private law schools. Most of the courses are mandatory and the number of credit hours required for graduation is generally speaking 132 credits. This number is lower than the credits required for other profession-tailored disciplines such as medicine and engineering. It is generally felt that 132 credits do not help faculties provide more innovative courses such as those in the areas of skill training. In addition, the curriculum stresses the knowledge and memorization of the law over legal analysis. All subjects and modules are given equal weight in terms of credit hours (i.e., three credits) without taking into consideration the importance of the subject. Non-law courses result in reducing the number of credits allocated to law subjects. Use of textbooks is a rarity and the same for assignments of research and writing. Furthermore, there is a lack of emphasis on language skills in English and classic Arabic which is the written language and which is used in formal forums. Little regard is given to legal drafting and research skills. Finally, clinical education preparing students for the profession is virtually not used in Jordan. The curriculum may provide fundamental knowledge of the Jordanian legal system and how it works, but it is not designed to train students to apply knowledge and skills to solve legal problems.

9) Faculty members are required to have a PhD degree. However 20% of the faculty members as a maximum may be LL.M holders. In numerous cases these degrees are accorded by sub-standard universities whether in the region or abroad. A number of faculty members do not have strong academic performance in the first degree (B.A) and therefore they do not meet the standards. Sometimes faculty members face social pressures in order to pass students who may not meet the required standards. Furthermore the salary of law professors is not adequate, and those who practice law in addition to their academic careers can not provide
good teaching. The possibility for the professors to participate in international conferences and workshops is very weak because of the budget constraints.

10) The weakest aspect of legal education in Jordan is the teaching and learning styles. Teaching is essentially rendered through lectures, i.e. the faculty lectures and students listen. They may take notes and they may not. Discussion is rare and interaction between faculty and students is at its lowest point. Lecturers often do not assign text, nor do they assign research and/or writing assignments. The Socratic method of instruction known in the common law legal system is not generally followed in Jordan. Instead teaching is based on the delivery – and – absorbing process of conveying information. Students are rarely called upon in class to discuss and analyze laws and judicial decisions assigned to them. They may, therefore, acquire a theoretical knowledge and understanding of the law but they are not able to acquire practical, analytical and critical skills and self learning and research and communication skills. There is no doubt that the mere knowledge of the law by the student is important but it is not sufficient. Reasoning and critical skills of potential lawyers is more important.

The result is the decline of the legal education and the legal profession as well.

**The Required Changes:**

To enhance the legal education in Jordan and to improve the quality of the students who study law and, ultimately, the lawyers who practice in Jordan fundamental changes are needed:

1) The contemporary law practice expands in scale as well as in scope; legal practice increasingly competes at an international level that transcends geographic borders.

2) The multitude of laws and jurisprudence.
   a. The need to know more about other legal systems.
   b. The need to have a solid command of the English language.
   c. The need for a critical legal mind.
   d. Need for practical training, legal argument, brain storming, interactive and participatory learning. Participation of the law students is not only expected; it should also be solicited by the instructor.
   e. Treating law as a professional field quite like medicine and applying strict conditions of admission.
   f. LL.B should become a postgraduate program.
Proposed Steps:

First of all there is a need to increase the number of credit hours required for a law degree to 141 which will allow incorporating new courses in the syllabus such as legal writing, research, new courses in English, and a course on clinical legal education and another one on ethics.

The curriculum should prepare the student for the profession. The training through the Judicial Institute and through the Jordanian Bar Association is not an alternative to the training during the study of law. Access to technology should be accentuated and the same applies to library collections. Online databases and the reputable legal journals could be shared by different universities. The materials with which students work regularly should be digital and electronic methods of work instead of the actual printed paper. Students still take notes in class by hand. We want them to type into their computers. In addition the curriculum should contain a class in ethics or professionalism. Ethics should be an integral part of law school training. Curriculum should be regularly scrutinized and updated in order to be continually appropriate to students and future career. It must aim to provide students with appropriate knowledge combined with relevant practical experience.

Enriching the teaching needs more and more diversification in faculties' qualifications and backgrounds. Courses with practical emphasis should be taught by lecturers not only with enough theoretical foundation but also with professional skills as well. Law faculties should engage promising scholars committed to multi-disciplinary research and teaching and to public service as well. The duty of those chosen should be able to provide the students with the best kind of education and to prepare them for success in legal practice, business, public service, teaching and other areas.

There is a need for introducing teaching styles that support the development of appropriate thinking and oral and problem solving skills. Students should be asked more and more to submit essays, to make presentations at classes and to write judicial forms, affidavits and judgments and to visit courts and watch legal proceedings. There is also a need for more and more courses involving problem solving as part of lectures as well as of examinations. Law faculties should use new teaching methods, especially interactive teaching and self learning methods which develop students’ creative and analytical skills as well as their legal talent.

Again, there is a need also for refocusing law school teaching methodologies from code memorization to interactive methods that stimulate thinking and analysis such as research paper writing, pleadings, legal consultations and mooting.

We are in need of a wider range of assessment methods to fully test some higher levels of academic and critical abilities.
The current training program of professional certification which depends on placing a trainee under the supervision of a sole practicing lawyer is a poor way of professional training.

Law faculties are in need of a complete accreditation system. In 2001 an Accreditation council was established at the Ministry of Higher Education and Scientific Research. The General Accreditation criteria Regulation came into force in 2002 and it is applicable to all private universities. This regulation should be extended to the public universities as well in order to enhance the quality of law faculties whether public or private.

**Reform of Legal Education**

Having set out the problems and characteristics of legal education in Jordan, one should also point out that these problems have been identified by the government and at the university and faculty levels as well. Reform is underway and significant steps have already been taken towards enhancing higher education in general including legal education. These reform plans and measures include have included so far:

- regular review and improvement of LL.B and LL.M. curricula;
- introducing quality assurance concepts and measures at university and faculty levels;
- laying down strategic plans for the academic institutions, taking into account the input of the market and stakeholders;
- enhancing teaching and learning through continuing training and sponsoring scholars to be trained in reputable universities;
- enhancing competition between law schools;
- increasing interaction and cooperation between law schools, and between law schools and professional institutions;
- encouraging more exposure to international academia and professional organizations.
There is nothing quite like being there.

In Guatemala, the American law students in the Campbell University summer program witnessed firsthand a guerrilla attack on an Army base in a remote mountain village. They assisted in the construction of widows’ huts and a two-room schoolhouse. They visited a medical mission clinic in the city dump. In addition, they explored Mayan ruins, spoke with a former president, conferred with practicing lawyers, listened to marimba bands, and took Spanish lessons. Guatemalan law students served as their hosts.

In Korea, our international students have walked the grounds of a Buddhist temple and worshipped in Korean churches. They have spoken with prosecutors, visited a prison, toured the Judicial Research and Training Institute, and observed students preparing for the Korean bar exam. They have gone to the Constitutional and Supreme Courts, heard from North Korean refugees, quizzed a multinational corporation’s inhouse counsel, and heard lectures on Korean history and economics. Besides Korea and the United States, the program’s participating law students came from Mongolia, Kyrgyzstan, Uzbekistan, Albania, Scotland, Cameroon, Burundi, Pakistan, China, and Myanmar.

Studying, working, eating, hiking, and singing together on a daily basis for weeks – in another culture, with students and faculty from that culture and others – makes for a remarkably dynamic opportunity to learn about those cultures in general and their legal systems in particular. Of course, all of us in our international travels have experienced similar advantages personally. My six-month teaching stint in Slovenia enabled me not only to interact academically on a regular basis with students, faculty, and administrators from a different legal system, in an emerging democracy, but to learn that system by living in it, in all its unique sound and color. Few classrooms can simulate the lessons learned by engaging in real sales transactions for groceries in the city market, witnessing the exercise of assembly and speech freedoms in the city commons on New Year’s Eve, crossing streets and observing the law enforcement activities of the police, applying lease terms to resolve lodging issues, and negotiating the twists and turns of a new bureaucracy.

Faculty and student exchanges are similarly beneficial. Obviously, however, teaching and studying “on location” are not always, or even often, feasible. But there are ways to come closer to the on-site experience.

Guest lectures by experts on the historical, religious, economic, familial, environmental, and political dimensions of a particular society – with generous opportunity for questions and answers – contribute mightily to an understanding of that society’s culture and legal system. A multi-disciplinary approach is an essential acknowledgment of the complexity and nuance implicit in every legal system. For example, one cannot approach full understanding of the laws and legal system of Korea – much less the Korean
mindset and the forces of change in that nation – without knowing something of the 35-year Japanese occupation during the first half of the twentieth century, of the impetus for the economic progress of the last forty years, of Confucian tradition and its hold on private and public institutions, of the almost instinctive priority for reunification of the Korean peninsula, and of the generational differences in perspective on the American contribution. The laws of inheritance, the legal power of the chaebol, the decisions and role of the Constitutional Court, even the system of legal education itself – all of these derive from a context that for those from other places is not self evident.

To come closer to the “real world” experience, in a mixed class in International Businesses Transactions, I have also addressed language barriers, first by having students translate into English model arbitration clauses published in their native tongues. Other students then translate those English translations back into the native language. As one might guess, we end up with interesting differences from the original model clause – and the students learn something about the challenges and risks of operating transnationally in a different legal system in more than one language.

As for specific classroom techniques, the Socratic method, applied in “student-friendly” fashion, has in my experience been well received outside my American classrooms. Of course, an internationally diverse student body also lends itself well to a comparative approach on most any subject. And small-group role playing has been a fruitful mechanism for getting students to see how particular law is relevant to and might be applied in a transactional setting.

We are in the early stages of considering some kind of video-conferenced classroom teaching as a promising alternative mechanism for mixing students and faculty from law schools in different countries. The Willem C. Vis International Commercial Moot Arbitration Competition has already afforded our students analogous opportunities. Common law backgrounds are intentionally juxtaposed with civil law traditions in both the writing of the research memoranda and in the oral hearings against teams from other countries.

Communication is the predicate to the understanding that teaching has as its goal. That communication should be accurate and comprehensive. That is why audiovisual technology and technique – what the broadcast industry calls “actualities” – are so helpful in the teaching context. They help minimize the risk of misinterpretation and increase the depth and breadth of observation. The teacher’s message is less likely to be obscured by biases borne of his own tradition. Even so, if “a picture is worth a thousand words,” an in-country life experience – being there as the subject of the picture – is worth ten thousand, or maybe even a million.
Effective Techniques for Teaching About Other Cultures and Legal Systems (Lithuanian report)

Julija Kirsiene

The study program at Vytautas Magnus University School of Law, Lithuania, leads to a master degree in law and from the very start was aimed at much more trans-cultural and interdisciplinary teaching of law, than it was and still is common in Lithuania. The necessity for teaching about other legal systems is grounded by these circumstances:

- Lithuania is a very small country,
- Lithuania is the Member of European Union,
- Lithuania was occupied for fifty years,

So one of its greatest challenges for Lithuania as a nation is to create and consolidate the rule of law. In order to create a law school which would indeed meet the real needs of the country by preparing lawyers who can move the country towards the rule of law and to implement the law which actually cuts across the “borders”, our School of Law have made and implemented these decisions, that are related with our aim to teach our students not only about Lithuanian legal system but about other legal systems as well:

1. The teachers: from the onset, numerous American and European scholars’ taught mainstream, required courses in our School. This effort was culminated by signing of certificate agreement with Michigan State University – Detroit College of Law.

2. The Socratic teaching method was encouraged. In order for the Lithuanian lecturers to raise the level of their skills of the case method of teaching, a seminar was conducted in 2001 by prof. Carl C. Monk and prof. Barbara Black (of Pace University).

3. A bachelor degree in other subjects and high level of legal English for students is required.

4. International exchange of students and academic personnel is promoted

Foreign teachers
Recognizing that foreigners much more readily travel to our Law school to teach law if the teaching is to be done over a short period of time, the School formed and implemented an innovative short and intensive course program. After the initial two semesters of the first year studies, during which courses are taught in the traditional, semester-long, manner, there are numerous short, intensively taught, courses. Each course last two weeks and have a classroom component of thirty astronomic hours. During the sessions of these intensive courses, students take no other courses. This intensive course program allows us achieve
two goals: 1. To invite a vast number of American and European teachers with great expertise and outstanding academic background. The lectures from abroad are selected by recommendations of our good friends at Michigan State University, by contacts with other law schools. Of course some visiting professors might be called recurring visiting professors as they are visiting us every year; 2. Visiting professors in most cases offer our students some areas of concentration, teaching on a higher level, much more in depth, not only basic assumptions of the entire system.

**The Socratic teaching method**

The traditional method of instruction used in continental – law faculties is commonly referred to as “didactic” or “magisterial”, in contrast with so called “Socratic” or “case method.

It is a goal of our law school to have almost all courses taught in the Socratic, case analysis, fashion. Accordingly:

1. nearly all classroom work is done in an integrated lecture-seminar fashion, it means classes take the form of question – and answer sessions on given areas of the law between the professor and a few students designated for that purpose throughout each class. Through such verbal interaction, students are put to the task of sorting the relevant from the irrelevant, making use of facts and analogies, invoking and distinguishing precedents, arguing both sides of a legal issue, casting specific problems in terms of their relations to broader legal principles. “Right answers” are not always given.

2. for nearly all courses students must prepare the traditional case briefs, so there is a great stress upon the independent work on the part of the student. Considerable amounts of raw materials are given students before the class, which they must read, dissect, understand and synthesize in preparation for class discussion.

3. Teacher is required to provide detailed reading assignments for every lecture. Since readings are assigned, it follows that the reading material should be made available to the students, by placing them into the course intranet conference, or left at the law school library.

On the other hand as Lithuania is a civil law country we cannot say, that we use purely Socratic method during our lectures, we have continental-law teaching method with Socratic elements in. As codes (for example civil, criminal, administrative and etc.) are considered as embodiment of the juridical moral order that ground our law tradition, the texts of codes are primary source of materials for study. In each class, the professor exposes one part of some conceptual edifice, presenting the rules and principles on the day’s agenda in their logical, natural and deductive order. Nevertheless “magisterial” and “Socratic” methods are deemed to reflect the different emphases, magisterial method is thought to reflect upon abstract principles and case method, places the greater focus upon
concrete cases, but the integration of these two methods can have a synergetic effect we try to achieve in our study program.

**Requirement of legal English and bachelor degree in other subject.**
There are two obligatory requirements for students applying into law program at our law school: 1. high level of legal English; 2. bachelor degree in other subjects; Students that are applying to enter law studies at our Law school should pass the English test. As well we suppose that students who have bachelor degrees in other subjects are more mature. They are more capable of entering into study program which requires a great deal more of them in terms of self-discipline and self-application than do studies at bachelor level. The fact that the students have degrees in other subjects (such as economics, history, politics and other social sciences) allows them to apply the various paradigms they have learned to the law. They are much more capable analyze a legal question’s relations to other fields are much more capable to determine both the policy considerations which underlies a particular rule ant to plot the results of a particular rule’s application.

**International exchange of students and academic personnel**
The best way to learn about other legal system is to study at least one semester in other country. While implementing the aims of Bologna process and common policy of Vytautas Magnus University (VMU), our Law school promotes mobility of students and academic personnel. Vytautas Magnus University has about 100 Socrates/Erasmus partners all over the world, has 44 bilateral agreements with universities form Europe, Asia, USA, Japan, and is partner in 4 international organizations.
Effective Teaching about other Cultures and Legal Systems

Associate Prof Datin Noor Aziah Mohd Awal
Faculty of Law
Universiti Kebangsaan Malaysia

Introduction

Malaysia being multi-racial and multicultural had a head start in teaching about other cultures and legal systems. Being multicultural, its legal system is pluralistic in nature and rich in a number of sources of laws. In order for students to understand the present laws they must be able to appreciate the past. This paper will look at the effective teaching about other cultures in teaching laws. It will look at the various approaches taken in ensuring that the students will be able to appreciate the differences of these cultures and legal systems.

(a) Introduction of Compulsory subjects

Introduction Malaysia Legal system and Introduction Islamic Legal System are being taught as compulsory subjects in year one in all government funded law schools. In fact some private law schools have also started to introduce these subjects as compulsory paper even though their students are doing a twinning programme with a foreign university or an external program, like the University of London, LLB External. These two subjects give students a very wide background to sources of laws and the different cultures that are in built within the Malaysian legal systems. Many of the judgments made in Malaysia by English judges take into consideration the local circumstances and local customs. For example in the case of The Six Widow (1908) 12 SSLR 1208, the Court held that a customary polygamous marriage practiced by Chinese in Malaya at that time was valid even though such marriage was contrary to public policy in England. In the case of Ramah v Laton (1927) 6 FMSLR128, the English Court accepted for the first time that Islamic law was the law of land and shall be applicable to Muslims in Malaysia(Malaya at that time). This was case of division of matrimonial property where in accordance to Malay custom, a wife upon divorce, has a right to a half share of all matrimonial properties acquired during their marriage. It is a recognized rights that a Malay woman is entitle to property *feme sole* and no marriage can deny her of such rights. In fact upon marriage she is given a right to sue for matrimonial property upon death of her husband or divorce. Her share is usually half if she contributed to the acquisition of the property or one third if she does not.

The two cases are among the few examples about learning other cultures in Malaysia. Hence a law student in Malaysia should be able to appreciate the Malay, Chinese and
Indian customs as they represent the bigger portion of the population. Of course in the Borneo states of Sabah and Sarawak, there exist until today the Native Courts where customary law of the natives are applicable. Again, students are given an introduction of different tribes and the customs they practiced.

(b) Encouraging students research- project paper

Apart from teaching and giving little background to Malaysian multi-cultural society, students are encourage to do mini projects or research work. In UKM, project paper is compulsory where students are required to write a small project between 15,000 to 20,000 words. This is done by year three students. The topics are of students’ choice, so long as it has not been written before. Students are encouraged to research and write about their customary law and how it has evolved and remained to be applicable in the modern world. It certainly enriches the data collections and make amends to some historical writings as some of these research may unveiled some realties and truth from what had been written in history books years ago.

Apart from writing mini projects students have to write assignment for almost all subjects. Assignments for Introduction to Malaysian Legal System, Family laws, and land law may include research work about other cultures and laws. This is because these laws are still applicable in Malaysia and had become an important source of laws.

(c) Comparative studies

Most undergraduate subjects are comparative in nature. The pluralistic legal system have encouraged the comparative method of teaching. Most subjects are taught simultaneously, as follows:

<table>
<thead>
<tr>
<th>Conventional Subject</th>
<th>Islamic laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaysian Legal System</td>
<td>Islamic Legal system</td>
</tr>
<tr>
<td>Law of contract</td>
<td>Muamalat –Islamic Contract</td>
</tr>
<tr>
<td>Criminal law</td>
<td>Islamic Criminal law</td>
</tr>
<tr>
<td>Law of Tort</td>
<td>Islamic law of tort</td>
</tr>
<tr>
<td>Family Law</td>
<td>Islamic banking</td>
</tr>
<tr>
<td>Banking</td>
<td>Islamic Insurance</td>
</tr>
<tr>
<td>Insurance</td>
<td>Islamic Family Law</td>
</tr>
<tr>
<td>Jurisprudence, etc</td>
<td>Islamic Jurisprudence</td>
</tr>
</tbody>
</table>

At postgraduate level comparative law subjects offered are:

a. Comparative Constitutional law;
b. Comparative Family Law;
c. Comparative Jurisprudence;
d. Gender and law
e. Advance Intellectual Property law;
f. Advance IT Law

Most subjects are taught in a comparative manner, i.e. compare to the law in another country like England, Australia, New Zealand and India. All subjects will look at the position under Islamic laws in Malaysia and one other Muslims’ country like Egypt, Jordan or Iran. Many lecturers also make a comparison with another ASEAN countries like Indonesia, Singapore or Brunei. Of course it is much easier to make a comparative study with another ‘common law’ country rather than a ‘civil law’ country.

(d) Own initiative when teaching about other cultures and legal systems

Personally, I am only willing to embark on a comparative study of any subject if I had some knowledge of the country legal systems. In order to do this, I need to be in that other country, and had done a ground research there. At present I am teaching Comparative Family Law where I compare the family laws in Malaysia, New Zealand and England. I am comfortable to teach the subjects as I had done all my studies in England (10 years) and had a year teaching and researching in New Zealand. It is undeniably true that one can get almost all information from the internet but it is never the same if one actually experienced it. I am also currently supervising students from Indonesia on Islamic law of succession and customary law of succession. I have from time to time visited Indonesia and had various discussions with my counterpart on the topic and had to understand Indonesian legal system. Inviting lecturers in from the other country as guest lecture definitely make the subjects more interesting a life. Students will be able to ask direct questions, particularly those interrelated with culture and custom of that country. With Indonesia, since its quite near, arranging student trips and exchange are some of the things that could be done to enhance the understanding of the subjects.
Islamic Legal Education in Public Law Schools in Malaysia – Charting the Direction

Muhammad Nizam Awang

Scope of the Paper

This paper ventures into the various possibilities of making Islamic legal education in Malaysia compatible with the contemporary legal trend and issues. Being an Islamic State, there is a need to work within capable local environment to nurture greater degree of scholarship in Islamic law and qualified practitioners. Speaking from local experience, it concludes that broadening the scope of Islamic legal education is crucial in bridging the gaps towards understanding and harmony between shariah and civil (secular) law.

Islamic Law in Dualistic Legal System

As other counterparts in Commonwealth countries, Malaysian legal system is deeply rooted in the common law, and entrenched into bulk of legislations and precedents. The common law tradition was once judicially construed to all branches of law applicable to locals. In the Straits Settlements, English judges endorsed the full-fledged common law reception having considered to the position of the states as terra nullius. Variably, in the Malay States, reception was effected through legislation.¹ Later, the Malaysian Civil Law Act 1956² inserted ‘saving provisions’ that English common law and equity is applicable only to fill the vacuum in law or in the absence of written law in force. Should English law applied, it shall pass the test of suitability (appropriateness?) to local circumstances. The extent of English law application has led the country to the future roadmap – that is to introduce Malaysian Common Law.³

Occupation of British, inevitably to say, has marginalized the application of Islamic law into Muslim personal law, and directly attributed to the limitation of Shariah Court jurisdiction in Malaysia. Both Civil Court and Shariah Court are created by the Federal Constitution, hence jurisdiction and power of the respective courts are defined by the

³ The realization of Malaysian Common Law might prolong due to many constraints and pending conflicts taking into account the divisive political parties, cross-religion issues and etc.
same.\(^4\) Shariah Court works side by side with its civil counterparts. Being a State Court, however, does not forbid the Constitution from appreciating the special position of Islam,\(^5\) freedom of religion\(^6\) and other position associated with the religion of Islam.

On matters relating to capacity building, two federal governmental agencies are created – that are the Department of Shariah Judiciary Malaysia\(^7\) and few special Units under the purview of the Attorney General’s Chambers of Malaysia.\(^8\) Both departments bring together local and foreign experts for consultation on regular basis. Following widespread practice of Islamic law in Islamic banking and finance law, the latter is currently putting the existing legislation under review. Indeed, graduates from premier public law schools are preferred due to their mastery of subject matter and high proficiency in Arabic and English.\(^9\)

The need of having qualified personnel in Islamic law is increasingly demanding in the global market. Nik Ahmad Kamal\(^10\) observed that:

Though Islamic law is applied to limited subject matter, it should be overestimated as more than 50 percent of the population is Muslim and use Islamic law. An amendment to the Federal Constitution that gave the Shariah Court exclusive jurisdiction over all matters pertaining to Islamic law reiterates its importance and status.

\(^5\) Article of 3(1) of the Federal Constitution
\(^6\) ibid, Article 11(1), (3).
\(^7\) The Department has successfully marked effort on the standardization of Islamic law throughout all states in Malaysia and enhance capacity building within the structure of Syariah judicial system
\(^8\) The Attorney General’s Chambers of Malaysia has already created three Units to strategize development in Islamic law in Malaysia, particularly Islamic Family Law and Shariah Judicial System Development Unit, Islamic Banking and Finance Unit, and Interaction and Harmonization Unit.
\(^9\) For further reading on fundamentals, constraints and challenges in Islamization of legal education, read Abdul Aziz Bari, *Legal Education and Islamization* (1997) 7 IIUM L.J.
Following similar line of arguments, Farid Sufian echoed:

The ability of Muslim to exercise their right to have Islamic law applied to them, to certain extent, depend on the existence of a court system that is able to administer Islamic law. In the Malaysian context, the most able court system to do that is the Shariah Court system mainly because it possesses the qualified personnel Islamic law. 11

Should Islamic legal education reach the genuine framework, this would in turn enrich the range of expertise in all fields of law in Islamic context. Whilst legal practice mainly deals with corporate and banking law (in which Islamic application is limited), learning Islamic law and Islamic Jurisprudence (Usul Fiqh) probably significant in other emerging legal and non-legal areas (ethics and bioethics, policy guidelines, best practices and etc).

Islamic Legal Education in Public Law Schools

There were two courses offered on Islamic law in Malaysian law schools - that were historical development and sources of Islamic law, and the other that encompassed perfunctory principles of Muslim personal law and Islamic criminal law. 12 Elective courses including Islamic Jurisprudence and Islamic Banking are available in their third and final year of law studies. Given the preferred purpose of getting the law degree recognized for professional practice, the syllabus content and delivery of Islamic law courses were very minimal, superficial and introductory in many law schools.

At least, there are two law schools13 that have offered other branches of Islamic law. As expounded in those university missions and goals, prospective graduates are expected to be Muslim professionals who are well grounded with exposition Islamic revealed knowledge into contemporary world. Courses offered are varied, but of practical significance to the future carrier and for those pursuing postgraduate level. Irrespective of compulsory or elective papers, the curriculum is always at its best seeks to present comparative analysis

12 Nik Ahmad Kamal Nik Mahmod, The Importance of Understanding and Teaching Islamic Law in Asia, Asian Journal of Comparative law Vol. 1, Issue 1, 2006: 9. There are currently six law schools in public universities in Malaysia – that are University of Malaya, Universiti Kebangsaan Malaysia, International Islamic University of Malaysia, University Teknologi MARA, Islamic Science University of Malaysia and Universiti Utara Malaysia.
13 Ahmad Ibrahim Kulliyyah of Laws, International Islamic University of Malaysia (established since 1985) and Faculty of Shariah and Law, Islamic Science University of Malaysia (created since 2000). The Bachelor of Shariah and Law (with Honours) is only offered since 2005. Prior to that, the Faculty offered Bachelor of Shariah and Judiciary (with Honours).
whenever possible. This would help student assess the merit, suitability and flexibility of Islamic law in critical way.

In addition, adequate understanding about other legal traditions, without any doubt, is of major importance to strike the balance between argumentative reasoning of adopting certain legal principles and peculiarities subsisting therein. Rather than being defensive, students will be able to synthesize the extent of compatibility of other legal system to principles subscribed under Islamic law. Advocating such approaches also enable Islamic law to gain better respects and confidence in the secular systems. In doing so, it will not only restore the originality of Islamic law, but also make Islamic legal system acceptable to Western readers as the secular system are acceptable to Muslim world.¹⁴

In terms of teaching methodology, the traditional didactic method of teaching and dogmatic approach of teacher can become barren and purely intellectual exercise in Islamic law teaching.¹⁵ As Islamic law constitutes substantial component in professional law program, shifting the existing paradigm are necessary. By any account, there should be deducted approach in which the theoretical framework of Islamic law is applied into specific real life issues. In what is termed as ‘professionalization’, the teaching methodology of Islamic law:

…should contain minimum academic standard for Islamic practitioners worldwide, whilst at the same time allowing local variations in courses and course contents. The professionalization of Islamic law education should also produce a class of Islamic law practitioners whose competence would be recognized anywhere in the world (emphasis added).¹⁶

Having regard to the need for development of such practice, the Faculty of Shariah and Law (Islamic Science University of Malaysia), offers its law degree as a double major program – that there is a fusion of shariah and legal studies under one faculty. Whilst in other public law schools law degree is a four-year program, the Bachelor of Shariah and Law (with Honours) takes five-year primarily due to high concentration on both disciplines

of knowledge. As the program outcomes may demonstrate, at the end of the course students should be able:

a) To gain the mastery of knowledge in both Syariah and Civil law at the ultimate level of understanding and of high capability to apply those knowledge into real life problems;
b) To identify, analyze and suggest workable solution to the contemporary issues related to Syariah and civil law;
c) To compare the principles and practices of Syariah and civil law, in which the aim towards harmonization of both legal system are feasible;
d) To assess the suitability and flexibility of principles and practices subsisting in Syariah and Civil law with the local conditions;
e) To understand the functions, roles, procedures and practices in Syariah and Civil law judicial and legal system;
f) To be highly proficient in three major languages - Malay, Arabic and English and present reasoned arguments suitable to the level of audience;
g) To utilize available sources and modern technology effectively in the provision of legal skills and practice, to demonstrate high teamwork spirit, good leadership values and is willing to improve knowledge and skills.

h) To understand and practice professional responsibilities, ethics and etiquette, noble character according to Islamic guidelines.

Being the first of its kind ever designed in Malaysia, our shariah and law degree describes the importance of teaching shariah and law in preparing students in the judicial and legal profession (and other related profession). During the early stage of consultation, the appointed members of Program Advisory Panel generally supported the idea of having the degree to bridge the dichotomy of shariah and law into better understanding. To stimulate interaction, both legal systems are taught in comparative manner either under single course or two different courses. Pure Shariah subjects are taught in Arabic by those specialized in Shariah studies, whereas Islamic-oriented law courses are taught in English. Amongst the Islamic law courses offered as follows:

<table>
<thead>
<tr>
<th>Courses</th>
<th>Synopsis</th>
</tr>
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<tbody>
<tr>
<td>Islamic Constitutional</td>
<td>It deals with the constitutional principles in Islam, basic features</td>
</tr>
<tr>
<td>and Administrative</td>
<td>of an Islamic State, historical analysis on Constitution of</td>
</tr>
</tbody>
</table>

The program outcomes are modified from Criteria and Standards for Programs in the Field of Shariah and Law Education, Quality Assurance Division, Department of Higher Education, November 2002. Starting December 2005, quality assurance practices and accreditation of national higher education is monitored and overseen by the Malaysian Qualifications Agency (in effect of the merger of National Accreditation Agency and Quality Assurance Division in December 2005).
| Law                                                                 | Madinah and its suitability in Islamic modern theory in Malaysian context and other countries like Saudi Arabia, Iran and Pakistan. It also looks into the definition of constitutional and administrative law, principles of *syura* (reaching decision through discussion) and fundamental human liberties, equality and social justice, supremacy of Shariah, obedience to the governor and people responsibility, prohibition to corruption of power, protection of minority and non-Muslims. It also looks into the role of political science and public law in forming system of administration. |
| Islamic Law of Banking and Takaful (Insurance) | The course describes the background of banking, guidelines and practices of Islamic banking. Discussion of Islamic banking introduces students to principles of transaction, contracts and Islamic banking products including deposit service, financing services, trade financing (letter of credit based on the concept of *wakalah*, *musharakah*, and corporate financing (syndicate financing, securitization and Islamic bonds). Special features of Islamic banking and conventional banking are compared. Students are also introduced to the concept of Islamic insurance, its management system in the Malaysian context, security and mutual responsibility, variety of products (under family insurance and general insurance), application of interest concept. It will also examine the comparison between Islamic insurance (takaful) and conventional insurance from aspects of interests, gambling, risks, uncertainties and exploitation. References are made to the Islamic Banks Act 1983, Takaful Act 1984. |
| Islamic Law of Tort | The course relates with civil responsibility of a person over others. It introduces the concepts, jurisdiction and development of Islamic law of tort. Discussion covers liability on the property injury, personal injury, occupier’s liability, professional negligence in economic standpoints, construction and medical profession, trespass of land and defamation. It also explains the role of *hisbah*, available and remedies from Islamic viewpoints such as compensation and damages. |
| Islamic Land Law | It introduces students to the laws related to land from Islamic perspectives. As such, it examines on the historical background of Islamic land law, development of Islamic law and civil law in respect of land law, applicable customary laws, administration of land in Malaysia, the legal position of reserved land and conformity of the legal provisions in the National Land Code 1965 to the Islamic principles – leasehold, recognition of land |
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Effective Teaching Techniques About Other Cultures and Legal Systems

| Islamic Law of Property | reversion, land dealing and transaction, special provision on *waqf* (charitable trust) and preemption rights. This course introduces legal aspects, administration of property in Malaysia with reference to inheritance, wills, gifts, matrimonial property, nominee property and saving property. It specifically discusses how inheritance and wills are governed amongst Muslims and applicable in Malaysia including law of probate and administration of property, customary practice. It further focuses on administration of *zakat* (almsgiving) and *Baitul Mal* (Islamic Treasury Institution) and their role in developing economic capacity amongst Muslim in Malaysia. |

Equipped with eight (8) generic skills outlined by the Malaysian Ministry of Higher Education and partial adoption of Clinical Legal Education (CLE) into curriculum, the Faculty is committed to lead more integrated and analytical approach. Following the newly established Committee of Excellence in Teaching and Learning, teaching methodology of all Islamic law and civil law courses are currently under review. It is certainly a daunting task to academics as mentioned by Nik Ahmad Kamal because:

They are a rare species, and although the number is increasing, most of them are young and inexperienced. Given a few more years, the experience and confidence will make them major player in the process of harmonization and integration of Islamic and civil jurisprudence.18

**Reflection for Future Roadmap**

The real truth is the judicial and legal profession in Malaysia is still heavily subscribed to the civil law. Nevertheless, liberalization of trade in the global market is creating high prospects and potentials for Islamic law to flourish. Islamic legal education, in turn, must be reflected to keep abreast with this emerging trend. The legal fraternity also need to be equally supportive to the mission of education – graduates are not only meant to serve industry; rather of preparing graduates of world class standard in terms of their knowledge and adaptability to any kind of environment. In the Malaysian context, triparte and interlinked relationship – law schools, professional bodies and government, is important so that policy or direction pertaining to legal education will be a shared goal.

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Effective Techniques for Teaching about Other Cultures and Legal Systems
Teaching Macrocomparison through Formal Debate

Fernando Villarreal-Gonda*

This paper describes a teaching technique used during the fall semester of 2007 in a Comparative Law course held at the Facultad Libre de Derecho de Monterrey (Mexico). The teaching experience consisted in holding a formal debate among students on convergence and divergence of different legal traditions of today’s world. Before analyzing the reasons why this teaching method was deemed effective by the debating students, the teacher and other faculty members (Part II), it is important to explain the context in which the experience took place (Part I).

I. Context

A. Comparative Law Course: It is mandatory for 4th year students (the Law program’s duration is 4½ years). Total in-class time is 24 hours. Course prerequisites are: Basic French, Introduction to French Law, Legal English and Introduction to Common Law.

B. Students: The group (12 to 24 students) is highly homogeneous. The student’s average age is 20. Most students are born and have always lived in Mexico. Their contact with foreign cultures is usually limited to summer travel in North America and Europe, as well as exposure to mass media. Most students are able to speak and read Spanish and English; some may read French. Comparative Law students simultaneously take other very demanding courses, which makes them hard to keep track of assigned readings.

C. Course Objectives: Knowledge objectives include: 1) knowing, 2) comprehending, 3) using, 4) contrasting and 5) evaluating, the fundamentals of the major legal traditions. Skills objectives include: 1) locating, analyzing and synthesizing foreign law, 2) the ability to use critical and creative thinking, 3) the ability to communicate effectively (e.g. reading, writing, speaking, actively listening, interviewing effectively), and 4) the ability to argue and influence people. Social learning objectives include: 1) developing relationships and 2) the ability to participate effectively in groups. Attitudinal objectives include: 1) the ability to “see through the eyes of others”, and 2) respect, acceptance and appreciation of the rich diversity of legal traditions.

D. **Course Content:** Since no comparison is possible without previously identifying the fundamentals of the major legal traditions, the course focuses on macrocomparison. It starts with an introductory discussion on different conceptions of law and the role it plays in various societies. Then the course explores the basic institutions, procedures and rules of the Civil Law Tradition, the Common Law Tradition, Socialist Law, Chinese Law, Japanese Law, the Islamic Legal Tradition and the Hindu Legal Tradition.

E. **Teaching Techniques:** Multiple methods of instruction are combined to accommodate different learning styles and to reach different levels of knowledge. Traditional lectures are combined with short summarization lectures, class discussions, student presentations, in-class writing assignments and guest speakers. For example, a reading on English Common Law (e.g. Zweiger & Kötz’ Introduction to Comparative Law) (guiding students towards the knowledge and comprehension levels) may be combined with a class discussion on that topic (i.e. analysis level of knowledge), a short summarization lecture (i.e. synthesis level of knowledge), homework exercises (e.g. CALI ® lessons on US Legal Concepts and Skills) (i.e. application level) and another class discussion (e.g. on how Common Law concepts compare to Civil Law concepts) (i.e. evaluation level of knowledge).

F. **Assessment & Evaluation:** The purpose of assessment and evaluation is not only to give fair grades, but more importantly to facilitate student learning. Evaluation may be used as a teaching tool and it should always be a relatively pleasant experience for the students, that engenders in them a wish to learn more.

G. **Course Materials:** Materials include basic and advanced texts, written in different languages, by classic and contemporary authors, with different legal and cultural backgrounds (e.g. Berman, Chow, David, Feinman, Glendon et al, Glenn, Husa, Markesinis, Mattei, Menski, Merryman, Pegoraro & Rinella, Reimann & Zimmermann, Rodière, Schlesinger et al, von Mehren & Murray, Zweigert & Kötz). Electronic materials are also used (e.g. CALI® lessons and the teacher’s blog).

II. **Teaching Macrocomparison through Formal Debate**

In the light of that context, a formal debate was perceived by students, the teacher and other faculty members, as an effective teaching tool.

A. **The Logistics of Setting up the Debate:**

1. The teacher’s intervention was intentionally limited, in order to promote students’ creative thinking and participation. The teacher’s only request was to videotape the
debate for analysis and review by future Law students. Naturally, the teacher was always available for guidance.

2. To create a healthy participatory environment, students were free to participate in the debate (they could, instead, submit a final research paper).

3. Students agreed to create 3 teams. Team 1 -composed of 4 students- was in charge of organizing the debate, controlling it and evaluating the arguments, questions, answers and conclusions of the debating teams.

4. On the proposal of Team 1, debaters were free to join any debating team (Teams 2 and 3 were composed of 6 students each).

5. On the proposal of Team 1, teams agreed on a debate topic and date.

6. On the proposal of Team 1, Team 2 agreed to argue on the convergence of legal traditions, while Team 3 agreed to argue on their divergence.

7. On the proposal of Team 1, teams agreed on the rules of procedure:
<table>
<thead>
<tr>
<th></th>
<th>Introduction</th>
<th>Team 1</th>
<th>welcome remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Position presentation</td>
<td>Team 2</td>
<td>position presentation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Team 3</td>
<td>position presentation</td>
</tr>
<tr>
<td>2</td>
<td>Work period</td>
<td>Team 2</td>
<td>formulates 6 questions to Team 3, in writing</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Team 3</td>
<td>formulates 6 questions to Team 2, in writing</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Team 1</td>
<td>selects 3 questions to be directed to Team 2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Team 1</td>
<td>selects 3 questions to be directed to Team 3</td>
</tr>
<tr>
<td>3</td>
<td>Q&amp;A (1)</td>
<td>Team 2</td>
<td>answers the questions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Team 3</td>
<td>answers the questions</td>
</tr>
<tr>
<td>4</td>
<td>Work period</td>
<td>Team 1</td>
<td>formulates 3 questions to Team 2, in writing</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Team 1</td>
<td>formulates 3 questions to Team 3, in writing</td>
</tr>
<tr>
<td>5</td>
<td>Q&amp;A (2)</td>
<td>Team 2</td>
<td>answers the questions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Team 3</td>
<td>answers the questions</td>
</tr>
<tr>
<td>6</td>
<td>Work period</td>
<td>Team 2</td>
<td>derives conclusions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Team 3</td>
<td>derives conclusions</td>
</tr>
<tr>
<td>7</td>
<td>Position summary</td>
<td>Team 2</td>
<td>position summary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Team 3</td>
<td>position summary</td>
</tr>
<tr>
<td>8</td>
<td>Work period</td>
<td>Team 1</td>
<td>deliberates in private</td>
</tr>
<tr>
<td>9</td>
<td>Evaluation</td>
<td>Team 1</td>
<td>selects the most convincing team and evaluates teams’ participation</td>
</tr>
</tbody>
</table>

- 225 minutes -
8. Students agreed to allow other students and faculty to witness the debate.
9. Students agreed to be evaluated by their peers as well as by their teacher.
10. On the proposal of Team 1, debating teams agreed to be evaluated on the following criteria:

<table>
<thead>
<tr>
<th>Professional attire</th>
<th>10 points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Persuasive argumentation</td>
<td>20 points</td>
</tr>
<tr>
<td>Debate participation (at least, one intervention by each team member)</td>
<td>20 points</td>
</tr>
<tr>
<td>Teamwork</td>
<td>20 points</td>
</tr>
<tr>
<td>Observance of timing regulations</td>
<td>10 points</td>
</tr>
<tr>
<td>Punctuality</td>
<td>10 points</td>
</tr>
<tr>
<td>No interruptions</td>
<td>10 points</td>
</tr>
</tbody>
</table>

11. On the proposal of Team 1, debating teams agreed to evaluate Team 1 on the following criteria:

<table>
<thead>
<tr>
<th>Professional attire</th>
<th>20 points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debate organization</td>
<td>20 points</td>
</tr>
<tr>
<td>Questions posed</td>
<td>20 points</td>
</tr>
<tr>
<td>Control of the proceedings</td>
<td>20 points</td>
</tr>
<tr>
<td>Argumentation (winner selection and evaluation)</td>
<td>20 points</td>
</tr>
</tbody>
</table>
B. Debate Results:

Knowledge
- All students –debaters and judges- had to be thoroughly familiar with the debate topic, reaching higher levels of knowledge;

Skills
- The students had to do their own research on the world’s legal traditions, including issues not necessarily covered by course materials;
- The students tested their ability to use critical thinking in analyzing those issues;
- The students had to synthesize everything they had learned;
- To some extent, the students tested their ability to write effectively;
- The students tested their ability to speak effectively in front of their peers;
- The students tested their ability to express opinions and argue;

Social learning
- The students tested their ability to participate effectively in groups;

Attitudes
- The students showed mutual respect for each other;
- The students tested their tolerance towards members of their own team and the opposing team;
- The students showed respect, acceptance and appreciation of the rich diversity of legal traditions;

Learning, Assessment & Evaluation
- The students discovered and solved problems by themselves and arrived to their own version of the truth (heuristic teaching method);
- The students played an active role before and during the process;
- The students’ freedom and autonomy resulted in motivation and feeling of inclusion;
- The students generated their own learning experience and learning environment;
- The students used creative thinking in shaping the debate structure;
- The students learned by teaching others;
- The debate allowed to link assessment and evaluation, on the one hand, and learning tools, on the other;
- The students came in contact with a combination of peer-evaluation and hetero-evaluation;
- Overall, students perceived a pleasant learning experience.
Teaching Casuistry of Criminal Law at the VU University Amsterdam

Elisa Hoving (research assistant Department of Criminal Law and Criminology, Faculty of Law, VU University Amsterdam)
Anja Oskamp (dean of the Law Faculty, VU University Amsterdam)
Klaas Rozemond (assistant professor Department of Criminal Law and Criminology, Faculty of Law, VU University Amsterdam)

The Method of the Criminal Law

In the legal course “Criminal Liability” at the Law Faculty of the VU University Amsterdam, second year law students and criminology students study the General Part of the Criminal Law. They have to learn the principles and precedents of legal subjects like Acts and Omissions, Causation, Self Defense, Duress, Complicity and Attempt. In the course, special attention is paid to the analysis of new cases, derived from decisions of Dutch Criminal Law Courts or moot cases, invented by the teachers of the course. One of the teachers, Klaas Rozemond, has written a course book, The Method of Criminal Law (in Dutch: De methode van het materiële strafrecht), in which the most important precedents of the Dutch Supreme Court in Criminal Law Cases are explained in such a way that a student can use those precedents to solve new cases.

The method of solving a case, explained in the book, starts with the concepts of the General Part of the Criminal Law, such as perpetration, causation, intention, recklessness, conspiracy, preparation, attempt, incitement and complicity. The Dutch Criminal Code does not give any further definitions of these concepts. Therefore, in its judgments, the Dutch Supreme Court has formulated criteria to explain the general concepts of Criminal Law. These criteria have been applied in a range of later cases in which the Supreme Court gave a final judgment on the way the lower courts applied concepts and criteria of the Criminal Law to the facts of these cases. Students have to compare a new case with the facts of the relevant precedents and they have to explain how concepts and criteria can be applied to the new case. During the course, the teacher explains the Criminal Law Method and leading legal precedent in general lectures. The lecturer also applies this method to new cases from recent decisions of the Supreme and lower Courts and he discusses the way Criminal Law Judges argue to substantiate their written decisions. The students practice in small groups with real cases from the Criminal Courts and fictitious cases which have to be compared with the relevant precedents of the Dutch Supreme Court.

The study of cases in small groups fits with the vision of the VU University Amsterdam of learning by research. According to this vision, students should be able to participate in the scientific research of teachers and they also should be able to learn methods of research with which they can actively participate in society. The training of students in solving new
cases tries to prepare them for a role in society as solicitor, prosecutor or judge. At the same time, they participate in the scientific research of the teachers in which decision making by Criminal Law Judges is analyzed from a theoretical point of view. The aim is to form ‘communities of learners’ in which students and teachers participate in scientific research and social practices of problem solving.

A Research into Case Solving Abilities

In May and June 2007, the law students and criminology students themselves became the object of scientific research. Two criminology students, Elisa Hoving and Jolien Terpstra, studied the way students learned to solve cases with the Method of the Criminal Law. Hoving and Terpstra started their research with an analysis of the teaching vision of the VU University and the Criminal Law Method described by Klaas Rozemond. After this analysis, they executed an empirical research into the knowledge and ability of students to solve a case. At the 7th lecture of the Criminal Liability Course, they handed out a questionnaire on the way students solve cases and they presented a new case, written by Klaas Rozemond, which focused on the question whether a suspect acted in self defense while wounding a presumed attacker with a broken bottle. Students had to answer general questions on the method to solve a case and specific questions on the case presented in the questionnaire. The aim of the empirical research was to acquire knowledge on the insight of students in the Method of the Criminal Law and the ability of students to solve a specific case.

Hoving and Terpstra also executed an experiment in two small groups of students. One group held a usual meeting in which a case was discussed. As usual, the students had to prepare answers to legal questions about causation in relation to a case in which a suspect knifed a victim after which the victim died of an infection, although the victim was released from hospital as cured from the knife wound. The meeting in the second group was organized as a trial in which a student played the role of the prosecutor at a trial and another student played the part of council for the defense. They had to argue a solution to a case from the perspective of the prosecution and the defense. After the meeting, the students of both groups had to answer a questionnaire and they had to solve a new case on causation.

With the results of their research, Hoving and Terpstra tried to answer the question what the general knowledge of students was to solve cases and what their specific ability was to solve a specific case. The outcome was that most students generally know what the method is to solve a case, but that they have difficulties in answering legal questions on a specific case. Part of the explanation of these difficulties is that most students did not bring their case book and the text of the Criminal Code to the lecture where the research questionnaire was handed out. Students participating in the small study groups scored better on the case.
questions. They were more experienced in solving cases (not all the students attending the general lectures participate in a small study group, because participation in a small group is not obligatory). A lot of students participating in the small groups hold the view that they do not learn much from general lectures, as these lectures give overviews of the subjects which are also studied in small groups. These small groups therefore seem to offer a better way of learning to apply the Method of the Criminal Law to specific cases. The research did not show relevant differences between the experimental group in which the discussion was held in the form of a trial and the other group which discussed the case in the usual way. The research did show that students who only attended the general lectures were less able to answer legal questions on a specific case than students participating in the small groups, although students who only attended the general lecture do have general knowledge on the way the method should be applied to a specific case.

In their research report, Hoving and Terpstra made recommendations to improve the course on Criminal Liability. They could not recommend the experimental way of discussing a case in the form of a trial with a prosecutor and a counsel for the defense, because of the limited validity of just one experiment, but they suggested further experimentation with this way of discussing cases in small groups. They also recommended a more active form of general lecturing. Students should be stimulated to bring their case book and the Criminal Code to the lecture. The teacher should explain the relevant subjects in the week before these subjects are discussed in small groups and not in the same week the groups handle the subject.

Motivating Large Groups of Students

A problem in teaching the Method of the Criminal Law is the passivity of students in large groups, for instance during general lectures with 200 students or more. The research by Hoving and Terpstra showed that students attend these lectures without the expectation to actively participate in discussions or in solving specific cases. Students do not bring their case book to the lecture and they just wait what the lecturer has to tell without preparation in the form of reading the relevant chapters from the book on the Method of the Criminal Law. During the course of 2007, the lecturer as an experiment did present new cases to the students, then he explained the relevant concepts and precedents and finally he asked a student to answer questions on the legal problems of the presented case. The evaluation of the course showed that students did not like this way of lecturing, because they found it hard to speak publicly in a group of 200 students and they also did not like to listen to a student who tried to answer legal questions in public, because the students who tried to answer legal questions during a lecture did not succeed in presenting a clear solution to the case.
Similar problems occur in small study groups. Students have to write answers to legal questions in relation to a specific case, they also have to prepare analyses of decisions by the Supreme Court and the lower Courts, and they have to search new decisions by Criminal Law Judges on hard cases concerning the General Part of the Criminal Law. Students can only attend a small study group after they have submitted their written answers and analyses to the teacher of the group. In practice, most students submit short answers, written within a few hours, without taking the time to fully apply the Method of the Criminal Law to the legal questions of the case. Students prefer teachers who give ample explanations before the discussion of the case in a small group. A consequence of ample explanations by the teacher, however, is that students do not really try to find the answers themselves, because they anticipate the fact that the teacher will give them the full answer. Only a few students are really motivated to study the relevant literature and precedents, to look up new decisions by the Criminal Courts, and to argue their own solution to a case with legal arguments, fully applying the Method of the Criminal Law.

The Law Faculty of the VU University Amsterdam is trying to find different solutions to the problem of motivating students to participate in discussions at lectures and small groups. The selection of students during the first year of the study has become stricter. Student who do not finish all their exams of the first year within two years lose all their results. Plans are being developed to introduce a binding advice to stop the study when a student fails most of his exams during the first year. Training of legal thinking and study skills in the first year has been improved by introducing special training courses. There are plans to introduce honor classes for students with the best study results and with special motivation to participate in scientific research. The idea behind all these plans and measures is that better selection and training of students will create a ‘community of learners’ in which student and teachers study the scientific and social aspects of the law. The aim of this community is to form students with scientific and social capabilities. With these capabilities they can study the theoretical and practical problems of the law and use their knowledge in science and society.

Literature


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Soft on Cultures, Big on the Common Law

Jeffrey Berryman

I am an academic who is fortunate enough to enjoy the best of two worlds; I hold an appointment in the Faculty of Law, University of Windsor, Canada, and a fractional appointment in the Faculty of Law, Auckland University, New Zealand, the latter university being my own alma mater. Each year I have the opportunity to teach in the graduate law program at Auckland. Auckland’s program has grown in size and success. It is structured to allow both part and full time students, and both domestic and international students to engage with each other. An important component of its success is the ability to bring faculty from overseas, as well as experts from within the country, but not necessarily within the academy, to teach intensive courses. An intensive course can run for as short as one week, requiring full time attendance for five days, often separated by the weekend.

Due to the fact that the New Zealand Government has negotiated a special arrangement for both German and French graduate students to undertake post-graduate study in New Zealand at a fee structure lower than other international students, Auckland’s graduate law program has attracted a good number of civilian trained law graduates to its program from these two countries. In the graduate remedies course that I teach at Auckland, I have been fortunate to have an equal mix of civilian international students and common law trained domestic students. In what follows I share some personal impressions of teaching this intensive post-graduate course.

My graduate course is one devoted to the study of remedies. This is a subject that has seen a meteoric growth in academic research and interest. While the subject has generated the development of dedicated courses in North American law schools; it is still the exception in other Commonwealth law faculties where the subject is considered primarily as an integral component of other substantive legal subjects. It is interesting to contrast the ongoing debate in Australia and the United Kingdom about the place of remedies in any taxonomy of the law of obligations. Those who advocate remedies as a principled area of separate study, and who suggest that rights and remedy are inextricably linked, one influencing the prescriptive content of the other, are often dismissed, sometimes derisively, as dualists practicing discretionary remedialism. Whereas, in North America, the long shadow of the legal realists still influences jurisprudential developments, few doubt that an understanding of remedies is essential to have an appreciation of the way legal rights are conceptualized and fulfill any normative and, or, transformative role in society. Interestingly, I have found my New Zealand students, a good number who are practicing while completing post graduate studies, as well as my civilian international students, many who are taking time off after practicing for a while, readily accept the North American approach; and, perhaps confirming Oliver Wendell Holmes’s famous aphorism that; “the life of the law is experience, not logic.”
Teaching intensively requires a special approach to the selection of reading materials. Students are expected to have read the materials in advance of the week’s classes, but obviously that reading takes place well before the actual classes. I think it unreasonable to expect students to have read the material immediately before the actual class given the volume involved for each day. Because this is a graduate program, I tend to try and choose secondary material that provides a context in which to frame debates on particular subject areas as well as some specific doctrinal primary material. Against this background I tend to structure the program into two hour components of time, commencing each section with a problem exercise and generating student input as to possible approaches and solutions.

From my experience teaching this course, problem based learning is not the usual approach to instruction for the European students. However, they readily take to it and provide comparative input from their own legal system. Surprisingly, the effective outcome in divergent legal systems is not that different. The areas that generate most debate are whether there is a role for punishment in private civil law, compensation for ephemeral and largely subjective losses through awards of damages for non-pecuniary loss, the expansive role accorded common law courts in creating procedural injunctions – Mareva, Anton Piller, and anti-suit injunctions, the role played by equity as a generator of substantive rights – trusts and confidences, and the large discretion given judges in common law systems to shape appropriate remedies.

My European students are keenly interested to learn about common law methodology. Part of their reasons for taking my course is to gain an insight into the treatment and protection of private law rights in common law systems. They are surprised at the sheer length of common law judgments and the complexity of factual and legal analysis undertaken therein.

My New Zealand students are fascinated with developments in private law in North America. New Zealand has been blessed, others may say cursed, with an extremely responsive legislature. New Zealanders, with some justification, believe that as a nation they have ‘punched above their weight’ in legislating for social and economic egalitarianism. The first nation to have universal suffrage, the early creation of pensions, a 40 hour work week, and free, compulsory and secular education being primary examples. But as New Zealand’s population grows, as its social homogeneity breaks down, and as its new prosperity is not necessarily equally shared, new tensions have emerged. Relieving these stresses through democratic reforms, i.e. the recent adoption of proportional representation to elect parliament, has been one approach. Another has been increased attention to ‘rights rhetoric’. New Zealand has adopted a Bill of Rights modelled on Canada’s Charter of Rights and Freedoms, and has finally established its own Supreme
Court, ending appeals to the English Privy Council. New Zealand lawyers are drawn to understand how ‘rights rhetoric’ will influence and shape private common law.

Thirty years ago lawyers and law students in Canada, Australia and New Zealand would have primarily looked to the courts of the United Kingdom as the primary progenitors of new common law rights. The United States, that other great bastion of common law was as foreign as civilian Europe. Thirty years later, the development of private law in United Kingdom is firmly directed toward Europe, although not exclusively in one direction. Because London has always been a centre for world shipping, insurance, and finance, the flexibility and dynamic nature of common law still exerts a great influence over these areas. But in other areas, for example, consumer regulation and employment, there is now a plethora of regulations and directives emanating either from Westminster or Strasbourg. For Canada, Australia, and New Zealand, all trading nations, as well as ones that share a similar history concerning settlement, the decline in jurisprudential significance of the United Kingdom has led to both introspection – there is a far greater confidence and maturity in the respective domestic legal systems of these three countries, as well as a renewed interest in learning about each others’ legal system and common law developments. Although I am not suggesting any deliberate or concerted action, nevertheless, the coalescence of ideas from these three nations has created an effective counterweight upon which to evaluate both American and United Kingdom legal developments.

Student evaluation in my course is undertaken by a major paper requirement. Here, there are quite distinctive approaches in writing style between my European and New Zealand trained graduate students. The former are more Cartesian and deductive in writing style, the latter more fluid, willing to engage in underlying rationale for particular positions, and prepared to offer an opinion.

My course is not comparative or trans-national. I teach private law identifying commonalities and differences in common law approaches, but primarily focussing upon New Zealand and Canada. At the first IALS General Assembly in Suzhou, China, I recall one commentator suggesting that it is difficult to teach another country’s law without being fully immersed in that country’s legal culture. While comparative methodology has value, the great fear is that it misses subtlety and nuance that only immersion can bring. I regard myself as occupying a most privileged position to be professionally engaged in two countries, and to be exposed to students drawn from many. I believe, a model built upon fostering cross-appointments between law faculties has much to commend itself as a way to enrich cross cultural understandings of legal cultures.

A personal view by Professor Jeff Berryman
Of the faculties of law at the University of Auckland, NZ.
And University of Windsor, Canada
THE ROLE OF CULTURE IN TEACHING ABOUT OTHER LEGAL SYSTEMS

DR. TAHIR MAMMAN
THE DIRECTOR GENERAL OF THE NIGERIAN LAW SCHOOL

Nigeria is a country that has a mixed legal system where the Common Law, Islamic Law and Customary Law cohabit, albeit not in a happy equal partnership. British colonial rule brought in its train and imposed as a Senior and predominant partner the Common Law, equity and statutes applicable at a particular date in England, on extant Customary Law and Islamic Law to which it also ascribed the status of a Customary Law on Islamic Law in spite of its permanent, broad based and all encompassing character.

Correspondingly, the judicature is structured to implement and apply these systems of Law, separately especially in the case of Islamic Law.

Each system of Law in Nigeria, as elsewhere in many ways represents the legal culture of a segment of the population, which have an expectation of a respect by others for its culture in all ramifications.

Faculties of Law and training institutions in Nigeria have over the years developed a mechanism for addressing the peculiar legal needs of the society essentially using two methods.

First, is through a prescribed national law curriculum that is broad to include the typical Common Law courses, and some courses on Customary and Islamic Law. All students are required to take these courses irrespective of their culture or religious background and usually offered at the second and third year stage of the four or five year long programme. The curriculum attempts to give a broad outline of the general features of Customary Law and except where specific situations have arisen in judicial processes, the existence or otherwise of a Customary Law is treated as a fact to be proved before the courts.

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1 I wish to acknowledge the contributions made by Okorie P.C, Efiewerhan D.I and Mrs. Beatrice Shuwa – all lecturers in the Nigerian Law School
2 World Legal Systems developed by the Faculty of Law, University of Ottawa – http://www.droitcivil.uottawa.ca/world-legalsystems/eng.tab/edu/php
3 See Onibudo vs Akibu (1982)7sc 60; Katibi v. Kalani (1977) 11-12 SC65
The main principle for the approach is to generate broad awareness among lawyers of the existence, and character of various legal culture in the country and in effect make them culturally sensitive in the practice of law.

Despite the efforts above outlined, there is a general feeling of bias against the local legal culture in favor of the imposed English statutes and rules of equity and Common Law. In effect the processes of producing culturally correct Lawyers have not achieved the desired effect. Consequently, the faculties still face the challenge of developing innovative approaches to teaching law such as to empower legal practitioners to respectfully deal with the cultures of other people in the course of Legal practice.

A further challenge arises from globalization and the international character of trade, e-commerce; diverse and complex arena of Law on human rights, international criminal law, labor law, environmental and humanitarian law, whose boundaries go beyond national frontiers.

There is also this further feeling by the developing world especially the Africa sub-region of being alienated in bilateral and multilateral co-operations, and collaborations, even in the intellectual activities such as exchange of scholars, students and research interest where there is considerable decline in interest in matters affecting the region.

This inevitably means less interest in understanding the legal system and legal culture of the region and tendency to continue to judge its laws from the perspective of other foreign legal cultures.

A good start at considering this challenge would be in part a mix of the menu proposed by Sue Bryant and Jean Koh Peters, and Zamora.

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7 Sue Bryant and Jean Koh Peters “FIVE HABITAT FOR CROSS-CULTURAL LAWYERING” presented at 1999 CUNY Conference on “Enriching Legal Education for the 21st Century: Integrating Immigrant’s Perspectives Throughout the Curriculum and Connecting with Immigrants Communities.

These essentially would require improving on the current level of international Comparative Law and courses on legal history, and making some courses in this regard required courses and spread across most levels.

Secondly, externship for students abroad and opportunities for Postgraduate programs abroad. The drawback on this would be for students from countries whose institutions are unable to offer reciprocal arrangements, especially those from African institutions by reason of lack of resources or bias from potential partners.

Third, hiring of foreign faculty or internationalization of local staff. Availability of resources will also be a handicap to hiring of foreign staff as with interaction of local staff with international colleagues. But specializing in particular foreign legal cultures shouldn’t encounter such difficulty since it would be seen as an aspect of promotion of education in general.

However, the problems of budgetary constraints may be ameliorated through subsidy and grants by international organizations set up in part to reduce development gaps amongst nations by complementing the contributions of national institutions.

In the final analysis, in developing a broad curriculum, collaboration and support so as to generate “culturally correct” Lawyers, the paradigm has to be clearly defined. This paradigm among others should aim to make the law teacher or legal professional to identify assumptions which often times are used to fill in or supplant facts or draw erroneous conclusions. This paradigm will enable the lawyer assess situations or practice law based on facts, circumstances and culture of those he represents, rather than his. That is, to develop legal culture that makes the lawyer perceive “as normal things that at first seem bizarre or strange”.

For instance, under Yoruba local succession laws, where a deceased dies intestate, succession to his property may be through “idi igi” or “ori ojori”. In the first case, the property is shared among wives of the deceased with each wife taking along with the children but in the second formula, the property is divided directly to the children. In the event of a dispute as to which sharing method to adopt, the head of the family makes a final decision.

In a dispute, involving the two methods, the trial judge held “idi igi” repugnant to natural justice, but was reversed on appeal by the Privy Council in England.

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10 Dawodu v. Danmole (1958) 3 FSC 46.
Discussions on the efficacy of various legal cultures are indeed most useful for the promotion and generation of awareness of the relative value of legal solutions. Differences among legal cultures are expressions of self identity of societies which can only be understood by being respected.

Teachers of law have a special responsibility to nurture this line of orientation and develop mechanisms and platforms for dealing with the issues.
The Way of Teaching about Foreign Legal Systems at the Faculty of Law and Administration of University of Gdansk in Poland

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Dean of the Faculty of Law and Administration
University of Gdansk, Poland

When thinking about methods of teaching of the foreign legal systems we must always consider what should be taught, what methods of teaching are appropriate, what materials can be used and how courses can be examined.

Our Faculty of Law and Administration offers studies in the two following subjects: Law and Administration. We have also extra-mural studies and doctoral studies in Law as well as post-graduate studies in: Labor Law and the European Union - preparation of candidates for officials in European institutions. Legal studies lead to a Master's degree and are uniform and universal - they prepare candidates for all legal professions in Poland. The institution of specialization is rejected in the university education of lawyers. When undertaking studies in Administration, apart from the problems strictly connected with the activities of public administration, students study all the fundamental disciplines of legal knowledge.

Both students and graduates of the Faculty can participate in the 2-year School of English and European Law, run in conjunction with Cambridge University, United Kingdom (lectures are in English). The course comprises eight modules which can be studied over a maximum period of three years, normally in two consecutive years. Successful students are awarded a diploma in an Introduction to English and European Union Law. Course Syllabus includes:

- English Legal System and English Constitutional law
- Introduction to Criminal Law
- Contract Law and Practice
- An Introduction to the law and institutions of the European Union.
- Tort and Proprietary rights
- The substantive law of the European Communities (free movement of goods and people and competition law)
- The law of Business Associations
- International Trade Law

Following the completion of each module in the first year, students will complete a written assignment (either in essay, problem question or drafting form) which will be
assessed by tutors. In the second year of the course, each module will be followed by an open book, timed assignment in class or home written assignment. Continuing assessment of students takes place in the compulsory seminars and tutorials/ fixed class weekends.

The course comprises a flexible learning system incorporating:
- Comprehensive workbooks and use of textbooks or readers for each module as appropriate
- Seminar and tutorial visits by tutors/video virtual contacts
- Individual private study by student
- Modules taught consecutively
- Individual registration on blackboard interactive system, enabling contact with tutors and other students in between tutor visits
- Students are expected to independently prepare for monthly/fixed meetings with the aid of the workbooks and textbooks when the seminar and tutorial questions are discussed with visiting tutors.

To meet the growing demand for knowledge of American law, the Faculty of Law and Administration has entered into close co-operation with Chicago-Kent College of Law, USA. As a result, an American Law Course has been established. Despite the fact that this course takes place at the Faculty of Law and Administration at the University of Gdańsk, it is formally organized by Chicago-Kent College of Law and it is very popular.

The program of the American Law Course includes:

Constitutional Law. This course provides an introduction to the fundamental law of the United States as set forth in the Constitution and developed primarily by the United States Supreme Court. It addresses Supreme Court review, separation of powers, federalism, and the protection of individual rights under the Bill of Rights such as the Freedoms of Speech and Religion and the Right to Privacy. These topics are explored in the context of the historical and theoretical foundations of American constitutionalism, including the role of the US Supreme Court.

Contract Law. This course presents a study of issues of contract formation, interpretation, breach, defenses, and remedies. Among other topics contract doctrines such as "consideration" and "offer and acceptance". The focus is on topics essential to preparation to deal with issues of global commerce.

International Business Transactions. The course will examine the law and practice of business transactions in an international context. The topics covered will include basic crossborder business transactions, such as purchase and sale contracts, licensing and technology transfer agreements, joint venture agreements, foreign investments, international trade, international monetary law, and dispute resolution via arbitration and litigation in foreign courts. There are also review of some international organizations and treaties that specifically affect international business, such as the EU, the WTO, the World Bank and IMF, and the Vienna Convention on International Sales of Goods.
Corporate Governance. This course provides an overview of the mechanics and theoretical principles of corporate governance - the system through which the various parties in a corporation interact with each other and promote their respective interests. The course outlines the responsibilities, rights and roles of parties including: employees, management, board of directors (supervisory board), shareholders, other stakeholders, regulatory authorities and the media. Three models of corporate governance from advanced industrial economies, the Anglo-US, Japanese and German models, are presented and compared/contrasted with the corporate governance model in Poland. Throughout the course, students analyze and discuss case-studies presenting corporate governance issues at real companies in order to understand corporate governance in practice.

Competition Law. That course is to present Antitrust law in US in comparison with EU competition law frame provisions. Both legal and economic aspects in dealing with monopolies, horizontal and vertical restraints on trade, mergers and sector regulation are to be discussed.

E-commerce Law. The course covers legal issues arising in the context of the Internet. Topics include: copyright, patents, contracting, privacy and security. The course provides the essentials necessary to understand commerce over the Internet.

Criminal Law. A study of the general principles of criminal liability, including the justification of punishment, general concepts of act and fault, principles of justification and excuse, the significance of resulting harm, and accountability for acts of others. Certain specific crimes, such as murder and manslaughter, are also examined.

Oral Advocacy. This course provides an introduction to the adversarial proceeding in the United States, it presents the American Jury Trial as a means of learning legal advocacy. The goal of this course is to develop student’s professional skills in oral advocacy, and therefore it is designed to acquaint students with basics of public speaking and presentation skills. In addition, the course will include an introduction to various aspects of court procedure (jury selection, opening statements and closing arguments, examination of witnesses in court and rules of evidence). At the end of the course students will prepare and will be required to participate in an civil or criminal trial conducted in a courtroom setting based on hypothetical cases, where students deliver oral arguments and examinations of witnesses.

Legal Writing (for Business). The course introduces to legal analysis, research and drafting of memos, articles of incorporation, partnership agreements, client letters, and other legal documents needed in a corporate lawyer' daily practice.

Students can also study at the School of German Law, where the lectures are given by professors from the Law Faculty of the University of Cologne, Germany (lectures in German).
The Faculty co-operates with many foreign universities, including several in Germany, England, Sweden, Italy and the USA, and such institutions as the European Human Rights Commission, the Human Rights Institute in Turku, the Norwegian Human Rights Institute, the Max Planck Institute in Munich and Hamburg, the Criminal Studies Institute in Cologne and the International Penal Law Institute in Freiburg. That cooperation also helps to teach about foreign legal systems thanks to academic and students exchange programs.

During Law or Administration studies in Poland all students have lectures in main kinds of the Polish law (for example: civil law, criminal law, constitutional law and administrative law) but also there are lectures about international and foreign law or the European Union law. The purpose of the lecture is to give students important information about concrete legal system and its rules. During a lecture professor talks about some topic and the students can ask questions. Usually professor talks about something new for students, so they make notes and more of the time just listen to the lecture. When they don’t understand something ask questions during the lecture or sometimes after it.

At the end of each semester most of the lectures ends with an examination. That examination can be oral or written, it depends on the lecturer’s decision. Every student must pass such examination to continue his studies. If he or she fails than has two more chances to do it, but after third unsuccessful examination must repeat that year of the studies.

Beside lectures students divided in small groups (usually from 10 to 20 persons) need to participate in obligatory classes in particular subject called “exercises”, where they can check their understanding of the subject of a lecture and train some legal cases with an academic teacher. Also during such exercises students get marks from the teacher (the mark/grade system have 6 marks, which are: 5 (the best), 4+, 4, 3+, 3, 2 (the worst grade)). All exercises must be successfully completed. If not, than they can’t pass for the next semester of the studies. The exercises planning content, teaching style, questioning and tactics of questioning, listening, responding – all of these are chose by a teacher. Students and teachers use legal codes, manuals, and sometimes also audio-visual materials.
Attempts to teach law to foreign students often confront a variety of obstacles.\(^1\) Sometimes these obstacles are a product of the conceptual models originally incorporated within the major classical legal traditions: Civil Law and the Common Law.\(^2\) In Western law schools, a small space in the curriculum may have been reserved to the Shariah, the sacred Law of the Muslim world. Paradoxically, that small space, due to events which have come about as a result of the 2001 incidents in the Twin Towers, may be gaining more immediate visibility nowadays. Muslim studies are now the order of the day in major universities of the western world and, through them one could also find an increasing interest in Muslim Law.\(^3\)

The conceptual models and legal traditions in which lawyers have been trained are quite resilient and, to a limited extent, impervious to the introduction of new, different or alternative conceptual models. They have been assumed as part of the basic foundations underneath the prevalent social structure. They are both an integral part and a product of the social structure, as well as a factor which defines the nature of that social structure itself. In effect, law has a constitutive role in society. Any attempt at trying to introduce new outside norms in societies built upon any of those conceptual models will be confronted by the presence of preexistent norms, no matter the way through which those preexistent norms have gained social acceptance in society.\(^4\)

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\(^1\) One of the major one is the role of culture and language and its relations to the study of law in a classroom. See Gloria M. Sánchez A. Paradigm, Shift in Legal Education. Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture and Legal Language of the Major U.S. American Trading Partners. 34 San Diego L. Rev. 635, at 645 (1997).


\(^3\) The University of Puerto Rico itself now reached an agreement with the University of Granada in order for our students to obtain graduate degrees in Muslim studies.

During the last decade and a half, our Law School has been frequently involved in legal reform projects in Latin America. Puerto Rico, lien, a mixed jurisdiction (Civil and Common Law) as a result of the transfer of sovereignty (from Spain to U.S.) which took place in our country at the end of the Nineteenth Century,\textsuperscript{5} was looked upon as an attractive forum for countries which have recently moved toward orality.\textsuperscript{6} Most of the groups that we received as part of those projects were Spanish speaking and had a French or German Civil Law tradition in its background. Language was not supposed to be an obstacle for their learning process in classrooms or in our local courts. That, however, was not always true. On many occasions concepts differed in their meaning although the same word was being used to define them.\textsuperscript{7}

But even beyond that, though we still call ourselves a Civil Law jurisdiction, the truth is that we behave in many ways and to a great extent as Common Law lawyers do. Our legal education in our law schools is strongly influenced and is mostly organized around case precedents even in the Civil Law subject matters.\textsuperscript{8} We probably were more aware than most other US jurisdictions of the way a Civil Code helps in drawing conceptual maps for lawyers in their societies, but our judges, particularly at our lower court level, probably felt less constrained than the foreign state judges by positive codes and legislation.

What I find even more interesting, our visitors seemed to have a preference toward clear cut, absolute views of Justice, based more on Classical philosophy, while we tended to behave under more pragmatic instrumentalist notions of justice. In the criminal procedure field no issue was more contentious whenever our visitors went to court hearings than the dynamics of plea-bargaining, which posed for them controversial notions of justice which were almost always rejected in advance by those groups. Their arguments went as follows: If the law establishes as a crime a particular conduct and imposes punishment for its violation, why should the state be negotiating what the legislator has

\textsuperscript{5} For a detailed explanation on the transfer of sovereignty and its effects on the judicial system of Puerto Rico, see, José Trias Monge, el Sistema Judicial de Puerto Rico, pp. 45-50, 10

\textsuperscript{6} It was my experience that those changes sometimes came about as a result of diverse types of pressures from both international institutions and sometimes by the U.S. State Department.

\textsuperscript{7} The word jurisdiction itself has had a confusing meaning in our own jurisprudence. When a Chilean visits the island and hear us talking about “our jurisdiction” he or she had difficulty understanding what we are talking about. For him it is a “foreign” concept. Are we talking about competence or territorial factors? The same thing happens with our use of the word “audiencia” (oral hearing) which in Spain may mean a particular appeal level.

already mandated? Our answer of course was always based on external factors; not on internal elements present in the determination of guilt. It was the only pragmatical way, we argued, that we had to serve the interests of justice as well as procedural guarantees. From our perspective, if every case in our jurisdiction would have to be litigated to the end, and everyone would have its day in court, calendars would be impossible to manage and justice will be greatly delayed.

Of course, on many occasions it was the backlog in their own court calendars that had served as an incentive for them to look at our system. Many of us, looking at the problem from our side of the fence, believed that any reform project to be successful would had to incorporate some form of plea bargaining negotiation, otherwise the calendar congestion problems will remain. Yet, at the same time such exchanges made us aware of the ways in which our system, through the adoption of increasingly pragmatic policies has distanced away from the classical philosophical premises which were the main building blocks for our concept of justice.

That brings us to what in effect was the principal question of this exercise. I find that the most effective technique in helping us teach foreigners about our legal institutions is to first abandon all notions of superiority regarding ours ways. Let us try to explain to them how they really work, with all their positive and negative characteristics. Let us avoid any pretense of salesmanship, and let us be aware that many of the institutions which we praise so much today as part of our heritage may have come about as a result of very despicable historical events. In our case in Puerto Rico many of the institutions we talk to others about, have come into being in the island as a result of war and aggression, and yet we still find them useful today and have incorporated them as positive elements of our legal structures.

A second consideration that I will like to bring forefront is the need for a certain awareness toward differences in social structures, both on the countries those foreigners come from and ours. This is a quite sensitive issue because it formulates some fundamental questions regarding the validity of universal or relative perspectives which at the same time will probably help to sustain contemporaneous positions regarding the nature of rights. I will introduce just one example.

I have argued for a long time that the nature of the judicial function and the role of a judge is played differently in different cultural contexts. In our system we tend to rely a lot on the figure of a neutral judge. It is a judge which plays a less active role at the investigative stage, but which also plays a major role in the constitutional structure, to the extent that he may declare the law created by the legislature unconstitutional. In our
adversarial system his role is supposed to be restricted. It is a complex figure. Is that figure operating similarly in every contextual situation within the US territory? I will say no. There are many ways in which that image may be compromised in a small island society such as ours, even within the context of the major federal jurisdiction. In a society where everyone seems to know each other, be related to each other, and everyone seems to be part of each other circle, that neutrality may be always questioned. Particularly when each of those relations encompasses a number of social obligations toward others and expectations of others regarding those obligations. But it is not only the judge which is subject to those pressures. Any individual in a position to take decisions is similarly subjected to these kind of social pressures in such an environment.

Why have I selected this example regarding techniques of effective teaching? I have done so because I believe that by opening up to a more transparent conversation about our own social structure, foreigners from some developing countries or from similar Latin American societies may be able to find in it similarities through which they could start a more solid pedagogical process of learning. They will be able to familiarize not with the “ideal type”, that they may find falsified and never attainable, given their own social structures, but will work out from the real complexities, which in effect may result more familiar and accessible to their process of learning. I hope that this short reflection will be useful in the context of our Montreal discussion.
1. Introduction

In view of the fact that education is a major contributing factor to the well-being of any society, the Emir of Qatar issued a decree in 1973 proclaiming the establishment of the College of Education. 57 male and 93 female students were admitted in that first year.

In later years, rapid development in the country made it necessary for the College of Education to be expanded to accommodate new areas of specialization.

As a result of this, Qatar University was founded in 1977 with four colleges: Education; Humanities & Social Sciences; Sharia, Law, & Islamic Studies; and Science. By 1985, two other colleges (Engineering and Business & Economics) had been established.

In 2004, Law Number 34 regulating Qatar University was issued. This new law recognized the separate legal personality of Qatar University with an independent budget and an appointed Board of Regents and President. Along with other reform changes, the University decided to proceed with six colleges, namely: the College of Education, the College of Arts and Sciences, the College of Sharia and Islamic Studies, the College of Engineering, the College of Business and Economics and the College of Law.

Since its inception, Qatar University has functioned with separate facilities for men and women.

The mission of the University is “to promote the cultural and scientific development of the Qatari society while preserving its Arabic characteristics and maintaining its Islamic cultural heritage. The University's dissemination of knowledge shall contribute to the development and advancement of human thought and values. The University shall provide the country with specialists, technicians and experts in various fields, and equip citizens with knowledge and advanced research methodologies. The University shall also remain committed to strengthening its scientific and cultural ties with other Arab and international universities and educational institutions.”

Qatar University is to remain the primary option for Qatari students who seek and are qualified for academically oriented postsecondary education. The University will therefore serve a broad population of students. The University will demand diligence and achievement from its students, granting degrees only to those who demonstrate both qualities. Qatar University education will be broad, laying a foundation of successful professional life and good citizenship and preparing students to
accept individual responsibility, to take initiative, and to work effectively in teams. Qatar University graduates will possess the skills required for critical thinking, effective communication, and independent learning. They will have a firm grasp of the principles of mathematics and science, and a solid understanding of their own cultural heritage. Qatar University graduates will also have a global perspective with understanding and tolerance for different cultures.

The vision of Qatar University to be a model national university that offers high quality, learning-centered education to its students.

Qatar University College of Law offers a four year undergraduate law degree. It is the only entity in Qatar offering this degree.

Qatar University initiated the College of Law and Shari’a in 1990. In 2004, the College of Law became independent from the College of Shari’a with a new LL.B Program. However, the program of law and Shari’a is currently being phased out and incoming students are now offered a law (LL.B) degree.

Under the leadership of the Dean, Hassan Al Sayed and the Associate Dean, Dr. Mosleb At’tarawneh the College has embarked on an ambitious upgrading initiative. A key feature of the initiative is a new LL.B. Program which is seen to be unique in the region.

In launching the new LL.B. program, all of the College’s prominent professors of law, who themselves designed LL.B. programs in other universities in the region took part in this exercise. Consequently, the initial LL.B. program was comparable to the curricula of other regional schools of law.

The new program is intended to prepare students for effective and ethical practice of law in an increasingly global and multicultural world. The curriculum of the new program offers a high standard of legal set of courses and provide both introductory and advanced courses in every major area of the legal profession, particularly and not exclusively of the contemporary legal system of the State of Qatar.

The curriculum consists of (123) credit hours. It includes, in addition to 30 general University requirements courses (this requirement was recently reduced from the previous level of 45 hours) , 93 credit hours law courses which represent a full and faithful presentation of the courses traditionally offered at nearly all law schools in addition to new courses which reflect the new developments of the legal profession in the international community.

Building on the Qatar University’s vision of international recognition, the curriculum incorporates important developments in the globalization of both public and private law. The academic program takes a pervasive approach to international and comparative law, incorporating these perspectives into all national law courses and includes required introductory courses and a rich array of upper level electives in international, transnational and comparative law.

Recognizing the importance of a solid grounding in the skills and values of the profession, the College of Law curriculum further will provide students with extensive, rigorous legal research and writing experiences, introduces other lawyering skills such
as legal writing, legal research, negotiation and arbitration, and introduces the important professional values of civility and ethical practice. The curriculum should be taught by a faculty committed to excellence in both teaching and scholarship. Faculty members are expected to be actively engaged in research in their respective areas of expertise. The faculties are expected to promote a stimulating and interactive learning environment that supports the mission of the College. The scholarly mission of the College of Law enriches classroom teaching and learning; contributes to the understanding, development and reform of the law; and promotes the University’s mission as the sole national university

2. The Mission of the LL.B Program

The Law Program aims at providing excellent and high quality legal education through a motivating environment which based on student-centered learning in order to enable student acquiring legal knowledge, skills and ethics that are prerequisites for the effective and efficient practice of different legal professions such as judiciary, public prosecution, lawyering, consultations and arbitration.

3. The LL.B Program Objectives

The Law Program is intended to:
1. enable student to acquire basic legal facts, concepts, principles and theories.
2. uphold student’s conception of rights at both national and international levels.
3. prepare student to understand, interpret, analyze and apply legal rules.
4. enable student to acquire drafting and pleading skills
5. deepen student’s commitment to professional legal ethics and values.
6. develop student’s ability to practice legal critical thinking and solve problems.

4. The LL.B Program Learning Outcomes

Upon completion of this program, students should be able to:
1. Recognize the concept, nature, types, scope and effects of rights.
2. Demonstrate awareness of the importance of the role of law and value of rights.
3. Recognize types and means of legal protection of rights.
5. Apply legal provisions.
6. Write legal memorandums in a systematic manner.
7. Draft contract in a clear legal manner.
8. Negotiate to settle dispute and conclude contracts
9. Recognize arbitration rules and procedures.
10. Discuss legal arguments in a systematic manner.
11. Be committed to legal ethics and values in practicing different legal professions.
12. Plead effectively before different judicial bodies.
13. Solve legal problems using different strategies.
5. The LL.B Program Assessment Plan

First: Assessment Policy

1. The program shall be assessed formatively every year and summatively every five years. The assessment will be implemented through the participation of all stakeholders.
   a. Formative Assessment
      Students at different study levels
      Faculty
      External Reviewers (experts within and outside University)
   b. Summative Assessment
      Students of different levels
      Alumni
      Faculty
      Judiciary and Public Prosecution
      Lawyers
      Ministry of Justice
      Institute of Judicial and Legal Studies
      Legal Departments of ministries, public institutions and distinguished companies.

2. A Standing Assessment Committee at the College level will be responsible for the formative and summative assessments of the program in co-ordination with the Office of Academic Evaluation (OAE).

3. The Standing Assessment Committee will seek the assistance of an international academic or professional body or more for the purpose of the summative assessment of the program.

4. The Assessment plan shall be based on the program learning outcomes.

5. The formative and summative assessment results will be used for the continuous development of the program.

6. The Assessment plan shall be based on the multi-dimensional assessment approach and authentic assessment situations.

Second: Assessment Tools

a. Direct Assessment Tools
   An objective Comprehensive Exam (Multiple choice type) closely related to the cognitive program learning outcomes will be administered to a random sample of students who are about to graduate.
   Moot Court to assess the intellectual and psychomotor program learning outcomes through Observation Sheets.
   Chamber of Legal Advising and Drafting to assess the overall program learning outcomes through a set of rubrics developed by program faculty.
Oral Presentations of selected sample of students before an examining committee and public audience.

Student Portfolio which provides different evidence related to the achievement of the overall program learning outcomes.

Course Exams.

b. **Indirect Assessment Tools**

   Student survey to measure the perceptions of those who are about to graduate regarding the overall program.

   - Alumni survey.
   - Employer’s survey.
   - Student engagement questionnaire.
   - Focus groups including: judges, public prosecutors, lawyers.

**Third: Learning Outcomes Indicators**

- 80% of students comprising a selected random sample will gain 80% or higher on the comprehensive exam.
- 80% of students will score 80% or higher on the observation sheets related to their performance associated with the Moot Court.
- 80% of students will score 80% or higher on the observation sheets related to their performance associated with Chamber of Legal Advising and Drafting.
- 80% of students comprising a selected random sample will gain 80% or higher on the oral presentation before an examining committee and public audience according to the oral presentation rubric developed by program faculty.
- 80% of students will gain the “expected” level of the student portfolio rubric develop by program faculty.

**6. The Program Needs**

1- **Human Needs**

   a- Two (male and female) supervisors for the Moot Court (job description is being developed).
   b- Two (male and female) supervisors for Chamber of Legal Advising and Drafting (job description is being developed).
   c- Four (two males and two females) legal writing specialists.
   d- Two computer lab operators.
   e- Faculty members in different branches in the legal field.

2- **Physical Needs**

   a- Establishment of the Moot Court (technical specifications and equipment needed are currently being developed).
   b- Establishment of the Chamber of Legal Advising and Drafting (technical specifications and equipment needed are currently being developed).
c- Establishment of Multi-purpose (technical specifications and equipment needed are currently being developed).

d- Two independent study computer labs for 30 students each (technical specifications and equipment needed are currently being developed).

e- Legal data bases and computer software (specifications needed are currently being developed).

f- Text books, references and periodicals in the legal field (currently being developed).
Bachelor of Law Program
123 Credit Hours

Foundation Program

General Requirements
30 Credit Hours

Law Courses
93 Credit Hours

Elective Law Courses in Arabic: 12 Credit Hours

Elective Law Courses in English: 15 Credit Hours
### General Requirements (30 Credit Hours)

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### Compulsory Law Courses (66 Credit Hours)

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## IALS Conference:
Effective Teaching Techniques About Other Cultures and Legal Systems

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EFFECTIVE TECHNIQUES FOR TEACHING ABOUT OTHER CULTURES AND LEGAL SYSTEMS –
TEACHING AFRICAN CUSTOMARY LAW

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How to teach African customary law in a manner that enables students who are unaware or unfamiliar with it to understand it correctly or open up to an entirely different legal system? It is a question that arises even in countries where, as in Senegal, customary law is not part of a foreign culture but is native to the land. However, when one speaks of African customary law, the issue of definition immediately arises. Indeed, the question of an adequate definition of the concept of customary law needs to be solved before one can effectively deal with the best way to teach African customary law.

African customary law can be seen as a fragmented body of laws scattered between different linguistic communities, each having a law of its own, which will be the African customary law of that specific group. Consequently African customary law will be made up of an infinite number of customs as varied and diverse as the communities that exist on a given territory. According to the list of customs applicable in Senegal that was set up by decree on February 23rd 1961, there were at that date 68 customs connected to 30 linguistic communities, 2 nationalities (Dahomey – actual Benin, and Guinea-Conakry), and one Muslim community (the Mourids). On those 68 customs, 20 are identified as being either Muslim or Islam-influenced, 7 are termed Catholic and 8 refer to the indigenous African faith under the name of ‘fetishist’ or ‘animist’. How does one teach African customary law with 68 customs officially listed?

It is a fact that many dissimilarities can be found between the legal rules governing different linguistic communities within the territory of one country in Africa. From such a perspective, teaching African customary law may then be reduced to teaching the customary rules governing a particular group (I).

However, another way to teach African customary law focuses on a comparative and

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1 I prefer the term « linguistic community » (communauté linguistique) to ethnic group, as from a scientific point of view it is easier to define.
2 Badiaranké, Bainouck, Balante, Bambara, Bassari, Créole, Diakhanké, Dialonké, Diola, Fandanké, Khassonké, Laobé, Léboue, Malinké, Mancagne, Mandingue, Manjaque, Maure, Mossi, Niominké, None, Ouloloff, Peulh, Pouladié, Sarakolé, Sérère, Socé, Soussou, Toucouleur, Tourka.
historical approach that allows similarities and common trends to emerge as being indigenous to Black African culture and constitutive therefore of a body of law that can correctly be termed “Indigenous African law” (II)³.

I. Teaching African Customary Laws

When teachers choose to introduce their students to the legal rules governing a particular linguistic community, then it seems to me that a good way to approach the task is to first acquaint the students with the key terms and concepts of that customary law, in the language of the people whose customs are being explored. The next step would be to use the sayings, myths, stories and sacred artefacts of the community whose customs are being studied as a way of having a direct and inside look at the material that that community used in order to preserve and disseminate legal knowledge and values.

1.1. Identify key legal terms in the language of the group whose customary law is being studied

A good way to open students’ minds to the intricacies of a legal culture they are not entirely, if at all, familiar with is to confront them from the start with words and concepts that will teach them up front that they are literally entering foreign territory. Consequently they need to pay attention and not take anything for granted. For instance, in Senegal, Wolof speakers use the word “jaam” to translate the term slave. In that sense, there is a distinction between the jaami néegu ndey (the slaves on the maternal side of the family), and the jaami néegu baay (the slaves on the paternal side of the family); the former are captives who have become assimilated to family members, the latter are captives who can be bought and sold.

The same word, jaam, is used to name a close relative, one’s cousin: the child of the maternal uncle⁴. Those particular cousins (“cross cousins”, cousins croisés) are called kal⁵.


⁴ The child of the paternal aunt is called “master”, sang bi; the children of the paternal uncle and those of the maternal aunt are neither masters nor slaves they are plain brothers and sisters (there is no word for “cousin” in Wolof, that lack of a word for distinguishing between a close relative, the sibling, and a more distant one, the cousin, is telling of a society where bringing people together and making everyone feel like they are part of one big family is one constant endeavour).

⁵ Kal is another interesting concept which can translate into “a relationship that makes joking mandatory”, there is kal between cross cousins (children of the maternal aunt and children of the maternal uncle), and also between the former clans who are now identified with their family name (for instance all those who are named Camara, share an obligation to joke with every individual who bear the family name of Cissé,
they share an obligation to joke mercilessly with each other. Besides the *jaam* in that relationship is entitled to anything their *sàng* have. *Jaam* can ask for whatever good they want, food, clothes, jewellery and not be denied, even if they don’t ask the *sàng* are under the obligation to shower their *jaam* with gifts. On the other hand *jaam* are duty bound to act as their *sàng*’s servants in all occasions where the latter would have needed hired help.

The King’s close companions, who are among the dignitaries of the kingdom, are also called “the king’s slaves”, *jaami buur*. Hence, referring in Wolof to someone as being someone else’s slave does not mean that that person is a slave in the way Western, Christian and Muslim law understand it. Moreover the different legal regimes associated with the word *jaam* should bring the students to explore the ways in which African customary laws may have been influenced by external factors such as the Muslim and the Christian slave trades (i.e. the transsaharian and the transatlantic slave trade).

African words and concepts can also be used to introduce students to a specific indigenous African constitutional system. Let’s take the expression “Fal buur” which means “to elect a king” in Wolof (before the colonial conquest wiped them off, the Wolof kingdoms covered a good part of the territory that is now the Republic of Senegal). The combination of the verb “to elect” with the word “king” can be confusing to students who never heard of such a thing as an elected royal. In what kind of a system is a king ever elected? What are the criteria to become firstly a member of the royal family, and secondly an eligible royal? Who elects the king?

What about the word “folli”? It is the direct opposite of “fal” (to elect), folli means “to depose (an elected official)”. “Folli buur” means “to depose a king”, so in a system where the legal terms indicate that the king is not only elected but can also be deposed, it can be assumed that there is also a system of checks and balances worth researching. Thus, with just two legal Wolof concepts (*fal buur/folli buur*), the students are being introduced to a whole new kind of constitutional monarchy.

Teaching African customary law using African words and concepts is a method which has the advantage of literally showing the students that any legal system is a universe in itself, and words are the means by which a people create their own universe. Working with sayings and stories can achieve the same results as selecting specific legal terms.

1.2. Exploring the multi-layered meanings of myths, sayings and stories

Diakhaté, Kébé, Mbaye, Mboup). The same mandatory joking relationship exists between linguistic communities; it is then called *gàmmu*. In Senegal, Peuhl, Seereer and Joola are *gàmmu*, which means that when a Peuhl meets a Seereer or a Joola, they should joke and act like siblings, ribbing each other mercilessly and helping each other out if needed even if they are total strangers, who have never met before).

* In 1855 the Wolof kingdom of Waalo is the first kingdom to be annexed by the French. Direct rule over most of Senegal is achieved in 1886, with the defeat of the armies of the Wolof kingdom of Kajoor.
The division of legal systems into patriarchal legal systems and matriarchal legal systems cannot be understood and fully explained without reference to the myths that, in each culture, define the roles of men and women on the basis of which, the behavioural patterns that will be entrenched in legal status as customary or statutory laws are justified. Religions have been and in many states continue to be the sources of legal rules. In Africa followers of the Indigenous faith were exposed to priestesses and to a feminine (feminist?) spirituality based on the concept of a Mother God and of powerful female spirits guarding the lands and its inhabitants. From there derives a vision of the woman that was not tainted with misogynistic prejudices carried by sacred myths or stories.

The Wolof language conveys the concept of gender equality by being gender neutral (there is no Wolof equivalent to she/he, her/his). There are also sayings which harbour the meaning that age is more important than gender. For instance a Wolof child will hear this saying many times during his early years: Nit dina mag yaayam, mag baayam, waaye kenn du mag magam (“A person can be older than his/her father, older than his/her mother, but no one can be older than their elders”). This Wolof saying is a good enigma for students who are learning about Wolof customary laws. How can one be older than one’s own parents? How can that make sense? The saying can only make sense in a legal system where individuals have as many mothers and fathers as their biological parents have brothers, sisters and cousins. In Wolof, the same word “yaay” is used for mother and maternal aunt, and “baay” means “father”, but it also means “paternal uncle”. Paternal uncles and maternal aunts can be younger than their nephews and nieces; in which case the nieces and nephews will be older than their “mums” (yaay) and “dads” (baay). However, whether she/he is a close relative or a total stranger, whether she/he is a poor woman or a rich man, an older person will always be your elder. Hence, this saying is used to underline the fact that age takes precedence over gender, social status and any other kind of privilege. The division of the society into age groups with specific roles and statuses derives from this value system.

The second method of teaching African customary law combines the method that has just been described with a comparative approach and a historical perspective.

II. Moving from Teaching African Customary Laws to Teaching African Indigenous Law

In a course named “The Egyptian sources of African customary law” I have explored with students from different Senegalese linguistic communities (such as Seereer, Joola, Pulaar...
and Wolof), the concept of Indigenous African law and Indigenous African jurisprudence (legal theory). The course was designed as follows: the students were given to read, and asked to research,

- original texts from Pharaonic Egypt; 
- studies of specific African communities, kingdoms or practices made by historians and explorers from ancient times to the contemporary time period (Herodotus, book two; Diodorus of Sicily, book one; Ibn Khaldûn’s *Al Muqaddima*; Ibn Battuta’s account of his stay in the capital of the empire of Mali in the 14th century; the French Gaspard Theodore Mollien’s account of his journey through Senegal in the late nineteenth century, Leo Frobénius, Cheikh Anta Diop, T. Olawale Elias ...),

Specialists in oral literature and customary laws of different linguistic communities were invited to give lectures on oral traditions, ancient myths and stories, initiation practice...)

Each student was then asked to choose a subject and use it as basis for a comparative study involving the laws of Ancient Egypt, the customary laws of their linguistic community and the customary laws of other indigenous African communities. Students have freely chosen the subjects they wished to research and write about. The only constraint was that they use as focal point, or basis of their research a specific African linguistic community, and then expand their research on the topic chosen, not only to ancient Egypt, but also to as many other black African communities as they cared to base their comparative work on. The goal was to lead them to see for themselves the similarities between these various groups, rather than studying them in separate courses or separate classes as if they were fundamentally different socio-legal systems. In making the effort to cross language barriers, geographical and temporal boundaries, the students could see the identity of fundamental legal principles beyond differences in terminology.

The purpose of the course was to get students to realize by themselves that, just as the Civil law legal system derives its consistency from its reference to Roman law, an indigenous African law can be identified in reference with the single most documented and ancient indigenous African state, Egypt at the time of the Pharaohs. Reference to ancient Egypt makes it possible to demonstrate that many rules and values indigenous African communities have in common originate from the African continent and can therefore qualify as indigenous (i.e. circumcision as a coming of age ritual ; the improperly named “bride price”; the fraternity rule which makes total strangers, but also spouses, call each other “brother”, “sister”, or father”, “mother”, “grand-mother”, … according to age and social status ; women’s freedom of movement and of dress, the various descriptions of

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9 Excerpts from the following books were given to the students: *Textes sacrés et profanes de l’ancienne Égypte*, Traductions et commentaires par Claire Lalouette, Connaissance de l’Orient, Collection UNESCO d’œuvres représentatives, Gallimard, 1984, 277 pages; *La philosophie africaine de la période pharaonique, 2780-330 avant notre ère*, L’Harmattan, Paris, 1990, 567 pages.
Black African people made by foreign explorers who travelled through pre-colonial Africa regularly points to the fact that women do not mind showing themselves naked or bare-breasted, ancient Egyptian art shows the same reality; the principle of gender parity in the running of public affairs as well as private family matters, female elders yielded effective political power as “queen-mother” or “first wife” in many African communities and kingdoms, elder sisters lord it over their younger siblings, male and female, in many indigenous African communities.

Students enjoyed the exercise; they seemed to berediscovering their own customary laws as they paid attention to the similarities with other African customary laws in remote parts of the continent. The exercise also made them pay attention to the small details that hinted at the fact that maybe some customary rules were not as ancient as they were led to believe, and maybe others were worth researching more thoroughly in order to find a way to usefully adapt them to modern times.
Effective Techniques for Teaching about Other Cultures and Legal Systems

Dr. Ousmane Mbaye, Faculty of Law, University of Dakar, Senegal

The topic on the effective techniques for teaching about other cultures and legal systems raises not only the issue of the validity of the techniques or methods but overall, we think, the role played by others’ culture in the course of teaching their legal systems. Will the techniques be effective if one culture which has generated the principles and rules of law of a said legal system has not been taken into account? Is it relevant to raise the issue of culture if we observe that nowadays the majority of countries share or at least proclaim that they recognize predominant principles and rules of law which are therefore deemed universal? At last, what is the importance of nations’ culture in this present era of globalization which aims at reinforcing the unification of the law between nations around the world? The word Culture broadly defined here not only as the combination of three factors: historical, linguistic and psychological but more as a way a people or a nation sees the world, understands it, explains it and finally behaves.

Here are some questions which cannot be put aside. This paper is based on my personal experience in teaching English for Law at the Law School of Cheikh Anta Diop University in Senegal. A course exclusively taught in English. In order to make the topics of the program match with the said experience and the reader feel more comfortable, prior information needs to be given (Part I) before addressing the issue of Culture (Part II) and the techniques for teaching (Part III).

I - Teaching common law in a civil law country

In relation with the context in my school of law in Dakar, let us say or recall that Senegal belongs to the civil law system as opposed to the common law system; therefore teachings in the Law faculty are organized following the techniques in force in Law faculties of civil law countries which are different from the Socratic method generally favored in Law schools of common law countries. This is to say that even if our students have a Comparative Law course and by the way are in touch (between other foreign legal systems) with the common law system, it remains that they study it in French and in accordance with the faculty system of teaching (mainly lectures). On another hand and regarding now the content of the English for Law course I give. As we know and this in terms of courses, English for Law is far from corresponding to Anglo-American Law (taught as said above in Comparative Law class) since the purpose of the first is to teach Senegalese law students to understand and use the language of the Law in English whereas the goal of the second one is to teach them the concepts of law of the Anglo-American legal system. However and in close connection with what this paper is about, I am after all a Law Professor and not a language teacher. Thus, one will easily understand that it is not a question for me to teach only legal terminology and the manner
to employ that vocabulary. Because of that, my English for law course comes also as a true orientation in the Anglo-American legal system. It is at this very moment that comes up the problem of the methods to teach a foreign legal system (i.e. common law) to students from a civil law tradition.

In fact, if the use of English language in the process of the course can be contained since Senegalese law students have already studied general English for seven years before entering University, things become different when time comes to explain complicated legal concepts (because specific to common law) in a precise and clear manner. It’s mainly what the teaching techniques are about. Precisely, the question comes as it follows: what part common law countries’ culture takes in the teaching?

An established fact dictates the answer: since differences between systems of law (civil law and common law) cannot be ignored, a brief analysis is enough to realize that those differences reside in the disparities in philosophical attitudes and in practical approaches towards the resolution of social issues. Hence, reference to the culture in the trend of the course is fundamental in the sense that it allows students to have a deep insight into the taught foreign legal system.

Let us illustrate this point quickly. To comprehend the English system today, must students not be told how much English common law was constructed upon “land issues”? The importance of land, owning it and working it in early England, aren’t they at the basis of many legal principles in force today? Of course, yes.

Another example: to explain the origins of American law, wouldn’t it be necessary to stress the fear that early Americans had of strong centralized governments? It is quite sure that making students understand this fear will help them understand the American system of federalism.

To end with and for common law in general, the same approach could be helpful to introduce fundamental concepts as the “doctrine of precedent”, “stare decisis”, “ratio decidendi”, notions concerning equity, etc…

II – The place of culture in the teaching of common law system in a civil law country

This part intends only to provide a brief overview of the role of culture as element to make the technique for teaching common law system work.

In our view and from the definition given in the introduction, it is appropriate when teaching the specific concepts of the common law to stress that this specificity derives from a philosophical approach which is different from the one which is at the basis of the civil law system. In fact, students need to be informed that the difference between their own legal system which is civil law and the one which is common law has philosophical roots. The philosophical and historical dimensions being the cultural identity of a people. Broadly and generally speaking, we may assume that like other civil law countries and specially France, Senegalese approach towards the Law is based on rationalism and is so essentially deductive. That approach as far as Law as a whole is concerned, starts from broad principles which are then applied to individual cases. The french philosopher René
Descartes being the “father” of this way of thinking. Completely different, as we know, is the british philosophical approach bearing the common law system. This latter is inductive rather than deductive because relying on empirical method. Empiricism believes that all knowledge is derived from experience, meaning that broad principles can only be developed on the basis of inductive observation. As a result, the importance of court decisions as source of law in the common law system whereas in the civil law system legislation takes precedence over case law. Even if one cannot ignore the ongoing growth of legislation in common law countries (USA, England…), it remains that major areas of that law are governed by the rules developed by the courts. As a matter of fact, the technique for teaching common law system to students from a civil law tradition must necessarily take into account the importance of court decisions as first tools to be used. A clear understanding of common law is impossible without reading the court decisions or at least the leadings ones.

In that prospect, an effective technique is the one which works on court decisions, encourages students to read and make them accustomed to the readings.

Put in the context of my English for Law course, this point is in direct relation with the third part of this paper i.e. the relation between what is taught and how it is taught. We have chosen to name the third part: “The influence of the taught foreign system of law in the way of teaching it” and it is illustrated by authentic materials we’ve purposely attached. We think these ones will show concretely the technique we use for this particular course. Instead of receiving an “ex cathedra” lecture i.e passively as it would have been the case in a classical Comparative Law course at the faculty of Dakar, the students are interviewed on the court decisions or on some excerpts of selected texts they are supposed to have read and studied earlier before class.

As we see, this method is very close, if not entirely, to the Socratic Method well known in schools of law of common law tradition.

From my personal experience, it is still a quick and safe method for my students to comprehend the principles and rules peculiar to the common law system. What reinforces my conviction that the best way to teach a foreign legal system is to borrow as far as possible the techniques of those who own it.

Is it a lack of imagination or simply pragmatism?

III – The influence of the taught foreign system of law in the way of teaching it.

(See the materials attached in the following 2 pages)
Theme: What is a contract? (Part I: the competent parties or capacity)

Because contracts are essential part of our daily life, contract law has important part in our legal studies. Same in common law countries. In both legal systems (civil law and common law), contracts have common basis: a contract creates legal obligations for contracting parties in terms of rights and duties with the intent for each individual that this contract will be enforceable at law. As an example, the duty for one to perform, the other’s right to seek remedy for breach of contract. However before any conclusion, the first main question is when we can say that we have a contract? In common law, to be enforceable, a contract must have: competent parties, legal subject matter, legal consideration, mutuality of agreement and mutuality of obligation. Let us follow those different steps which fix a contract by choosing for today class one of them (the competent parties) which appears in a very interesting U.S case.

**Reading:** Kiefer v. Fred Howe Motors, Inc. (Supreme court of Wisconsin, 1968)

**Exercise:** Analysis of the case enclosed.

**Vocabulary list:**
- Plaintiff
- Defendant
- To sue
- Infancy
- Infancy doctrine
- Void
- Voidable
- Voidability
- Minority
- Public policy
- Reliance
Theme: What is a contract? (Part II: Mutual Assent – Offer and Acceptance)

In the trend of making a contract, we’ve already seen the issue of capacity. Today we will focus on the necessity of mutual assent between parties a contract requires to be valid. It consists of an offer and an acceptance. Sound simple? It is not. This has been illustrated in a famous case: Lucy v. Zehmer (Supreme Court of Appeals of Virginia, 1954) in which a contract to sell a farm written on a cocktail napkin at a bar has been considered as enforceable even if the seller thought he was joking, because the buyer thought he was serious and that belief was reasonable based upon the seller’s conduct. Before reading this case, let us give brief definitions of the other requirements:

- **Subject matter**: The subject of a contract must be legal
- **Legal consideration**: This is proper to common law and has no equivalent in our contract law. It means that each party to a contract has to contribute something to the bargain.
- **Mutuality of obligation**: That is to say that the parties must both incur legal duties before a contract be enforceable.

**Keywords:**

- Suit
- Specific performance
- Offer
- Acceptance
- Evidence
The role of culture in teaching about other legal systems

*Presented at the Role of Culture in IALS EDUCATIONAL PROGRAMME*

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“I …. argue that legal scholars should stop prevaricating over the definition of law and should instead develop sensitivity for the intrinsically plural and dynamic nature of all law. If pluralist approaches take themselves radically serious, they end up respecting almost all positions of the ‘the other’ as equally valid. There is nothing wrong with that. Pluralist methodology should be realistic, and therefore it cannot accept monism. Beyond that there is a jungle of competing conceptualizations and the contested field of global legal theory.”1

Introduction

The topic of the International Association of Law Schools educational programme in Montreal centres on other cultures and legal systems. In the planning of this programme, the Planning Committee was conscious of the fact that culture is a broad subject and includes many things that are far afield from the law. In order to guard against the danger of wandering, the Committee agreed that culture be discussed only when it is relevant to a legal system, and that in this case the connection between culture and the legal system should be made explicitly. Put another way, if the topic did not include the word culture, what exactly would be the difference in what the educational programme should be considering? This paper discusses the relevance of culture to legal systems and the need to take cognisance of this in the teaching of law in a globalising world.

The paper is divided into three sections. The first section is a brief consideration of the problematic notion of culture and the way it is viewed by lawyers and scholars operating purely or largely within legal centralist and positivistic theoretical perspectives. I argue that the view within these perspectives of non-Western legal systems as culture have led to the marginalisation of some of these legal systems to the extent that they are often not considered as serious candidates for inclusion in the curricular of law schools, including the home country law schools. The second section deals with the ‘grounded’ realities of culture in relation to law in both Western and non-Western societies today, which underscore the need to take culture seriously in modern legal systems and in legal education. I argue that this “grounded” realities mark a turning point in the way culture should be viewed and treated in legal education curricula. The third section is the conclusion.

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The notion of culture

Culture is not only a broad concept which may be far afield from the law as already stated. It is, more importantly for our present purposes, a problematic concept in so far as it is sometimes used to trivialise non-Western legal systems, such as customary law or religious systems of personal law (e.g. Muslim law) in comparison to Western legal systems. I submit that culture in non-Western societies has a depth of meaning which makes it an integral element of the normative systems of the communities whose culture is in question; it is not a superficial thing that people put on and off like shoes. For this reason, I cannot but marvel, as does also Menski, that despite the recognition by scholars, including those working within the legal positivism framework, of the globalising context of our times many still fail to seriously account for what Menski has called “concurrent glocalisation,” ‘for local non-Western perspectives and for the input of non-Western legal theories.’ Menski further observes that non-Western legal systems are viewed as cultural tradition while Western legal history continues to assume the stature of a global legal theory, and that: ‘Modern Western lawyers have largely managed to banish religion, culture and tradition from the tree of law. Such intellectual pruning, declaring that this or that is ‘extra-legal’ labels the bountiful fruits of South Asian and other laws …as cultural poison, which progressive lawyers want to consign to the dustbin of history.’

This view of non-Western legal systems through the lenses of positivism and its transcendent State may be likened to a child who refuses to be weaned off its dead mother’s breast, in the sense that legal positivism continues to feed on conceptualisations of law in the bygone British colonial contexts of Asia, Africa and other regions of the world. In these contexts, law (i.e. generally representing imported colonial legal systems) was considered to be bigger than culture (i.e. generally representing indigenous and other non-Western systems of law). Moreover, Western law supplied the standards of morality, natural justice and public policy used to determine the applicability of indigenous laws and other non-Western laws where these had been spared abolition, in addition to overriding culture in critical areas of life of the local communities, such as marriage. Examples of this legal chauvinism may be drawn from the interpretation of public policy by the courts in cases involving the recognition of African customary law and Muslim law institutions by the common law systems derived from the Western legal systems of the colonial States.

In many Anglophonic colonial territories, the applicability of non-Western legal systems was determined by reference to the notion of public policy, i.e. that in order to apply as a legal norm, a rule or concept deriving from non-Western laws should not be contrary (or repugnant) to public policy, morality or natural justice. But the values that informed the interpretation of public policy in specific contexts were clearly those of the Europeans and

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2 Menski note 1 above, p. 4.
3 See, for example, Section 1(1) of the Law of Evidence Amendment Act 45 of 1988 of South Africa.
their culture. Statements such as the following (in *Ismail v Ismail*⁴) were common in the jurisprudence involving the recognition of non-Western legal concepts and institutions and used as a basis for refusing their recognition:

“To sum up thus far. Having considered all the arguments presented on plaintiff's behalf, I have come to the conclusion that we would not be justified in deviating from the long line of decisions in which our Courts have consistently refused, on grounds of public policy, to recognise, or to give effect to the consequences of, polygamous unions contracted in South Africa, statutory exceptions apart. The concept of marriage as a monogamous union is firmly entrenched in our society and the recognition of polygamy would, undoubtedly, tend to prejudice or undermine the status of marriage as we know it…”⁵

The non-recognition of non-Western legal systems was and continues to be reflected in legal education by the absence of these systems of law from the curricula of law schools. Customary laws and other non-Western legal systems are not taught as mainstream courses or as part of legal theory in mainstream courses on jurisprudence in many law schools. Neither are they included in comparative law courses, and where they are, this is done in a cursory manner. Even in schools that have incorporated the study of these legal systems as area studies, such as the School of Oriental and African Studies (SOAS) of the University of London, there is evidence that these studies are not taken seriously by some scholars of these institutions. For instance law professors who engage in these studies and argue for the inclusion of non-Western legal systems in what is considered to be law are referred to by their colleagues as SOAS ‘eccentric[s] from a bygone age.’ In response, Menski, a Professor of South Asian Laws at SOAS remarked in his inaugural lecture: ‘I hope people won’t say this about me in years to come. I have, of course, asked myself what makes it appear so eccentric to argue that Asian and African people should be allowed a well-respected human right to their own culture-specificity rather than copying Western transplants….’⁶

**The “Grounded” Realities of Culture in relation to law: A turning point?**

A question may be asked whether the “grounded” realities about culture have not brought us, as legal educators and scholars, to a turning point about the way we should view culture in relation to law, and about its inclusion in our teaching of law. What are the “grounded” realities of culture? It is not possible to give an exhaustive answer to this question within the limited scope of this paper. A few indicators will suffice.

Taking the African continent, constitutional law and human rights studies have, for example, taken a new turn with the emergence of new constitutions that explicitly

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⁴ 1983 (1) SA 377(A). This case was decided by the Appellate Division, then the highest court of appeal in South Africa.
⁵ *Ibid* at p. 1024.
⁶ Menski, note 1 above, p. 6.
recognise culture. Countries like Namibia, Malawi, and South Africa guarantee cultural rights in their respective constitutions. For example, the South African Constitution provides that:

“Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights. Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community- (a) to enjoy their culture, practise their religion and use their language; and (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.”

I have argued elsewhere that culture in these provisions undoubtedly include the unwritten, normative customary practices that regulate the lives of South Africans in their day-to-day lives.

In guaranteeing the freedom of religion, section 15 of the Constitution of South Africa adds to these rights by stating that: “This section does not prevent legislation recognising- (i) marriages concluded under any tradition, or a system of religious, personal or family law; or (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.”

Other indicators of the “grounded” realities of culture in relation to law in the South African context are that some courts are more willing than before to broaden the view of law to include what was hitherto referred to as culture and unimportant to law. They have in a number of cases cast aside the narrow view of law espoused by the Appellate Division in cases such as *Ismail v Ismail* in favour of a legal system that is inclusive of previously marginalised non-Western systems of law. Thus the High Court held in one case that:

“It inimical to all the values of the new South Africa for one group to impose its values on another and that the Courts should only brand a contract as offensive to public policy if it is offensive to those values which are shared by the community at large, by all right-thinking people in the community and not only by one section of it. It is clear, in my view, that in the Ismail case the views (or presumed views) of only H one group in our plural society were taken into account.”

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7 See the Constitution of Namibia, section 19.
8 See the Constitution of Malawi, section 26.
9 Section 30 of the Constitution of the Republic of South Africa of 1996.
10 Section 31 of the Constitution.
13 *Ryland v Edros* at p 707. It should, of course, be mentioned that in south Africa, in particular, there are already worrying trends towards the uniformity of laws in which the Western legal system is once more
Furthermore, there are cases in which customary law concepts, such as the concept of *ubuntu*, have not only been equated to the “global” human right to dignity,\textsuperscript{14} but have also been employed to decide major constitutional cases,\textsuperscript{15} while concepts of unwritten customary practices (now known as living customary law) have been explicitly recognised as part of the national legal system.\textsuperscript{16}

What about indicators of the grounded realities of culture in Western countries? It has been observed that English courts have been under pressure not only to learn about Asian laws, but also to incorporate the cultural element of some disputes in their decisions, in order to achieve justice, even though the decisions concerned are ultimately couched in English law principles, such as the principle of equity. The latter is done in order for the judge not to be “seen to be implementing Muslim law in Britain.”\textsuperscript{17}

Thus notwithstanding that Britain does not generally recognise many Asian customs and norms, culture is doing its rounds on the ground, forcing the legal system to acknowledge it as an integral part of law in reality. The pressure in this regard has come from the settlement in Britain of immigrant Asian communities which import their cultures and plead them in disputes before the courts.\textsuperscript{18} Presumably, Great Britain is not alone in its experience of the immigrant communities’ cultures; but many more of its Western counterparts are experiencing the grounded realities of culture in a similar manner. Furthermore, it has been pointed out that “all over Europe today, governments talk to certain representatives of ethnic minority communities and religion because they wish to be seen as inclusive….\textsuperscript{19}
Conclusion

In conclusion, I submit that the developments connected with the “grounded” realities of culture in relation to law suggest that the time has come for according culture in so far as it relates to non-Western legal systems, whether they be systems of minorities within our own borders or of communities in far away lands a greater, if not the same, recognition we accord Western legal systems and of giving similar attention in our legal education curricula to non-Western legal systems.

Thus, even if one were to disagree (for whatever reason) with the legal pluralistic methodology advocated for by Menski’s statement at the head of this paper, a legal educator would miss an important point if he or she were not to appreciate the need to be conscious of culture as an integral element of law that requires to be respected and studied as any other system of law in a global context.
Effective Techniques for Teaching about Other Cultures and Legal Systems

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1. Introduction

This paper proposes three interrelated techniques for effective teaching about other cultures and legal systems. It is further proposed that, depending on the availability of resources (material, fiscal and human), any school of law may consider adopting and adapting one or more of these techniques to suit its specific needs. The three proposed techniques are (a) the establishment of a multicultural environment; (b) interbreeding; and, (c) foreign language proficiency.

2. Multicultural Environment: Faculty, Students and Curriculum

First and foremost, it is important for any provider of legal education in the 21st century to recognize the impact of globalization on legal practice which requires lawyering skills that transcend the borders of any single jurisdiction. In view of this, any legal education provider needs to create a multicultural environment in terms of its faculty (or teaching staff), students and curriculum. With regard to faculty, it would be enriching to have foreign and minority representation among the teaching staff that would be able to relate appropriately to foreign legal concepts and minority sensitivities. Fortunately, most tertiary institutions which claim to be ‘international’ have on their staff academics from diverse national backgrounds. Indeed, most advertisements for academic positions do not preclude foreign nationals from applying.

Foreign students from diverse backgrounds should be encouraged to interact with local students with a view to tapping on their innate as well as acquired insights into other cultures and legal orders especially on legal issues that appear to be in conflict with the predominant local legal thinking and norms. As in the case of faculty, the diversity among students could be achieved through short, medium and long term strategies. Short (summer) courses, faculty and student exchange programmes as well as tenure appointment of faculty from other jurisdictions may be considered as possibilities towards this end. For instance, most South African schools of law have staff and students originating from neighbouring countries such as Mozambique, Swaziland, Lesotho and Zimbabwe. At the University of Venda
School of Law, 25% of the full-time teaching staff (from Ghana, Germany and The Netherlands) and an increasing number of students are non-nationals.

3. Interbreeding (Metissage)

Second, interbreeding or crossbreeding among different cultures and legal systems presents an attractive model for teaching law; especially, when a law school seeks to produce a lawyer with a competitive edge for legal practice in the globalised economy of this millennium. Perhaps it is for this reason that Kasirer argues that legal education should be better perceived as a ‘cross-cultural dialogue in law rather than as training for experts in a particular place or set of places.’

Law teaching should therefore move beyond abstract comparisons of mixed, hybrid or foreign legal orders and actively draw on the concept of metissage. Advocates of metissage explain that, legal education should vigorously promote the experience of contact, confrontation and dialogue between other cultures and legal systems as an organizing theme for training lawyers as cross-cultural global actors. Unlike the comparative law method that merely catalogues difference, the methodology of metissage seeks to confront exchange by exploring exchange as a subjective experience.

4. Foreign Language Proficiency

Finally, the most effective technique for teaching about other cultures and legal orders is to acquire a good command or proficiency in a relevant foreign language. Foreign language proficiency is required of students as well as faculty.

Foreign students recruited into postgraduate programmes may help teach local students and faculty the basics of their home language especially when the cultures and legal systems of their home countries are to be effectively studied. Steenhoff points out that Dutch universities have an advantage in this because most Dutch students have at least a working knowledge of English, French and German and are therefore able to read and use primary materials from some of the main civil law and common law traditions.

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21 Ibid. 489.
22 Ibid. 495.
Obviously students learn better about another legal order when they are exposed to the legal concepts and cultures in the actual language of that country. In fact the teaching and learning about other legal systems and cultures becomes especially fruitful in an environment where the language of the legal systems under study is directly accessible to both faculty and students.

Perhaps the lesson to be drawn from the US case of *Frigaliment Importing Co v BNS International Sales Corp*\(^{24}\) may be significant here. This case demonstrates the problems caused by misunderstanding and miscommunication because the parties did not know each other’s commercial sub-culture, despite speaking each other’s languages. Most importantly, the celebrated *Frigaliment* case illustrates how an international contract between two parties with different linguistic cultures may be frustrated because of the failure of both parties to concisely define what ordinarily seems as simple a term as ‘chicken’.

5. Conclusion

These three techniques for effective law teaching have two main things in common. First, none of them may sit in its own silo since they are inherently interconnected and each complements the other. Second, all the three proposals have heavy resource implications. The resource implications involve both human capital and funding. It is however expected that schools of law which can afford implementing some of these cross-fertilisation techniques will tremendously make their law teaching more inspiring and beneficial to the new generation of lawyers for the 21st century.

References


Effective Techniques for Teaching about Other Cultures and Legal Systems

Systems within a system: Teaching International Law through Interactive Learning and Simulations

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This comment explores teaching about other cultures and legal systems through the lens of a teaching technique that was designed primarily for a different purpose. The Inkundla ye Hlabathi project of the Law Faculty of the University of Cape Town (UCT) was aimed primarily at improving students’ sense of the relevance and practical application of international law, particularly in an African setting. But an almost incidental aspect of this project suggests a route for learning and communication between cultures and legal systems.

Inkundla ye Hlabathi is a phrase in isiXhosa, the African language of the Western Cape, which translates as “World Forum”. It was conceived by Salim Nakhjavani of the Law Faculty of UCT, designed by him, myself and Shihaam Donnelly in 2006-7 and piloted in 2007. This year the project has been developed and improved under Salim Nakhjavani’s leadership. In my discussion of the project, I am drawing primarily on its pilot year, but also using some of the subsequent experience. Here I would like to thank Salim Nakhjavani for providing me with some useful pointers from the teaching experiences of 2008.

One of the inspirations for Inkundla ye Hlabathi was the simulations which the international law course had held in previous years. In these simulations, lecturers would set out an international incident, often relying on historical events, and the students would volunteer to represent states involved in the incident within a forum such as the UN Security Council. These events were always very popular, for a number of reasons. First, simulations provide the fun and excitement of a competitive game. Second, they give the students a chance to apply their international law knowledge to a concrete situation. A third, but related advantage, is that they allow students to have the experience of a practicing lawyer – in effect, students get the chance to emulate their role models, a situation identified as a powerful buy-in by education technologists. Finally, and somewhat to their own surprise, most of the students found that they identified strongly with their “adoptive” state. They took care to reflect the position which their states did adopt with respect to an historical event, or which they would be likely to adopt in hypothetical situations. They also substantiated and supported their states’ positions with their own legal and factual research.
Inkundla yeHlabathi was a much more ambitious project, envisaging a year-long, continuous simulation. Students were divided not into tutorial groups, but into a number of African states, the United States of America, a liberation movement and a human rights organization. Students were told they were legal advisors to these entities and presented in the course of the year with a succession of historical events, starting in 1960, to which they had to respond, using the principles they were learning through the course.

In teaching international law, we were teaching a single legal system, albeit one experiencing tension between some of its established, and some of its emerging, principles. But there is considerable scope for variation between states in their application and understanding of international law and their participation in the international regime. Because international law is, in theory, based on the consent of states, each legal subject in international law enjoys more leeway in accepting and interpreting many international norms. In addition, states’ domestic application of international law follows a number of possible models. International law is therefore a system which is deeply affected by the individual legal systems and political outlooks of its subjects. Thus, to participate in the Inkundla yeHlabathi project, students have to research a range of aspects of the states they were representing. These include parts of their domestic legal systems and their political position on current and past events.

The first example of the interaction between systems was provided in the very first lesson of the academic year of 2007. When we launched Inkundla yeHlabathi, we presented the students with a brief overview of the International Court of Justice and explained that states could choose to submit to its jurisdiction. The first task given to the groups was to choose whether or not to submit to the jurisdiction of this Court, and, if they accepted the jurisdiction of the Court, whether they would like to attach any reservations to their acceptance. The reaction of most students was encouraging and surprising: most of them demanded more time to make this decision because it was “vital to the interests” of “their” states and would need some proper research. Given some extra time, students proceeded to use it well, and the final choices of the simulated states mirrored the choices of the real states very closely.

In a second example, one of the tutorial assignments dealt with claims brought in the domestic courts of some of the states, based on an international treaty. The success of such a claim depends on whether the state in question has signed and ratified the treaty, and its own rules for the incorporation of a treaty into domestic law. There will no doubt be many more such examples as the project develops. 2008 has already seen another, student initiative to manage the constant interaction between domestic and international law: students have begun to appoint different members of their groups to carry out different portfolios within the domestic systems they represent.
It is almost a side-effect of this teaching of one system (international law) that students come to learn a great deal about a range of other systems – that is, the domestic culture and systems of the subjects of international law. But I thought this side-effect might provide a couple of useful pointers for techniques when teachers are aiming specifically to impart knowledge about other cultures and legal systems. The pointers would be to allow students an experience of the legal system and culture from the inside, as it were, ideally in a setting where some detail of the new system affects an interest which the student has come to identify as his or her own. The second lesson that the Inkundla ye Hlabathi project suggests is that students can, and indeed, should, be allocated to systems and cultures of which they have little experience. They are not, in other words, explaining their own, familiar, legal system or culture to other students in the class; they are researching a different system, and thereby consistently, albeit unconsciously, comparing the new system with their own. Ultimately, they might be learning more about the differences between systems than about any one system itself, but the growing awareness of potential diversity on a range of legal and policy choice is itself one of the best tools for further comparative study.

A related advantage of such an approach for any type of comparative study is that it avoids the trap of juridical tourism, teaching through immersion rather than detached observation. Here the second version of the project, running in 2008, has provided a different kind of simulation, in that it is based on current events rather than historical episodes. This seems to increase the relevance of the project for students, as simulations cover current and unfolding events on the continent. It motivates the students to follow current events and understand how “their” states approach particular current problems. This year, apart from taking on portfolios within their respective groups, students also undertook independent research into the history, culture and legal interests of their states.

From an educational perspective, Inkundla yeHlabathi has the major advantage that it rewards those who actively participate, rather than those who absorb passively. In one example from this year, a problem arose from the “shared computer network” (that is, chat room!) that had been set up to facilitate group discussions. Students from one group began to observe the discussions in other groups, leading to a dispute regarding the inviolability of State-specific chat rooms – that is, whether representatives of the receiving State or any other State might infiltrate another State’s chat room in order to gather information. A small group of students raised this problem with the teaching staff, and saw it turned into the next academic exercise, in which students applied the Vienna Convention on Diplomatic Relations to electronic communication.

Finally, we submit that immersion is a virtue all of its own. Another legal system or culture cannot really be understood unless the student engages with it. Furthermore, because students in the Inkundla yeHlabathi project continue to identify strongly with the
state to which they have been assigned, Inkundla provides a built-in incentive for tolerance and the appreciation of diversity.

There are some disadvantages, many of which put into doubt the extent to which this technique is transferable to other disciplines. One of the chief advantages of the international law context is that it provides one, unifying system which allows the individual systems to keep communicating with one another. Without this context, groups might splinter off into disconnected study projects, losing the competitive stimulus that an ongoing simulation provides. Secondly, the Inkundla yeHlabathi project teaches systems within a system. It is possible that the “incidental” quality of the research into the smaller, inner systems might be lost without a strong umbrella system to inform and support the process.

Thirdly, Inkundla ye Hlabathi takes students out of their comfort zones. The first is a particular challenge for developing countries, as different students in the classroom have widely differing degrees of access to, and comfort with, the technology used for the project. From the perspective of equity, an education system should avoid putting students under this type of pressure. On the other hand, a different perspective suggests that it might be a positive step to take students out of their comfort zones, because it recreates the experience which we always have when facing a different legal system or culture. By providing a structured process whereby students are encouraged to engage with the unknown and the different, the Inkundla type of approach slowly provides the tools and incentive for intercultural dialogue in all areas of life.
This paper essentially examines effective techniques for teaching about other cultures and legal systems. One of the challenges in teaching especially about other cultures and legal systems is to cater to the various groups within the class as well as to each individual student. There may be various nationalities in the class who may have different learning abilities and experience. In addition, there may be language barriers for some students which a professor needs to be aware of. Understanding these individual differences can help a professor design effective teaching techniques in order to maximize the students’ learning experience about other cultures and legal systems. Below, the writer discusses some of such effective teaching techniques.

1. Look at oneself first
Before teaching any class about other culture or legal systems, a professor has to look at himself/herself first to see what he/she is qualified to teach about such subject matter. It is not only knowledge about such subject matter that one needs to possess, but also experience in that area. For example, it is fruitless to have a professor to teach about a culture or legal system which he/she has never been in or had never experience. In order to give a fully enriching learning experience to the students, provide a deep understanding and be able to answer all of the students’ questions, one would need to examine oneself to see whether one is qualified with the proper knowledge and experience for such task.

2. Know your students
It is important to know the target audience and find out as much as possible about each of the students’ background, culture and legal system. If a professor has such knowledge, he/she can help convey information more effectively by giving comparison similar to those in the student’s culture or legal system, or by presenting information that can be easily understood despite the difference in background/culture.

Understanding different cultures and background gives insight on how to communicate effectively with the student. Having knowledge about a student’s culture not only helps convey information better, but may also help prevent misunderstanding that may lead to a student feeling offended. For example, in certain cultures, asking the age of someone or even a friendly tap on the shoulder may be seen as offensive.

Every student is unique. Just because two students are from the same country doesn’t necessarily mean that they share the same values and beliefs. Their values may differ due
to the fact that they may be of different gender, age, religion, socio-economic stats etc… As such it is crucial not to stereotype any student based on their country of origin or race. They may look Chinese and speak mandarin, when they actually are not from China but could be from Singapore, Malaysia, Vietnam or Thailand. These misunderstandings may be seen as a disrespectful and cause serious offence.

3. **Sharing knowledge about other cultures and legal systems**
Sharing knowledge of different cultures and legal system with the class is a teaching technique that not only provides an enriching experience for the students but also makes the class more interesting. In the writer’s experience, it has proven to help breakdown barriers with certain students and increased their class participation by giving them an opportunity to contribute knowledge about their culture and legal system.

4. **Encourage outdoor learning experiences**
Learning doesn’t have to be in the class room. A great way for students to learn about other culture and legal system is to attend cultural shows, festivals, courts, prisons etc. Professors may encourage students to undertake such outdoor activities themselves or organize class outings to such events/places. However, this method only works in the event that the student is studying other cultures and legal system in a foreign country.

5. **Use video, visual examples and practical demonstrations**
Certain aspects of a culture or certain legal subject matter may be taught more effectively by using video, visual examples or practical demonstrations. For example, in Thai culture, greeting an elderly is accompanied with the “wai” (which consists of putting the hands together and slightly bending the knees). As words may not fully explain the action, a video or practical demonstration would be the best way to illustrate such action.

Visual examples are also very useful in helping explaining certain aspects of a legal system. For example, in a particular country, there may be different types of title deeds (like old title systems and new title systems). The different characteristics in the title systems can be explained by words, but a visual example of the different title deeds would help promote comprehension and deepen understanding on the subject matter.

As for court proceedings, they would differ from country to country. In the writer’s opinion, words by themselves cannot fully explain court proceedings. Having a video of court proceedings or practical demonstration would enhance the students’ understanding of such subject matter.

It goes without saying that it is easier for students to remember what they see as opposed to what they read. As a result, from the writer’s experience, the writer tries to use videos, visual examples and practical demonstrations as much as possible when there is an opportunity.
6. **Proactive learning**
One of the most effective techniques that the writer found when teaching students about any subject matter (whether it be other culture or legal system) is to have the students read their course materials before coming to class. Then the class can be a discussion where the student can share their understanding, views, and ask further questions. At the same time, the professor can test the student on what they have read and get them to reflect on what they have learnt. The writer believes that with this method the student is applying knowledge that they have learnt and can better understand its usefulness, instead of being spoon-fed with huge amounts of information. Also, this technique allows students to practice their verbal and analytical skills. However, the drawback with this method is that students who do not do their readings before class, do not benefit from it.

7. **Stay back after class**
Some students are sometimes too shy to ask questions during class. As a result, it may be helpful to stay back after class to help answer questions. This method can also give the professor an opportunity to find out more about the students and present himself/herself as friendly and approachable.

8. **Group discussions**
Having group discussions is also an effective learning avenue. This encourages students to share their legal knowledge and culture with each other in an informal and possibly more comfortable setting. Students may share knowledge in group discussions which they may not share during class discussion. This method also helps students know the other students in the class where they may not have otherwise have had the chance to know.

9. **Encourage questions in class**
At the beginning of the class, the professor should inform his/her students that they can ask questions during class or after class. Asking questions allows students to clarify their understanding. Secondly, other students can also benefit from the questions asked. At the end of the class, the professor can also ask questions to the students, which can serve the purpose of summarizing the subject matter that he/she had just taught. The questions asked by the professor do not have to be addressed to any specific students, but questions to anyone who wishes to answer. Students from certain culture may not like having questions asked directly to them, because they may feel embarrassed in front of the class if they cannot answer it.

10. **Presentation style**
The presentation style of the professor can also be considered as a teaching technique. A humorous and lively presentation style would not doubt make the class more interesting to students, thereby leading them to pay more attention.
Conclusion
Other cultures and legal systems are hard to teach simply by using words. As such, a professor would need to rely on multi-sensory teaching techniques (as exampled in this paper) to communicate more effectively and help student gain a better understanding of the subject matter. These techniques involve having students listen to lectures, discuss ideas, do role-play, visualize examples and perform demonstration. As shown in this paper, such techniques would go a long way to promote comprehension of students, deepen their understanding as well as produce more effective learning.
Effective Techniques for Teaching About Other Cultures and Legal Systems

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With the object of developing young and qualified Turkish lawyers, The University of Bahçeşehir Faculty of Law accepted its first graduates in the 2000-2001 academic year. The faculty strives to give the students a cutting edge in the field of law prepares them on universal legal principles and comparative law as well as familiarizing them to other cultures which also includes a good command of at least one foreign language.

1. Comparative law method

A most widely known and ancient technique is the using of the comparative law method in teaching and in writing books and papers. However, it should not be misunderstood that not all characteristics, details and legal regulations of all other countries are taught. Only the most important characteristics and differences of some leading countries are handled. By doing so the students are given the opportunity to make comparisons between the legal system of their own country with other country models and to analyse, criticize and evaluate the differences. As a result, students will try and have the chance to find out some different and may be better solutions for the domestic legal issues.

2. Instructor exchange programmes

A more updated and effective version of this technique is that, the related courses are taught not only by the Turkish professors but also by some foreign professors who are experts in their fields of interest. Thanks to this method the students obtain the chance to look at the legal issues like foreign lawyers do and analyze the issues from a different perspective.

The said technique is applied specifically in the “European Union Law” course in the Bahçeşehir Faculty of Law. Namely, a course of lectures after being delivered by a Turkish professor at the Bahçeşehir Faculty of Law, the same course is later delivered by a German professor in English in accordance with an agreement between the Bahçeşehir and Bremen school of laws.
3. Specific elective courses

Moreover, a series of elective courses related to foreign law systems are offered to the students in order to give those who are willing to learn, a general idea about the foreign regulations. For example, there is an “Introduction to Comparative Law” course among the elective courses. It is about the penal law and the penal procedural law which examines the fundamental human rights in the Constitution of US and in the Convention of European Human Rights with a comparative method and due trial rule, cross examination and jury system. Introducing this course on elective basis provides the students who are really interested with deeper and detailed knowledge.

Another elective course in my School is “International Commerce Law”. Within the framework of this course the students are delivered the knowledge about international trade, business doctrine, its theory and practice, and the economic theory of the liberalizing of commerce and the effects of liberalizing in the long run. In this way the Turkish Law of Commerce which is taught in the 3rd year is handled with an international perspective.

4. European law courses

Further, in the curriculums of the most of the Turkish law schools (including Bahçeşehir) “European Union Law” course is mandatory. Within the scope of this course of lecture the topics like the historical development of the EU, legislation, primary and secondary legal sources, budget, executive power, direct application, supranationality and community law are taught in the first semester.

In the 2nd semester the knowledge about the free movement of goods, labour and capital, legal consequences of the agreement concluded with one member state, decisions of the European Court of Justice, the law applied by the European Court of Justice, the general principles of the Court and the general principles of the Union are given to the students. By doing so the law students are provided the opportunity to see and observe closely the ongoing process and alterations occurring on the path that Turkey is walking (slowly though) towards the full membership of the Union and to learn about the structure and functioning of the Union as well.

5. Erasmus-Sokrates Programme

Today a cooperation functions between the European Universities within the scope of the Erasmus-Sokrates programmes. Within the scope of these programmes the students and the university instructors are exchanged between the universities according to the bilateral agreements. Namely an Erasmus Exchange programme is actively managed by Bahçeşehir University. Thanks to this programme the students of law, engineering, arts and sciences, and post graduate students of the institutes of the social and technical sciences are given
the opportunity to study for one semester in an institution abroad at their choice. The said programme does not only contribute to the improvement of the students in academic and professional respect but in cultural and social sense as well. Living and studying approximately for 3 months in Europe helps students progress their foreign language knowledge and gives them the chance to meet new peoples and cultures and makes a change in their views to life and various matters and widens their horizons.

As for today the students of Bahçeşehir Faculty of Law have the opportunity to study in the University of Bremen, in the University of Bielefeld, in the Viadrin University, in the University of Jean Monnet and in the National and Kapodistrian University of Athens for one semester long in accordance with the agreements concluded with Germany, France and Greece.

In order to offer the students a broader choice of universities the efforts to include new universities to the Erasmus-Sokrates programmes are going on.

6. Bilateral agreements

Beside the programmes above Bahçeşehir University has concluded many bilateral agreements with a number of universities. Thanks to these agreements the Turkish students obtain the opportunity to spend one semester abroad. Among these universities are Case Western Reserve University, Ohio; St. John Fisher College University, NY; Kent State University College of Technology, Ohio; Robert Morris University, Pennsylvania; Fort Hays State University, Kansas; University of Houston, Texas; The George Washington University, Washington DC, Maryland; Midwest Universities Consortium for International Activities Kansas State University, Kansas; Stevens Institute of Technology, New Jersey; Murray State University, Kentucky; Oakland University, Michigan; University of North Texas, Texas (United States of America), Information and Communications University(ICU), Kyungsung University, Myongji University, Woosong University(South Korea), Nanjing Xiaozhuang University (PR of China), Lingnan University (Hong Kong), University of Ontario Institute of Technology (Canada), University of Saratov (Russia),Lahore School of Economics (Pakistan), University of Zenica (Bosnia Herzegovina) and Academic Studies College of Management, Bezalel Academy (Israel).

7. IGUL programmes

Within the teaching methods of other cultures and legal systems which are applied by the Faculty of Law at Bahçeşehir University, the IGUL (Institute For Global Understanding of Rule of Law) programmes must definitely be mentioned. In these programmes, which are run by Directorate of Global Law Programmes, developing a common concept on the global level concerning the private law and public law with the cooperation of experts from
different legal and educational institutions and also the police department are aimed. An important part of the programmes which are applied by IGUL concerning justice and security in the community, is conducted in a Peoples University concept. Therefore these programmes are free of charge and are applied between 6.00-9.00 p.m. on working days and between 10.00a.m.-18.00 p.m. on the weekends, in order to make a wider and easier participation of the professionals, lawyers and students.

Prof. Dr. Feridun Yenisey (from Bahçeşehir Faculty of Law), Prof. Dr. Sabuhitdin Begosevic (from Bosnia Herzegovina), Prof. Dr. Tom Read, Prof. Dr. John Sonsteng and Prof. Dr. Steve Mcallister (from USA) are the co-directors of IGUL. Due to the global structure of IGUL transnational law programmes have also been included into its area of activity. In this context IGUL realizes professional improvement programmes for lawyers in the USA, LLM programmes in Istanbul, London and Washington DC and it also realizes same activities for IALS. Basic English for lawyers, Basic German for lawyers and Special English for lawyers are among the other professional foreign language activities which are run by IGUL.

Further, the Directorate of IGUL undertaking the regulating institution role, conducts summer school programmes and some other joint academic programmes at the Bahçeşehir University by inviting some foreign instructors from foreign universities.

8. Equality of diplomas

Another technique that should be finally mentioned is that, Bahçeşehir University is working on a project in coordination with the University of Bremen which will enable the law degree diplomas obtained from Bremen School of Law to have equal standing to the diplomas obtained from Turkish law schools. According to the rules of the Higher Education Board, the validity of the diplomas which are obtained from foreign universities are given equal certification by the Board. Therefore in order to consider a law degree diploma obtained abroad by a Turkish student, equal to those obtained in Turkey, the foreign diploma holder is required to study and take exams of a number of courses (approx.20-22) again in one of the Turkish law schools. If the project finalizes should the Turkish students who graduate from Bremen School of Law apply to the Higher Education Board for the equality of their diplomas, they will then be considered equal only after passing the exams of a few number of courses which are on the Turkish curriculum but not on the German curriculum. In other words certifying the equality of a German law degree diploma will be easier. Those courses which must be taken for the equality will be taught in Turkish either at Bahçeşehir University Faculty of Law or at Bremen University School of Law but by the visiting Turkish professors from İstanbul. These courses will be held during a summer school programme and will last between 7 and 14 weeks.
Briefly, there may be some other ways to familiarize the students to other cultures and legal systems, but I have nothing more to add to the information given above.
IALS Conference:
Effective Teaching Techniques About Other Cultures and Legal Systems
Conference: Effective Techniques for Teaching About Other Cultures and Legal Systems

Panel: Teaching Techniques for Cross Teaching and the Question of Difference in Teaching About Other Legal Systems

Defining a Legal System

William J. Aceves

To effectively teach about other legal systems requires a common understanding of the basic unit of analysis – the legal system. A legal system consists of a set of norms, rules, and institutions that regulate the behavior of a distinct population. Thus, a legal system requires three elements: norms, rules, and institutions. Each element is not sufficient on its own to establish a legal system. But each element is necessary for a legal system to exist. While most legal systems regulate human behavior, some systems regulate states, nongovernmental organizations, and corporations.

Norms express principles of conduct. They are the basic values of the underlying population. Norms can be grounded on religious beliefs and, at one time, most legal systems had such a foundation. Today, most legal systems are based on secular values although prominent exceptions exist (e.g., sharia law, canon law, indigenous law). Norms typically delineate conduct in binary terms so that specific conduct is viewed as either right or wrong. Perhaps the most seminal norm in any legal system is respect for the rule of law. Quite simply, no legal system can function without a norm that recognizes and affirms its own existence. Other common norms that exist in most legal systems include respect for human life, prohibitions on causing bodily harm, and prohibitions on stealing.

Rules represent a codification of the underlying norms. Such codification can be written or unwritten. Rules can appear in statutes and administrative regulations, treaties and related instruments, and legal documents. In many legal systems, rules are also found in court decisions. But rules need not be written. They can appear in the customary practices of the underlying population, including rituals, ceremonies, or prayers. They can exist in oral traditions, handed down through generations. Not all norms are codified in rules, however. Some norms never attain such status. The codification of a norm indicates it has attained sufficient acceptance by the underlying population to justify its formalization.

1 Associate Dean for Academic Affairs and Professor of Law, California Western School of Law.

Institutions are the mechanisms through which rules are enforced. Institutions perform a variety of functions. They can monitor compliance, mediate disputes, and impose sanctions for rule violations. Law enforcement mechanisms (e.g., courts, judges, lawyers) are perhaps the most common form of institutions. These institutions typically enforce the rules through a hierarchical enforcement mechanism that imposes punishment through civil and criminal penalties. Another common institution is the military. But institutions need not take such traditional forms nor do they need to function through coercive enforcement mechanisms. Institutions can include family units, tribal elders, and community groups. They can take the form of indigenous justice systems. Institutions can also enforce the rules in various ways, including shame, peer pressure, moral suasion, or other non-hierarchical enforcement mechanisms. These mechanisms rely on reputation and reciprocity to achieve rule enforcement. Most legal systems rely on a variety of methods to enforce the rules. Significantly, a hierarchical enforcement mechanism is not an essential feature of a legal system.

A robust legal system typically contains a set of well established norms accepted by a large majority of the underlying population along with a dense network of rules and institutions that operate on multiple levels. If norms are contested, the legal system may lose its coherence. If the rules lack formalization or the institutions prove ineffective, the legal system may cease to exist.

This definition of legal system presents a rigorous yet flexible approach for comparative studies. It recognizes the essential features that must exist in any legal system. Yet, it is flexible enough to be broadly applicable to a wide range of legal systems, from the classic models in common law and civil law systems to the contested status of the international legal system or the uniqueness of the Roma system.3

Historically, common law and civil law systems received extensive study by comparative scholars. Indeed, comparative law textbooks long focused on these legal systems to the exclusion or marginalization of other systems. Focusing on Western notions of law caused scholars to overlook the richness and diversity that existed in the legal world. Norms need not be Western to represent legitimate values. Rules need not be written to support their legitimacy. Institutions need not rely on hierarchical enforcement mechanisms to impose sanctions for rule violations.

To engage in effective comparative studies, scholars must first develop a common understanding of the underlying unit of analysis. Defining a legal system as a set of norms, rules, and institutions can thus provide clarity to our efforts.

“Effective Techniques for Teaching About Other Cultures and Legal Systems”

Professor Ronald A. Brand
Director, Center for International Legal Education
University of Pittsburgh School of Law

The topic for this conference raises issues about two important aspects of teaching. The first, teaching techniques, is one we assume is of interest (or at least should be so) to every law professor. The second, comparative education, is one we generally relegate to only a few professors at each law faculty. The mere existence of an organization like the IALS serves to emphasize that we should be concerned with the first of these aspects on a comparative basis, and that we should be incorporating the latter aspect into every course we teach.

Teaching Techniques

The question of teaching technique raises two very basic questions: what do we teach?, and how do we teach it? Both are important to the discussion of teaching technique. We often think the answer to the first of these questions is quite simple. I, for example, teach International Business Transactions, Transnational Litigation, and Introduction to American Law. But that statement does not really tell anyone what I teach. I hope that I teach how to think through problems, how to approach drafting important contract terms, how to consider options for clients and weigh the advantages and disadvantages of each of the options, and how to accomplish a myriad of other important tasks. I also hope that I teach some substantive law. But it only takes a month or so of law school for students to learn how to find the law (perhaps a bit longer in common law systems than in civil law systems). After that, teaching them substantive law is important only if it is made relevant to placement of legal rules and procedures in the context of real life problems and real life skills for addressing those problems.

The question of what we teach, as well as the question of how we teach it can be approached by thinking about the role of a law professor. How we define our role can help us determine both what we should teach and how we should teach it. For example, the following is a list of possible roles of a law professor in the classroom:

–to convey an understanding of substantive law
–to teach students to “think like lawyers”
–to teach students to be problem solvers
–to teach students the ethics of lawyering (the role of the legal professional)
–to teach practical skills through “practicum” courses
–to teach through live-client representation (clinics)
We may ask the same question about the role of the professor outside the classroom. Possible answers might include:

– no role with students; the only role outside the classroom is to generate academic scholarship
– extension of classroom training
– addition of practical elements
– support for educational opportunities in law reviews and journals; moot court experiences; clinics

Similarly, we might ask what the role of the law faculty is as a whole. Possible ways of asking this question could include:

– Are we a basic “scientific” department or a professional school?
– Do we teach theory or practice, or both?
– Are we more like the history department or the department of medicine?
– Where does the Law Faculty fit in the role of the university?

For myself, I define the role of law teacher by assuming first that we cannot do the work for the student. Each student must do the work of learning. While teaching is important, if there is no learning it is worthless; and students do the learning, so the test of our teaching is measured by the students, not by the professor. This means that teaching is not a simple transfer of information or knowledge. The learning that takes place must be an active process, it cannot be a passive experience. The requires that students come to class prepared to learn. For me (as for most U.S. law professors and many others around the world – at least where books are plentiful), this means that books can convey information; you don’t need a teacher to do that.

What then, is the teacher’s role? Possibilities include:

1) To help “lock in” knowledge of substantive rules,

2) To help understand how to use those rules in real life situations, and

3) To help develop the ability to challenge and test those rules in order to be able to fill in the gaps in those rules when they exist, both in terms of theoretical knowledge and real world ability to reach results not self-evident from the rules.

A shorthand statement for this combination might be stated as to help develop critical thinking skills in the application of the law. This raises the question of theory and practice, and the extent to which our teaching focuses on one or the other. The bottom line is that it must focus on both. I once heard Harold Koh describe a Chinese text hanging in his office as stating, “practice without theory is thoughtless; theory without practice is lifeless.” We must have both in our teaching, and, more importantly, students must have both in their learning.
This brings us to the question of practical teaching methodology. I find it most appropriate to change styles and methods of teaching depending upon the subject matter and my purpose for the day’s class. Thus, over the course of a semester, a combination of the following teaching “methods” can be useful:

1) reinforcing what students have read – by presenting it again in similar context (straight lecture);

2) reinforcing what students have read – by presenting it again in adjusted context (adjusted lecture);

3) reinforcing what students have read by discussing the theory behind the law in order to deepen student understanding (theoretical discussion);

4) reinforcing what students have read by applying the law to practical settings, and thus teasing out arguments in order to deepen student understanding – by review of problems or by Socratic discussion of cases, rules, and context (practical application).

There are, of course, many other possibilities here, and the list should depend on the style and approach of the teacher as well as upon the type, number, age, and education level of the students. At base, teaching – and learning – are personal experiences; and so to should be the method.

**Comparative Education**

I am a firm believer in comparative education. We all should learn by exposure to the way things are done in other cultures and other legal systems. While I do not teach “Comparative Law,” I find that everything I teach is in comparative context. I teach Introduction to American Law to a group of non-U.S. lawyers in our LL.M. program. For each of them, everything we cover in the course is necessarily in comparative context, and we make great use of that fact. The students are encouraged to compare the U.S. approach to legal issues and problems to that in their home countries, and to discuss the similarities and differences. Some of these “foreign” students are also in my other courses, productively contributing a comparative context for all other students in the class.

Like metaphor, comparison is a powerful teaching and learning tool. I believe it is only by understanding other legal systems that we truly come to understand our own. If this is so, then it really is not possible to understand our own legal system until we have had the opportunity to compare it with others. The corollary to this is that, unless one is exposed to comparative legal education he or she will never really understand his or her
own legal system. This is one of the major failures of legal education; one the IALS should take it upon itself to help to cure.

An example of comparative presentation I find to be particularly useful is in the very fundamental area of adjudicative jurisdiction. In my International Business Transactions and Transnational Litigation courses, a wonderful comparison is available through discussion of (1) the U.S. series of cases developed from *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), to *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), to *Asahi Metal Industry Co., Ltd. v. Superior Court of Calif.*, 480 U.S. 102 (1987), and related cases, when compared with (2) Article 5(3) of the European Community Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Council Regulation (EC) No 44/2001 of 22 December 2000 (the “Brussels I Regulation”) and its interpretation by the European Court of Justice in *Bier v. Mines de Potasse d’Alsace*, Case 21/76, [1976] E.C.R. 1741. I often ask students to determine the outcome in *World-Wide Volkswagen* under the Brussels Regulation as interpreted in *Bier*. This allows discussion of differences in approach to jurisdiction, the validity of perceptions (and mis-perceptions) about whose procedural law has the greatest extraterritorial reach, differences in how opinions are written in various courts, and fundamental distinctions between common law and civil law approaches to solving legal problems. This comparative analysis not only provides introduction to another legal system, but helps students strengthen and clarify their understanding of the law of their own legal system.

**Final Thoughts**

While the topic of this conference, on its face, suggests discussion of teaching about others, it offers the opportunity to do much more. In particular, it offers the opportunity to think carefully about two aspects of legal education which are now at the margin but should be fundamental in a global environment. Teaching techniques can always be improved by comparative discussion, and the study of legal systems should always incorporate comparative analysis.
“Effective Techniques for Teaching about Other Cultures and Legal Systems”

Larry S. Bush  
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Having set out to write a paper on the subject of the IALS educational program, I come to the topic with the assumption that we are being asked to answer a question—“What techniques are effective for teaching about other cultures and legal systems.” I also come to it with a background of having: a) taught comparative law in a U.S. law school for twenty years, with varying degrees of success; b) served as a Fulbright Lecturer for an academic year, teaching about the U.S. legal system at the University of Bucharest law faculty; and, c) administered international and comparative programs at both a small state law school and an Ivy League law school.

My experience leads me to reject, at the outset, one possible interpretation of the question at hand. I do not feel constrained to limit discussion to what I, or any given instructor, might do to improve his or her own teaching methods. Rather, I propose an institutional approach, emphasizing what I believe to be the most effective techniques available to permit a school’s students to learn about other cultures and legal systems. I fully recognize that much of what I write might not be possible at every law school. Nonetheless, I think it is important to present these ideas for consideration in this context.

Study abroad

In my judgment, the single most effective method for teaching about other cultures and legal systems is to send the student to study in that culture/legal system. This is a lesson that I absorbed personally, by earning an LL.B. (as it then was; today it is an LL.M.) at the University of Cambridge, after several years of practicing law in the U.S. There I was able to study international law from eminent English dons, one of whom went on to serve on the International Court of Justice, to study comparative law with a brilliant young Greek scholar, and to spend my non-studying hours immersing myself in every aspect of English life and culture possible. I was once told by a don that “the best education is simply living in Cambridge.” I could not agree more.

As everyone reading this paper will know, recent years have seen the proliferation of opportunities for law students to study in other legal cultures. In the U.S., this phenomenon first began reaching significant numbers of students in the explosion of U.S. law school-sponsored “foreign summer law programs” that had begun by the early 1970’s. Today there are 230 separate summer programs approved by the American Bar
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Association. They exist in 46 countries and are offered by 120 U.S. law schools. In the summer of 2006, the most recent year for which I have statistics, 5,025 students took part in these programs. The extent to which the students are effectively exposed to the host country’s culture and legal system varies, of course, but the ABA accreditation criteria direct that: “[a] substantial portion of the academic program must relate to the socio-legal environment of the host country or have an international or comparative focus,” and “[t]he program shall include visits to legal institutions in the host country.”

The summer program is no longer the exclusive province of U.S. law schools. Many law faculties in other countries now offer such programs at their schools, seeking to draw students from elsewhere.

Summer programs are probably the least effective of the options for study abroad, however. In the U.S. programs, at any rate, there is no guarantee that students will be taught by instructors from the host country, or that their exposure to the local legal institutions will be other than superficial. Nor are they required to take any courses that focus on the legal system of the host country. Plus, it is likely that the students will experience little, if any, interaction with law students from the host country.

A more effective practice is that of sending students directly into foreign universities to study--for a semester, an academic year, or longer. Widely practiced in Europe since 1987 through the Erasmus program, today it is also a world-wide phenomenon, typically taking place through bi-lateral exchange agreements. At my own school, Cornell, for example, there are agreements of varying degrees of formality with 15 partner law faculties in 11 countries. These experiences, which themselves vary in intensity, have the common strength of requiring students to enroll in the host university, deal directly with its administration and faculty and interact with the local students (as to this last, though, unfortunately, not in all placements). Although such placements do not guarantee that the student will study courses that focus on the legal system of the host nation, the Cornell

1 http://www.abanet.org/legaled/studyabroad/foreign.html
2 Id.; The ABA list includes in indeterminate number non-summer programs as well, so the numbers given would be subject to modification downward if it were possible to identify these.
3 These figures were compiled from a confidential ABA memorandum, which is not available to the public.
5 Id., §III.G.
6 For example, Bucerius Law School begins offering a summer program in 2008; see www.law-school.de/summerprogram.html
7 See http://ec.europa.eu/education/programmes/llp/erasmus/index_en.html
8 See http://www.lawschool.cornell.edu/international/study_abroad/semester_abroad/index.cfm
experience suggests that a significant number of U.S. students choose this option. The same can be said of the incoming exchange students’ course selection at Cornell.

The most effective form of study abroad for teaching about another culture and legal system is the dual-degree. Again, this is something that flowered in Europe before spreading to the U.S. and elsewhere. In November 2007, the University of Paris I Panthéon Sorbonne and King’s College London celebrated the 30th anniversary of their “double diplôme” in French and English law, in which students study in London and Paris, receiving law degrees in both countries.9 Paris I now has programs in French and German law (with the University of Cologne), French and American law (with Columbia and Cornell), French and Spanish law (with Complutense de Madrid), and French and Italian law (with the University of Florence).10

The number of U.S. law schools offering international dual degrees is increasing. I am aware of such programs at fourteen different schools,11 although there well may be more. The goal and focus of these dual degrees vary. Some are intended to equip the students to become licensed attorneys in the two countries.12 Others offer a more general program—an LL.M. or the rough equivalent—in the non-U.S. partner school.13

Our dual degrees at Cornell span this spectrum. The oldest, the J.D./Master en droit, with our partner, l’Université Paris I Panthéon-Sorbonne, equips its graduates to become members of the bar in France and the United States.14 Although not all of them acquire both bar memberships, a surprising number do. Our dual-degree program with the University of Humboldt, Berlin, the J.D./Masters in German and European Law and Practice (M.LL.P.), offers an in-depth education in the German legal system, but its graduates cannot sit for the German bar examinations without significant extra study.15 Finally, students in the J.D./Master in Global Business Law, a partnership with Sciences-
Po and Paris I, study international and broadly comparative topics during the one year program.16

**Bringing international faculty, students, visiting scholars and short-term guests to your school/faculty**

I will not devote much time to this obvious device to enhance the teaching of comparative culture and legal systems. If a school cannot, or chooses not to, send its students out into the world, an alternative strategy is to bring the world to the school. This approach traditionally has been used by elite schools in the U.S. and elsewhere. A steady flow of visiting faculty members, visiting scholars, guest lecturers, graduate students and (in more recent times) exchange students will enrich the learning experience of one’s own student body (and faculty). To take only one example, team-teaching a class with an international visitor can serve to expose the students both to the foreign perspective and to faculty-guided discussions that permit useful comparisons of the visitor’s legal system with the one with which the students are already familiar.

**An innovative set of course materials prepared by a Cornell colleague**

Candidly, I have nothing inspiring to offer from my personal experience teaching comparative law. I would, however, like to acquaint the reader with an interesting set of materials prepared by my colleague, Professor Claire Germain, at Cornell Law School. Claire teaches a seminar in French Law at Cornell. Several years ago, she put together an innovative set of documents, interviews and other materials on a site for her students, much of which can be viewed by the general public. I commend Claire’s efforts, which can bring the subject alive for her students without having to bring French lecturers to the class. *Please see* [http://legal1.cit.cornell.edu/frenchlaw/](http://legal1.cit.cornell.edu/frenchlaw/)

16 [http://www.sciences-po.fr/formation/master_scpo/mentions/droit_economique/maquette_droit_eco.htm#5](http://www.sciences-po.fr/formation/master_scpo/mentions/droit_economique/maquette_droit_eco.htm#5)
Local Experiences in (In)Effective Teaching
“Over- and Under- Tolerance in U.S. Law Teaching”

Thomas Carbonneau
Orlando Distinguished Professor of Law
Penn State University
Dickinson School of Law

I.

Ideological convictions in the circumscribed environment of U.S. law schools should stand aside. Insularity and disfigured truths hinder the advancement of American legal education and deprive it of its potential for leadership and achievement. The work of academic lawyers should consist principally in the examination of decisional determinations and their interpretation. Despite the popularity and facile appeal of clinical legal education, the law’s content and mission will always be shaped by the discipline of analysis and the rigorous doctrinal evaluation of case law.

II.

Despite their attempt to adjust to evolving political pressures and to remake their image, law schools in the United States appear unable to engage in real change. They are reluctant to integrate the multijurisdictional phenomenon of globalism and privatized justice into the core value system that animates their operation. Such developments are either ignored or greeted with token acknowledgements by both faculty members and administrators. Foreign law has been, traditionally and to this day, relegated to an esoteric standing in U.S. law programs. U.S. law schools have also resisted mightily the critique of judicial litigation by pandering to “soft,” more clinically-oriented, “talking-therapy” approaches to dispute resolution. It is always more politic to disparage the true competitor and enhance the standing of misguided pretenders. Administrative policies have excised arbitration from the ethos of U.S. law schools. The power structure believes arbitration is a but a trend that will fade away and eventually disappear. In any event, it is a poor and inconsequential reflection of constitutional due process. The message from law practice and courts, however, is unequivocal and contradistinctive: Arbitration is firmly established, growing, and an increasingly dominant form of civil and commercial adjudication.
III.

Two aspects of contemporary U.S. law teaching simultaneously contribute to the negativity and inhospitable reception. First, activist political ideology—predominantly left-wing in character—has come to have a substantial influence in both U.S. universities and law schools. Many law professors are dedicated to a cause and its values. Their dedication is rarely modest. Humility is not emblazoned on the law professor coat of arms. The cause often absorbs their writing and infiltrates their teaching. Moreover, these law professors are ordinarily refugees from the arts and sciences who escaped underemployment or worse by migrating to law school. Their academic talents allowed them to succeed well enough to compete for academic positions in law teaching—the original purpose of their migration.

In some respects, this preoccupation with ideological objectives has an impact upon future hiring practices and pedagogical decision-making. As a consequence, analytical methodologies, professional instruction, and the importance of the bar become subordinated to academic policies that are founded upon political conviction. Were it not for the talent of admitted students and the professional discipline of large U.S. law firms, U.S. lawyering might be in considerable decline. U.S. law schools, in fact, gain in the all-important rankings by sequestering themselves in “off-beat” endeavors like the intersection of ancient Icelandic literature and the law.

To some degree, the academic mission of professional schools is being expropriated by an increasingly rarified sense of academic quality and rigid belief systems. The law teaching academy is overly tolerant of eccentricities, individual agendas, and arts and sciences approaches. It erroneously believes that these scattered elements constitute a grand design. From a professional vantage point, these narrow concentrations yield arcane and inconsequential thinking. They are hardly an intelligent and effective means of responding to the multi-dimensional challenges of global lawyering. Those fixated by domestic diversity and cultural integrity do not even recognize the substantial diversity questions posed by the transborder clash of legal systems and national traditions.

Second, there is another, equally vital and defining, characteristic of contemporary U.S. law teaching that fosters the institutional myopia of U.S. law schools. A significant number of U.S. law teachers share a long-standing sectarianism and staunch traditionalism. Unlike the activist, special interest group, these law professors do not make dilute the formula. These academics are not bent on converting their environments into a mirror-image of their experience and interests. They are the true students of American law. Their goal is to preserve and protect that law’s established dominant values. Those values have always resided (at least, in the modern era) in civil procedure, complex litigation, federal jurisdiction, adversarial advocacy, and constitutional law. The under-tolerance of deviation and change among these teaching lawyers has made them less open to and understanding of change and its necessity in the U.S. legal process. The conservative group converges with its ideological opposite in rejecting views other than those of the admitted religion. Arbitration, in both its international and domestic manifestation, provides a good
example of how these differing perspectives both distort the character and value of transformations in the American legal process.

IV.

The rise of arbitration to the left-wing activist professor represents a majoritarian conspiracy to oppress undefended minority groups and deprive them of their entitlement to due process rights. In disparate-party circumstances, the contract of arbitration should be outlawed because it embodies the economic unfairness of society itself. Private adjudication, like arbitration, also robs the polity of the opportunity to debate and develop significant rights protection frameworks. To the conservative element in the U.S. law teaching profession, the recourse to arbitration violates the most fundamental strictures of the U.S. Constitution. It substitutes the frivolity of private adjudication for the fiduciary responsibilities and authority of courts. Rights determinations are reached in the shadows and public jurisdictional mandates are subverted. International arbitration in particular encroaches upon and eventually dismantles the integrity and legitimacy of the domestic legal system. Transborder arbitrators should not alter or define the rule of law in American society.

Both camps, despite the sincerity of their convictions and their intractable sense of rectitude, misunderstand arbitration and its necessary role in furthering the civilization of justice. These opposing ideological groups agree, each in their own way, to blind themselves to the profound dysfunctionality of unrestrained due process and the costs of courts. The enormous success of arbitration in the last forty years, in the United States and elsewhere, is directly attributable to the equally enormous failures of the judicial process. Arbitration can and does make effective adjudicatory services available to the general citizenry. In contrast, the courts do not. Moreover, the groups—because each believes equally in the myths and mysteries that surround judicial robes—misassesses the spectacular achievements of transborder arbitration in establishing an international rule of law. Private international law has been a well-recognized aspect of the science of law. Arbitration, in effect, has made that area of law more than theory—in a word, useful and workable. Global commerce would not be possible without the system of international arbitration. The U.S. Supreme Court has given arbitration its contemporary destiny. In the Court’s view, arbitration does not undermine, but rather accomplishes and furthers U.S. justice. It is astonishing that both academic groups should condemn the work of the oracle of American law.

V.

It is undoubtedly necessary and productive to have dissenting and traditional values represented in U.S. law curricular. The ideological tendencies within U.S. law teaching, however, have made it difficult to appreciate both the new (and perhaps revolutionary) and the global. Neither development threatens to extinguish established values, but rather seeks to adapt them to changing exigencies and needs. Although ideological distortions
may permit counterproductive conclusions, it is difficult to argue with effectiveness and palpably positive results. U.S. law students should be and are entitled to receive a firm, objective grounding in unaccustomed alterations in the fabric of domestic justice such as alternative adjudication and global developments. At least a few law faculties elsewhere attribute strategic significance to these trends in their academic programs. The McGill law faculty, for instance, seeking to accommodate competing cultures within a mixed legal jurisdiction, promotes the study of comparative law on a curricular-wide basis by underscoring the variegated procedural requirements of international arbitral proceedings. This methodology applies both to transborder commercial and diplomatic disputes. U.S. law schools should draw inspiration and guidance from their northern neighbor.
Some Thoughts on International Business Law and the Education of the International Legal Practitioner

Juscelino F. Colares

Introduction:
One of the distinctive characteristics of mature democracies is public confidence in the "rule of law." The rule of law, or l'état de droit, as the term is known in countries following the civil law tradition, is nothing more than the profound belief that democratically-created law ought to be the guiding principle by which the conduct of individuals should be judged. In light of the ever present temptation of even legitimately elected governments to misuse power, an educated citizenry holds firm to the belief that only a regime of laws, not rulers, can provide for the effective, secure and full exercise of its civil and political rights. Yet, the reach of the rule of law and its virtues, such as predictability, transparency and finality, extends far beyond the public/political sphere. Indeed, the growing expansion of this concept in international business deserves much of the credit for the past quarter century's increase in both trade and economic development.

The rule of law has actually become the concept that harmonizes the operation of the domestic and international laws that govern the conduct of international business. In an increasingly interdependent world, this unifying force serves as the common ideology of lawyers who navigate the legal framework that governs the cross-border transactions of their clients. Notwithstanding the importance and status of the rule of law as the centerpiece of this professional culture, lawyers, who are trained in different legal traditions, are constantly challenged to operate across multiple legal systems, often with colleagues that may not be aware that they have quite distinct views on the scope and content of domestic laws and international treaties. Thus, awareness of the existence of such differences as well as knowledge of the multi-tiered nature of international law must be imparted on students and practitioners of international business law.

I. The Multiple Sources of International Business Law
   A. The Importance of National Law in International Practice

International business transactions ("IBTs") are often complex, and require at least some basic knowledge of the relevant law and legal systems. Knowing what the rules of the game are becomes not only prudent but essential. However, even experienced international lawyers cannot be expected to know all aspects of the laws of other countries. It is important that persons engaged in international business have a competent legal advisor available to assist them in navigating the local laws of the countries in which they conduct business.

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Consider the example of a Brazilian entity negotiating with a U.S. corporation to establish a joint venture manufacturing plant in São Paulo. It will be extremely useful for the Brazilian company to understand how U.S. law affects the decisions of its American counterpart. There are a variety of U.S. laws that affect the decisions made by the U.S. company on such matters as: (1) how profits are to be received by the U.S. company; (2) how financing can be arranged; (3) controls on the export of U.S. technology; (4) the form of relationship between the U.S. and Brazilian companies; (5) limits on payments that may be made by the U.S. company to Brazilian officials; (6) salary payments to U.S. employees; (7) the availability of insurance; (8) the payment of customs duties on imports; (9) how the U.S. company is organized; and (10) the kinds and forms of international contracts used.

Many other examples can be given, but the above list at least suggests the pervasive influence of the law, and the complex legal issues that may arise when a business relationship is contemplated by prospective partners from two or more different countries. However, this complexity is not circumscribed to the realm of legislated law. For example, the legal systems in Latin America and continental Europe reflect the influences of civil and customary law. In contrast, the United States has a common law system inherited from Great Britain. The common law system places great importance on the value of prior court decisions. This gives the courts and judges a distinctive place of importance in the American and British legal systems—a matter of profound importance for business partners in and outside of the United States. In addition to concerns about potentially applicable domestic laws, it also is important to consider the existence of international norms and how they apply in IBTs.

B. Sources of Law Bearing on IBTs

The legal regulation of international business may be examined within three different legal contexts: private, national, and international law. Private law regulates the business relations between parties according to their freedom to contract. Thus, in the arena of private law, one is concerned with such matters as enforcement of contracts, formation and conduct of businesses, resolution of private disputes, and related matters. Under the Western legal systems, parties to a transaction have considerable discretion in negotiating the private contractual rules that govern their business relationship.

National public law regulates the outer limits of private conduct in the business world. These constitute a set of non-derogable norms that sovereign states enact in areas where government regulation is deemed essential. Such law regulates, for example, trade through import tariffs and other taxes, licensing, export and import controls, product quality control, and related measures. Such government regulations may be based upon a wide variety of public interests, such as national security, health and safety, environment and conservation, free and fair trade and even anti-competitive concerns.

Finally, the international law that is created by treaties and agreements between governments regulates the trade relations between nations and has an impact on IBTs. A principal example is World Trade Organization ("WTO") law, under which more than one
hundred governments have agreed to progressively reduce import tariffs by agreeing not to discriminate among goods and services imported from or provided by any member and by prohibiting discrepancies in the treatment of foreign and domestic goods and services. These principles as well as the ensemble of the WTO agreements restrain the discretion of governments, thus promoting predictability, a highly appreciated notion in IBTs.

C. International Commercial Dispute Resolution

Students who are new to the study of international business law are often surprised to learn that most of the legal rules applying to a business transaction derive not from international sources, but from national sources. There is no international legislative body invested with powers to establish general rules of private conduct, nor is there an executive body with worldwide police powers to enforce such attempts at universal rulemaking. This absence of universally accepted international lawmaking bodies means that one must identify the individual nations that have jurisdiction over the matter to determine which law applies and how it will be enforced.

That task may be relatively simple if the entire transaction occurs within the jurisdiction of only one country. Suppose, for example, a buyer from Brazil comes to the United States, purchases goods under a contract negotiated and signed in the United States, and makes payment and receives delivery of the goods in the U.S. This transaction will be subject to the jurisdiction of U.S. courts and U.S. law if a dispute arises over the quality of the goods.

Where a transaction occurs within multiple jurisdictions, however, the task of deciding the applicable law and finding a court with jurisdiction becomes more difficult. In such a transaction, the parties can either choose the applicable law and the dispute resolution system, or they can leave the matter undecided. If the parties to an IBT actively choose the applicable law and the dispute resolution forum, the outcomes of disputes can be more predictable. Returning to the previous example, if the buyer and the seller conduct portions of the transaction in both Brazil and the United States, they can exercise their freedom to contract and specify in the sales agreement which nation's law will apply and which nation's courts will have jurisdiction over any disputes arising from the contract. By taking this course of action, the parties will know ahead of time the laws that will govern the conduct of the transaction and the appropriate place to file a claim if a dispute arises.

Where the parties fail to contractually specify the applicable law and the method of dispute resolution, the dispute can become more complex if it is not clear which nation has jurisdiction over the dispute. In an effort to simplify such matters, nations have entered into treaties and agreements that address questions, such as jurisdiction of courts, enforcement of foreign court judgments, and regulatory cooperation. For example, the United Nations Convention on Contracts for the International Sale of Goods (CISG) is one of the most ambitious efforts to resolve questions of law in international sales transactions. The CISG establishes widely accepted legal norms applicable to the sale of goods in IBTs. The CISG can govern international contracts dated after January 1, 1988 between parties in
the ratifying nations. The United States, Japan, and several other countries around the
globe are signatories to the CISG. However, even where such specific treaties apply,
disputes between buyers and sellers of goods are resolved in national courts rather than in
international tribunals. Thus, to avoid the risks of litigation in a foreign country, parties to
international trade contracts often choose to settle their disputes in private arbitration
proceedings rather than in judicial courts.

II. The Legal Profession in a Fast-Integrating Global Economy

A. Foreign Lawyers

To understand how the practice of law differs among professionals of different
countries one must recognize that there are significant differences among the major legal
traditions in the modern western world. Roughly, one may divide these traditions into
three separate groups: Anglo-American common law, Romano-Germanic civil ("civil")
law, and Socialist law traditions. Of the major legal traditions, the civil law tradition has
the greatest prominence geographically and is most influential on new developing legal
systems. Since the collapse of the Soviet Union and Communist Party rule in most
socialist states, there has been a perceptible change in the law of formerly socialist
countries to adopt Western legal concepts, principally those based on the civil law
tradition.

There are, of course, some legal systems that may be considered hybrids or sub-
traditions of the three major groups of law, and others that are entirely different. For
example, one may find significantly different strains of legal tradition in East Asia and in
the nations with strong religious traditions (e.g., Muslim Law or Jewish Law). Some less
developed countries have legal systems which are based on customary law (e.g., some
countries in Africa).

In dealing with the legal traditions of other countries, one must bear in mind that
law is the embodiment of the historical, cultural, and social value development of
particular society. For example, an American or European business person investing in an
East Asian country is dealing with more than simply a different set of rules; the differences
in law reflect more fundamental differences in cultural and social values. The differences
in legal traditions have practical consequences for business persons engaged in foreign
trade and investment.

The training and background of an attorney from another legal system also may be
different from that of attorneys in the client's homeland. For example, under the Anglo-
American system, the profession of practicing attorneys has a significant amount of
influence over legal education through the organized Bar. In contrast, universities
operating in Europe and Latin America, which follow civil law tradition, tend to control
legal education with little involvement of the practicing Bar. While most students of
Anglo-American law expect to practice as lawyers, many students in the civil law systems
undertake the study of law as their general university education, with no intention to
practice law after graduation. In such countries, most legal training occurs at the
undergraduate level. In contrast, the legal education of American law students consists of
postgraduate training beyond the first university degree. American law students, therefore, focus their education in law more upon their future responsibilities as practicing lawyers.

There are also fundamental differences in the way law is transmitted and taught. The civil law tradition values legal rules or norms that are identified and articulated by scholars. The Anglo-American system, with its emphasis upon judicial precedent, tends to focus more upon judicial decisions, although this brightline distinction has blurred somewhat in recent years. With the increasing dominance of statutory law in America since the New Deal Era, the truth is that American legal education has increasingly focused upon legislative rules and legal classification, so that the difference between the civil law method and the Anglo-American "case method" has been diminishing with the passage of time.

The status of lawyers varies significantly from one country to another, depending upon socioeconomic and political conditions. Membership in the legal professional in the United States is generally considered as prestigious, and is associated with wealth, power and influence. In contrast, according to Ordem dos Advogados do Brasil, the Brazilian Bar, there were 322 law schools in Brazil in 2007, with over 590,000 students enrolled. There are over 570,000 lawyers in Brazil, and the legal market is saturated with poorly prepared attorneys.

B. Lawyers in the U.S. Legal System

Each of the 50 states in the U.S. has a bar association which is the professional organization responsible for the regulation of lawyers. American lawyers generally are required to study for four years in an undergraduate institution, attain a Bachelor's degree, study an additional three years in a nationally approved law school, and attain a Juris Doctor degree as a result of that course of study. In addition, almost all of the state bar associations and supervising state authorities require that a graduate of a law school successfully complete a comprehensive examination of their knowledge of generally accepted "common law" principles and the statutory laws of that particular state.

The practice of law includes the giving of legal advice, the drafting of legal documents, and the representation of clients before courts and other legal forums. Lawyers are the only persons allowed to practice law in the United States. Lawyers may practice law individually or may choose to associate with other lawyers to form a law firm. Law firms may have as few as two lawyers or as many as several hundred.

The government is represented by lawyers who prosecute individuals charged with crimes or violations of civil statutes. All citizens are allowed to be represented by a lawyer in any case before a court. Those who are prosecuted by the government for crimes which can be punished by a jail sentence of more than six months, but who cannot afford a lawyer, are provided with a free court-appointed lawyer.

Judges are usually lawyers who have practiced law for a number of years and have become noted for their knowledge and experience. State judges often are elected by the people and must stand for reelection. Federal judges are appointed by the President of the United States and must be approved by a majority vote of the Senate. Federal judges serve
for life, provided they do not engage in any serious misconduct which would justify their removal from office.

The American judicial process is based on the adversary system. The court is viewed as a neutral arena where the opposing parties can argue their cases to either an impartial jury of citizens or an impartial judge. All serious criminal actions and most significant civil suits are heard by a jury of average citizens. These citizens are chosen on a random basis and are expected to render a fair and unbiased determination based upon the facts presented at a public trial. Even where a jury is utilized to decide the legal contest, a judge presides over the proceedings to ensure that the rules of procedure are followed. These are standard rules which govern the type of evidence, testimony, and legal arguments which may be introduced in the courtroom.

C. American Lawyers and Their International Business Practice

Lawyers may assume a wide variety of roles in business transactions, depending upon the country in which they practice. In the United States, lawyers have always had very important roles in business, politics and government, and in other positions of leadership. Business persons frequently rely upon lawyers, and they are particularly important in IBTs. The traditional role of the lawyer is to protect and advise the client with respect to her legal rights. However, some lawyers also assist by providing advice on business matters, including opportunities for business in the United States or in other countries.

American lawyers perform a wide variety of tasks, but many are considered specialists and only work on certain kinds of specialized legal matters. International trade is considered a specialty and a business client should consider hiring such a specialist if she plans to conduct business in the international arena. An American lawyer can provide a wide range of legal services to a U.S. or foreign business person, including, but not limited to: (1) advice on U.S. law; (2) preparation of petitions to governmental agencies; (3) negotiation, review and advice on contract proposals; (4) coordination of financing efforts with banks; (5) client representation before government agencies and courts; and (7) service as legal agent in the United States.

There are about 150,000 lawyers in the United States. Although it may be difficult for a foreign business person to select a lawyer from among the many choices, there are sources of information to assist in that decision. Persons who have been involved in IBTs between the United States and other countries may make recommendations of names of lawyers who have experience in the specific area of trade, and who may be available to represent foreign clients in the United States. The American Bar Association (ABA) is the largest national private membership organization for lawyers in the U.S. The ABA headquarters are in Chicago, Illinois. The organization includes a group known as the "Section on International Law" whose members are lawyers who are interested in and/or practice in some aspect of international law. Law professors also may be familiar with lawyers who practice in international law and trade. Some law professors also are lawyers and represent clients in international trade matters. The Martindale-Hubbell Law
Directory is a useful book which lists names of lawyers and indicates areas of specialty, background and experience.

The United States is a federal system, with a central national (federal) government and a separate government for each of the fifty states. Because the United States is a federal system with both national and state law, there will be certain state law requirements that must be met in addition to national law requirements. If a foreign businessman plans to do business with or in a particular state, it is important to seek the advice of a lawyer who is licensed to practice in that state.

A major difference in the nature of practice in the legal profession in the United States is the association of lawyers in large urban law firms. While lawyers in Latin America and continental Europe will also form business partnerships for the purpose of providing legal services, these entities tend to remain small as they normally are organized around family ties. By contrast, firms in the United States are much larger, better organized, and their lifespan is independent of their lawyer-partners' survival.

In fact, over the last century, these firms have expanded enormously in the number of their partners and associates, and they have become national and international. Firms typically have offices in several American cities and, increasingly, in foreign cities. This larger scope of operations is largely explained by and accounts for the growth, degree of specialization, and their capacity to service their clients' needs in an expanding global economic environment.

The growth of economic activity in the past fifty years, largely a result of a more rules-based international business environment, has inevitably led to the present trend towards concentration in legal firms operating in the United States and abroad. While large American firms have adopted very aggressive expansion strategies abroad, European and Latin American firms have had a mixed reaction. Some foreign firms, reflecting a defensive attitude, have pushed for greater protection and monitoring against the unlicensed practice of law in their own countries. Others have decided to actively engage in this process by the pursuit of affiliations with and even acquisitions of U.S. firms.

By positioning themselves as regional and even global leaders, large American firms (and some European firms) have made huge gains during the last two decades of economic expansion. Their survival at the present scale, however, largely depends upon the continued economic stability of their multinational clients. However, the occurrence of eventual economic downturns should not be feared so long as further consolidation of the rule of law takes place. To those who can master its complexity, its stabilizing effect holds the promise of an expanding profession.

Conclusion

The growing economic interdependence of our age requires the attention of all who are involved in international business education and practice. Adherence to the principles underlying the rule of law alone, though essential, does not suffice. In an environment
where IBTs are increasingly more sophisticated, legal practitioners must be aware of the complex legal landscape in which they operate and be cognizant of differences in legal cultures throughout the world. The latter knowledge can often shed much light on how to interact with their foreign colleagues. Legal education often focuses on differences in the content of applicable norms in cross-border transactions. To be truly effective, however, it must also impart on students the systemic importance of these legal-cultural influences.
Effective Techniques for Teaching about Other Cultures and Legal Systems

Mary C. Daly

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). 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 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.

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

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; 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. 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 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.

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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).

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. 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 effective 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. A second option is to create a virtual presence in the classroom through the use of technology. While technology holds the promise of

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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 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.
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.
Comparative Law teaching requires translation – not merely language translation but also legal, and cultural translation. For that reason, comparative law teaching poses challenges that, to some extent, far surpass challenges regularly associated with law teaching generally.

The title of the workshop is somewhat curious – or perhaps revealing – as it asks about teaching about “other cultures” first and other “legal systems” second. Many legal scholars, however, may feel entirely inadequate teaching about another – and perhaps even their own -- cultural system though they may feel much more confident discussing the systemic make-up of another legal system.

What is “culture”? Anthropologists view cultural knowledge as encompassing traditions, including legal ideologies. Much cultural knowledge it intimately tied to language – often the existence or absence of certain words or of many nuanced linguistic variations on a concept, reveal much about a culture, its economic make-up, its religious beliefs, and its aspirations. Clearly, only the unique linguistically versed, legal scholar can count on such understanding, and then only about one foreign culture. However, such in-depth knowledge does not seem necessary or required for our students to deal more effectively with those from another legal and cultural system.

How much cultural knowledge is needed, and for what purpose? How much is relevant? How can it be taught? The scholarly comparative law community holds widely varying views on this question, with legal historians, for example, often attempting to contextualize existing legal culture in light of its historical evolution while Marxist legal scholars would deem legal rules intimately tied to economic development and the distribution of wealth. For U.S. law students at least, the cultural knowledge required will allows them to work more effectively and more smoothly with foreign clients and, more importantly, with foreign counsel. While increasingly our students may practice abroad, most will encounter foreign law, foreign legal institutions, and foreign legal actors within the confines of a U.S. law firm or governmental agency. This holds clearly true for international deal lawyers but may be equally relevant to U.S. prosecutors who must increasingly work with prosecutors and judges abroad, or for adoption lawyers who must

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liaise with foreign government attorneys. How can we make our students competent to do so? This paper will focus on teaching “other cultures and legal systems” within the confines of the present U.S. law school curriculum. Traditionally, in U.S. law schools elements of comparative law are taught in three ways: First, in a domestic doctrinal course where comparative elements are often used for comparison purposes, to provide deeper insight and understanding into our own system; second, through the traditional survey course which is designed to provide an overview of many different legal systems; and thirdly, in specialized courses that may focus either on a particular topic – Comparative Criminal Law or Comparative Refugee Law, for example – or on a specific country or legal system, typically Islamic or Jewish Law or the Japanese or Chinese legal system. Comparative elements are being employed differently in these three models, as their usage aims to accomplish different goals.

1. Comparative Law Elements in Substantive Courses
Throughout the 1980s, legal ethicists, the practicing bar, and many reform committees, encouraged U.S. law schools to teach ethics pervasively throughout the legal curriculum. The result was that only a very small number of teachers ever addressed ethical questions in their courses. Some have nevertheless advocated this approach for comparative law throughout the 1990’s.\(^2\) Not surprisingly, not much has happened though increasingly casebooks have included some comparative law materials and occasionally foreign cases in their materials.\(^3\) The goal of such inclusions, however, is not to teach about foreign legal systems or cultures but to provide a foil for a discussion of U.S. law. While this achieves one of the goals of comparative law – providing greater insights into one’s domestic legal system – it facilitates only piecemeal thoughts about a foreign legal system, and very little understanding of its overall structure. Usually, there is not any systematic thought given to providing such insight, with foreign legal systems usually chosen based on which provides the best different or alternative model to facilitate discussion. This is most likely done without greater discussion of legal culture or reasons intrinsic in the foreign legal system for an often, diametrically opposed, approach.

Recently, companion volumes to traditional textbooks have been developed to provide comparative insights in a more systematized way. Whether they are used in such way, remains to be seen. In any event, comparative elements in substantive domestic courses rarely provide more than a snapshot into a foreign legal system though they may be useful in increasing a student’s interest and exposure to a foreign legal system.

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2. The Overview Course

The comparative law overview course has long been a staple of the U.S. law school curriculum. It tends to focus on large systemic comparisons of legal systems or legal cultures rather than individual nation-state legal approaches, though the latter are used to illustrate the former, and also to demonstrate the variety that may exist within a legal culture.

How best to teach an overview course? The ideal way to do so is to have students or faculty from different legal systems teach the course together. This may be done relatively easily in schools where a large LL.M. student body exists. Students often learn better from their classmates than from faculty. This becomes even easier when a number of students from a particular legal culture, or perhaps even one country are present in the classroom since it will reduce the likelihood of an idiosyncratic representation of a legal system, or even its misrepresentation. Alternatively, foreign visiting faculty members are a wonderful enrichment, as guest faculty, and would be even better as co-teachers. In that way, their different approach could be reflected in regular conversation and teaching. While this puts an increasing burden of preparation on the domestic faculty member – and on the law school’s budget, it would also enrich the domestic teacher’s classroom experience.

While we can teach about the structure of a foreign judicial system and even the way in which a criminal case, for example, makes it through the legal system, approaches to a problem are very difficult to convey to students unless modeled in the classroom. Subtle differences in that respect may not be obvious to the students unless highlighted in conversation. For example, many students fail to understand the role the civil code plays in civil law countries because of their impression that U.S. law is also heavily structured and impacted by statutory law. While codes have lost some of their importance in civil law countries and U.S. law has become somewhat more structured, and surely more impacted and developed, through legislation, historical, philosophical, and legal differences in thought and approaches remain. Having a civilian in the classroom allows such modeling by providing, for example, the same case facts, the same hypothetical, to all students, and then asking them how they would begin to analyze the issues and propose a solution. This approach would be equally effective if civil law-trained students were in the classroom. After all, we learn foreign languages in the classroom setting by highlighting their differences to the English language – vocabulary; capitalization rules; punctuation – and we do this best when a native speaker is teaching who understands the nuances and models an authentic accent.

For today’s students and their learning needs, visual aids are often crucial. Short video-clips of foreign legal systems are often more memorable than long law review articles or long-winded conversations. Video-clips can also be used in the classroom to demonstrate the different approaches, as one can stop the video and ask whether this particular practice,
for example, would be permissible in the domestic legal system – and the visual representation may provide some insights into the other culture.

3. Specialized Comparative Law Courses
I have been privileged to teach in the Intercultural Human Rights LL.M./M.A. program at St. Thomas University in Miami during the last few years. This program draws students from the United States and as well as many countries around the world, especially in Africa and Latin America. It, therefore, reflects many, often all, of the major legal systems in the world, usually with a sizeable number of students. The focal point of the program is human rights, and I have taught a course on women’s and children’s human rights. The goal is to present international human rights instruments but then to demonstrate their application within different cultural and legal frameworks. Teaching such a diverse group is a challenge since some of the cutting edge legal issues confronting high technology, wealthy, Western democracies – for example, the question, whether statutory maternity protection should apply upon in-vitro fertilization, or upon the actual implantation of the inseminated egg – do not bear much resemblance to the issues dominating lesser developed countries where changes to a clan-based land inheritance law may be crucial for the protection of rural widows. In working through both of these examples, the students confront each other’s legal systems and, perhaps more importantly, cultural assumptions and stereotypes. Even though the course is subject matter focused, it provides a heightened comparative immersion as the topics reveal structural and cultural insights. The ultimate result is that generally applicable human rights norms become contextualized and more deeply understood, critiqued, and applied.

In this setting, I also facilitate group-based work, often centered around a country reports on an issue. There are two ways to set up the student groups who work on the issues: They may be composed exclusively of students from one country/legal system. In that way, the intra-group methodological approach will be the same, but inter-group comparisons of approaches and substantive results will occur. More interesting are mixed groups as the students must immediately confront differences in approaches and thinking, and have to arrange ways in which to cooperate. When they may, for example, compare statutes and case law governing a particular area, they will have to understand each other’s assumptions about the relative importance and value of the two. This experience resembles the one in practice where, when they are working with attorneys from another legal system, have to explain their own approach, assumptions, substantive law, and procedure, agree on a strategy, and ultimately attempt to persuade the decision-maker of it. Mixed groups, therefore, provide the best learning experience for all. At St. Thomas the students are ideal for such group-based work as they include at least a few experienced attorneys who have sufficient insights into their own system to distinguish between law-in-action and law-on-the-books, which again provides crucial insights to those who may have learned about a foreign legal system only from books, law reviews, and newspaper articles.
Modern technology, however, no longer requires such presence in the classroom. Video-conferencing equipment would allow any faculty member to co-teach a course with a foreign faculty member who teaches a course parallel to the one taught at home. In that way faculty and students can enrich either others experience though they are located on different continents. Through e-mail the students may even be asked to cooperate on papers or presentations. This would be a relatively low-cost way to enrich the learning environment of two student groups and faculty, facilitate international networking and cooperation. This type of a course would also decrease cultural and legal stereotyping, and therefore contribute to greater understanding across international boundaries.
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), 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

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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.
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.

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), 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

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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.
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 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.
Families in a Global Context: Film and Fiction in a Family Law Course

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When I began teaching comparative and international Family Law, I began to consider how to help my students imagine and connect across cultures and legal systems to people and families whose worlds are both similar and very different. Short fiction and films have been a useful way to help my students build a richer understanding of the many different ways in which marriage, parenthood, and generational ties are constructed and experienced around the globe. During the course of my seminar on “Family Law in the World Community,” I assign a number of short stories as background reading, and we watch several films together. The quest for new material now shapes my own reading and viewing habits, and pulls me into book shops wherever I travel. On a recent trip to The Hague, I stumbled on a wonderful novel by the Dutch writer, Karel van Loon, called A Father’s Affair (2003). The last time I was in Montreal, I found Le parlement conjugal: une histoire de polygamie by Paulina Chiziane of Mozambique (2006) (conveniently translated from Portuguese into French). Even when my discoveries are not useful as course assignments, they spark new questions and enrich my own understanding of the subjects I teach.

In choosing what to assign to my students, I look for works written by authors who are insiders, whose imagination and art is grounded in a real experience of time, place, and culture. I choose stories that are contemporary rather than historical, and I look for both male and female voices. My goal is to take what may seem foreign at first encounter and make it more familiar and imaginable. Because I am a law professor, my purpose in a classroom discussion is not to undertake a literary critique of the story or film I have assigned. Rather, I want to know what my students learned from their viewing or reading, what questions it provoked, and how it connected with the more traditional legal materials they are also reading or researching.

Marriage

Marriage traditions are often our starting point in the course, and a source of plentiful material in literature and film. We talk about the distinction between arranged and forced marriages, and I assign a chapter from Pearl Abraham’s novel The Romance Reader (1995) in which a young Orthodox Jewish woman in New York is introduced to a young man her parents have identified as a potential husband. The chapter pairs nicely with a story by Peter Orner called “Providence” from Esther Stories (2001) about a young couple heading secretly to Rhode Island to get married. Beyond the stories assigned for class, I suggest possibilities for additional reading. For example, different marriage traditions are important to novels by the Nigerian-born writer Buchi Emecheta, including The Bride Price (1976) and The Joys of Motherhood (1979).
Polygamy is deeply foreign to most law students in the United States, except perhaps for the television version in the recent HBO series *Big Love*. I recommend novels such as Ama Ata Aidoo’s very funny *Changes: A Love Story* (1991), which centers on several modern, independent career women living in Accra, Ghana. Esi, one of the women, separates from her husband and eventually becomes the second wife of another man, exchanging one set of problems for another. Students may read the classic short novel by Mariama Bâ of Senegal, *Une Si Longue Lettre* (1980) (available in English as “So Long a Letter”) in which Ramatoulaye narrates the story of her marriage and her struggles after her husband chooses to take a much younger second wife. Polygamy stands in the background of Faïza Guène’s *Kiffe Kiffe Demain* (2004), in which a teenage girl in the housing projects of Paris narrates her story, noting at the beginning: “I guess I’ve been like this since my dad left. He went a long way away, back to Morocco to marry another woman, who must be younger and more fertile than my mom.” (p. 2)

**Parenthood**

Becoming a parent is a subject richly considered in film and literature, and I have found a number of short stories that are useful to our discussion of difficult legal and human rights questions. Prenatal sex selection is an issue in “The Ultrasound” by Chitra Banerjee Divakaruni in *Arranged Marriage* (1995), and China’s one-child policy forms the backdrop to Ma Jian’s “The Abandoner” originally published in the *New Yorker* magazine, and later incorporated into his book *The Noodle Maker* (2005). The moral complexities of paternity determination in an age of genetic testing spark the plot of Karel vanLoon’s novel *A Father’s Affair* (2003), which centers on a single father who discovers that he is infertile, and struggles to accept the many truths implied by the evidence that that the son he has been raising alone since his wife’s death is not his biological child.

There are also wonderful adoption stories, and I have often recommended Aimee Phan’s *We Should Never Meet* (2004), a series of linked stories that circle around the airlift of orphans from Saigon to the United States at the end of the Vietnam War. The French and Israeli film *Live and Become* (*Va, Vis et Deviens*, 2005) tells a complicated story of a boy sent by his mother to Israel from a refugee camp in Sudan in 1984. John Sayles’s film, *Casa de los babys* (2003) centers on a group of women waiting in a hotel in a foreign country to finalize adoptions.

**Divorce and Family Dissolution**

Many American books and movies address problems of family dissolution, including two short story collections: *Fault Lines* (2001), edited by Caitlin Shetterly, and *Split* (2002), edited by Ava Chin. To provide a cross-cultural comparison, I have used the Prologue to Ha Jin’s novel, *Waiting* (1999), and Sandra Cisneros’s short story titled “Woman Hollering Creek” (from *Woman Hollering Creek and Other Stories* (1991)). Based on a suggestion from a colleague in another department, I discovered a film from Zimbabwe called *Neria* (1993) which deals with the difficulties faced by a woman after her
husband’s sudden death, particularly in the conflict between the village traditions of his family and her rights under the civil law.

For purposes of my seminar, two documentary films have been particularly useful in introducing different systems of disputing and dispute resolution. *Heart of the Dragon*, a series produced in the 1980s, includes one episode following the extended divorce mediation and eventual reconciliation of a young couple in China. Although aspects of the film are now somewhat dated, it quite usefully opens questions about different goals of a mediation process and the connections between family law practices and broader social and cultural norms. Ziba Mir Hosseini’s *Divorce Iranian Style* (1998), made with Kim Longinotto, offers a fascinating look at the cases of several women brought in the religious family law courts of Tehran.

My students are very enthusiastic about this dimension of the seminar. Our discussions are sometimes uncomfortable, but notably richer and more sophisticated on the issues they have encountered through both law and literature.
This note will introduce what I believe to be an important challenge for legal education in developing countries in teaching about other legal cultures. I do not have any good solutions, yet, but I think this note identifies a problem worth focusing on.

Imagine that you were placed under arrest for crimes against humanity arising out of conflict in the Democratic Republic of Congo. You were then transferred to the International Criminal Court in the Hague. Who do you want defending you?

The answer that clients usually give to this question is, quite literally, “Someone who speaks my language.” And not just that, “Someone who understands the society I come from.”

Though many of those arrested do not know it to begin with, this is not enough. The accused also needs someone who understand the international legal system—the system that pours millions of dollars (or, in the ICC, euros) into developing a case involving thousands of documents and hundreds of witnesses, along with legal research to document the relevant aspects of international criminal law, international humanitarian law, international procedure, and international human rights law back to Nuremberg, if not beyond.

As a result, the defense bar at the international criminal tribunals—such as the ICTY, ICTR and ICC—has a peculiar structure. On the one hand, most do have a lawyer who speaks one of their languages (though in some cases, a second language). And almost everyone accused in an international criminal court or tribunal also has a lawyer from a developed country, usually from the West. These are also mostly the lawyers who plan the litigation strategy and write the briefs on the large legal issues. But they very frequently do not speak the language of their clients.

Similar questions could be asked concerning the desires and needs of prospective clients in developing countries looking to make a major deal with a large company from the developed world. And in those cases, a similar interesting structure might emerge. That is, such a client obviously wants a lawyer who speaks her language and understands her company’s business environment. On the other hand, the outside company will have access to much greater legal resources from large Western law firms or in-house counsel. Local law firms in developing countries often do not have the sheer size or other resources
to provide equal bargaining power to local clients. Thus, local clients and law firms may want to retain international firms as legal counsel, in order to be able to bargain fairly on legal issues. If this proves impractical or impossible, there may well be asymmetries in the bargaining relationship between the parties. If this asymmetry is repeated frequently in the dealings between local and international businesses, the problem can become a general political and economic issue for the less developed country involved.

Here is one way of phrasing the problem for legal educators: How do those of us from developing countries structure our educational system so that our graduates will be prepared to work and compete on equal terms in the international legal market?

Now if this were the only question, at least one way forward would be relatively clear, though not easy. One would look for the resources to build at least one elite law school nationally (or regionally, in the case of small countries), where all the resources of the school would be of international standard, and talented students would compete for admission, and international-level opportunities would be provided for graduates. Within a generation, with the normal course of professional development, a cadre of international standard lawyers would arise.

Of course, nothing is ever that simple. India has done something similar, with the Indian Institutes of Technology (IITs), for science and engineering. It has led to a great deal of progress in India, but also to a great brain drain, as many of the brightest graduates leave for careers elsewhere in the developed world.

Moreover, at the same time that developing countries wish to develop a cadre of international lawyers, they also need to develop the human infrastructure to strengthen law and justice within their countries—providing law to the poor and disenfranchised, as well as the elite. In many cases, this may include a social justice mission for law schools.

There can be very little question that the economics of this mission are very different for graduates. It is hard to imagine that the levels of remuneration for graduates who pursue this sort of position will be much different from those of a civil servant in a developing country. And yet the dedication, training and skill required of these lawyers are as great as the dedication, training, and skill required of lawyers for the international interests. The economics of building and maintaining the quality of these and other law schools in a country will be much different as well. The international school may be able to obtain international funding to begin, and will, it is hoped, develop support from its prosperous cadre of graduates. The school with the social justice mission, and other law

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1 For a recent discussion, see “Legally Barred,” The Economist, 24 April 2008 (on law firms and foreign competition in India).
schools, will not in general have the same access to resources, either at the beginning or down the line.

One example of a start at what might be done again comes from India. About two decades ago, the National Law School of India University was set up in Bangalore, with national, local, and some international support, and with strong leadership from Dr. N.R. Madhava Menon. It had a social justice mission for India, as well as a mission to be a laboratory for reform of legal education. As it turned out, it attracted many of the best law students from around India. Highly qualified teachers were recruited. Even though, library resources remained an issue for some time, a great deal was done to prepare students for high level work in both national and international environments. Early on, many of its graduates began to enter the international legal market, but some of them continued to work locally on legal infrastructure and social justice. The National Law School model has now been replicated in a number of Indian states. Its work has led to curriculum reform throughout the system.

How sustainable this model will be remains in question. It is not clear whether the economic discrepancies between the international sphere and other spheres of legal work will pull an ever-increasing number of graduates away from providing justice to the majority of the population. It is not clear that they will be able to achieve the sort of donation levels from graduates that will allow them to carry forward their missions without a great deal of support from international NGO’s. Finally, these law schools remain—and are intended to remain—a small segment of India’s legal education sector. How other law schools respond will be vital to the ultimate success of legal education.

So, in this very brief note, there are no answers. The questions and experiences set out here do, however, suggest that law schools will have an important role to play in the internationalization—and fair treatment—of the economies and societies of developing countries.
Building the World Community:
Challenges to Legal Education and the WCL Experience

*Claudio Grossman*

I. Introduction

Today we are witnessing dramatic global transformations that question both the content and methodology of legal education. These changing processes have been well documented and extensively discussed elsewhere. They include global trade, foreign investment, the breakdown of authoritarian political structures, the emergence of new nations, and the presence of new international actors such as individuals, multinational corporations, and non-governmental organizations (NGOs). Crucial problems that challenge humankind cannot be solved solely by individual states. Instead, this growing trend demonstrates the necessity for international cooperation. It is particularly the case for transboundary problems such as the proliferation of nuclear weapons, widespread poverty, environmental degradation, international terrorism, and war crimes. These developments confirm that a new world reality is emerging and is here to stay. Society must now ask how these phenomena will affect legal education.

For rhetorical purposes, we can identify two main schools of thought that consider the implications of these global changes and their effects on legal education. The first school contends that the transformations taking place are of minimal concern because lawyers deal primarily with domestic issues. This theory maintains the status quo in

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3 See Claudio Grossman and Daniel D. Bradlow, *Are We Being Propelled Towards a People-Centered Transnational Legal Order?*, 9 AM. U. J. INT’L L. & POL’Y 1 (1993) (arguing that new actors include individual voices who implement change through non-governmental organizations and have played a monumental role in developing transnational alliances towards securing human rights, consumer protection, social justice and sustainable environment, thus garnering transnational affiliations and making their voices heard).

4 See Reisman, *supra*, note 1, at 323-24 (contending that increasing acts of political violence, transnationalization of crime, and economic monopolization render the individual state unable to protect public order and, therefore, increase the need for intergovernmental cooperation).
legal education, believing that the practice of law primarily deals with domestic interests and issues that are confined within one nation’s borders. Proponents of this viewpoint further allege that the modification of legal education is unnecessary because the global issue is “merely a matter of translation.” For example, a real estate lawyer in the American Midwest who engages in the development of agricultural land will simply need a language translator if a foreign party is involved in a transaction, but need not employ different legal concepts. Accordingly, because the basic concepts underlying the transaction remain the same, the traditional concept of legal education should remain intact.

The second school of thought goes beyond translation. Indeed, this more innovative theory argues that more is required to prepare lawyers for the seismic changes currently taking place than mere language interpretations. Proponents of this school regard translation alone as an ineffective means of establishing a continuous relationship with a client. They believe that knowledge of the client’s cultural values is also of great importance when developing a professional relationship. This group believes legal education needs to be modified by increasing global exposure, achieved by adding courses, hiring more international faculty, sponsoring more international academic programs, opening research centers with global connections, and augmenting the number of formal international linkages. Unfortunately, this group only makes quantitative changes to legal education. The actual law school experience would require no basic transformation.5

Standing alone, neither of the above two approaches produces the paradigm shift required to educate lawyers in the new world reality. Both schools of thought appear to underestimate the breadth of the changes currently taking place, as one simply maintains the status quo and the other advocates making only surface changes to legal education. What is needed, instead, is a profoundly different approach, one that advocates a qualitative rather than a quantitative change in legal education. The aim of this paper is to push the debate in that direction and to explore ways to reconceptualize legal education in accordance with the global transformations currently taking place.

II. Legal Education in an Interconnected World

Despite the past century’s numerous philosophical changes in international law, the curricula of law schools continue to focus on a domestic agenda. A study conducted by the American Society of International lawyers (ASIL) found that during the

5 This approach further neglects the fact that crucial international legal dilemmas in recent times have concerned “non-Anglo-Saxon” nations. E.g., International tragedies such as war crimes in the former Yugoslavia and Rwanda, human rights violations in the form of disappearances and state-sponsored terrorism in Latin and South America, female genital mutilation in Africa, and the Bhopal environmental disaster in India.
Langdellian era (1870-1895) there were only twenty-three educational institutions that offered international law in the United States.\(^6\) Surprisingly, the contemporary law student is only slightly more likely to have taken a course in international law than her counterpart in 1912.\(^7\) Moreover, although international law is offered on a wider basis in today’s law schools,\(^8\) the full incorporation of the subject into legal training remains marginal. For example, there are still no questions on any bar exam concerning international law, no mandatory international law courses, and generally no first-year exposure to the study of international law.\(^9\) This disregard of international law has been particularly disheartening with regard to the teaching of international human rights law. In 1979, only fifteen law schools offered a course or seminar on the subject, and only twenty schools offered such a course in 1990.\(^10\) Despite strides being made to disseminate information and prosecute the perpetrators of human rights violations—events such as state-sponsored terrorism, ethnic genocide, and war crimes such as rape, torture, and the conscription of child soldiers—the subject has yet to become an accepted elective in the traditional law school curriculum.\(^11\) The failure of the modern American law school to update its curriculum to encompass international law, and thus recognize it as a subject highly applicable to the practice of law, constitutes a profound anomaly in legal training.

The first-year curriculum in most law schools consists of the standard “core courses,” including torts, contracts, property, civil procedure, criminal law, and constitutional law. Furthermore, many professors continue to rely on the traditional case method for instruction. A brief look at Langdell’s curriculum at Harvard indicates that changes to the first-year legal training have been moderate at best. At the end of the nineteenth century, the primary first-year course of study consisted of:

1. The Law of Merchants, Contracts
2. Equity
3. Pleading, Practice, and Evidence
4. Criminal Law
5. Real Property\(^12\)

\(^6\) See REED, supra note 10, at 301.
\(^8\) See WCL Informal Course Survey, *supra* note 8. One hundred fifty-two (152) of the 160 AALS schools offer a general international law course. See id.
\(^9\) See id.
\(^11\) See *id*. Despite the increase in institutions offering a course or seminar on international human rights law in the 1980s, only 11.9 percent of the 168 schools then listed by AALS offered courses in human rights law. As of March 2000, over half of American law schools offer a course that studies human rights law, but fewer than twenty percent of schools offer more than one course on the topic. See WCL Informal Course Survey, *supra* note 8.
\(^12\) REED, supra note 10, at 454.
The continued focus on standard courses that remain inextricably attached to domestic concerns is inadequate to prepare lawyers for a new world reality.

Lawyers practicing within this new reality will be challenged by rapidly developing international economic and political links. Rising global technologies, such as satellite communications, establish greater transparency between global actors. The Internet and high-tech computer networks now connect the world with the click of a button. Authoritarian political systems are being dismantled and societies are becoming more open.

These changes in the world have simultaneously changed the role of a law school, calling for a fundamental reconceptualization of legal training. Exclusive reliance on the Langdellian ideology, which treats law as a science in which legal principles are derived by studying selected cases, will not adequately prepare law students for the contemporary world. New forms of communication such as e-mail, the Internet, and teleconferencing have exploded onto the scene, enlarging the scope of dialogue and questioning the integrity of legal training. The classical ingredients of legal training—consisting of faculty, students, appellate decisions, and research centers—underestimate the scope of legal training that is demanded by the new world paradigm. The world is now immersed in multiple networks with ever-growing interconnectedness, redefining the needs of legal education.

Inasmuch as individual states can no longer isolate themselves from the international community, legal training can no longer be enveloped within the four walls of a law school. Instead, law schools must connect themselves with the outside world and reconstruct their academic agendas to work with actors in the international community, such as NGOs, multinational corporations, governments and legal systems of other countries. In addition, while the study of case law continues to provide an indispensable vehicle for legal training, we now know the importance of expanding legal training beyond this one-dimensional approach.

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13 See Weyrauch, *supra* note 7, at 263-63 (emphasizing that although the Langdellian teaching method is still largely adhered to, it nonetheless precludes students from observing facts and understanding social norms).


It is becoming less tenable to classify issues as “international” and therefore as inside the boundaries of international law or as “domestic” and therefore within the jurisdiction of each sovereign state. All issues now have both international and domestic features, in the sense that they influence or are influenced by developments in both the domestic and international arenas. This collapsing distinction between domestic and international calls for a reconceptualization of international law so that these issues can be addressed in their totality and free of the constraints that are created by the artificial distinction between domestic and international issues. *Id.*
Today, new skills are required in legal education as exemplified by the development of practical and experiential training methodologies. Clinical programs, moot court competitions, study-abroad courses, debate clubs, and an increased reliance on non-legal disciplines such as economics, psychology, political science, anthropology, and sociology have made the study of law based exclusively on readings cases obsolete. Today’s law school graduates must have the skills to play the role of facilitators and problem solvers in international transactions. They must also be able to act as liaisons for communications between and among formally organized legal systems with differing national histories, customs, and experiences. Put simply, the philosophical foundation of Langdell’s case theory is insufficient to prepare law students for the world they will encounter.

III. An Innovative Model: American University Washington College of Law

What can be done with regard to the disconnection between domestic-oriented legal training and the global-oriented world system? One approach may be simply to make quantitative changes by sponsoring more research programs, stressing the importance of linguistic diversity, and augmenting the number of international students, faculty, and courses. However, this additive approach does not necessarily provide the typical law student with the diverse interaction that is needed to operate in the new world. In addition to updating its curriculum through the quantitative measures described above, American University Washington College of Law (WCL)\textsuperscript{15} has adopted a qualitative, process-oriented approach that sets into motion the dynamics necessary to transform the traditional, domestically-oriented legal training into training that is interconnected with the world. The building blocks of this approach consist of the following: (A) establishing links between the study of domestic and international law; (B) focusing on different legal systems; (C) including cultural issues in the academic agenda; (D) incorporating the perspectives of other academic disciplines into the study of law; and

\textsuperscript{15} The Washington College of Law was founded by Ellen Spencer Mussey and Emma Gillett 104 years ago. In 1895, Delia Sheldon Jackson approached Ellen Spencer Mussey and expressed a desire to practice law. Mussey herself had undergone legal training at her husband’s law practice but, because of her gender, was later denied admission at the law schools of National University and Columbian College (now The George Washington University). Realizing the importance of Jackson’s endeavor, Mussey contacted her colleague, Emma Gillett. Under Mussey and Gillett’s tutelage, the first Women’s Law Class was held on February 1, 1896, attended by Jackson and two other women. By 1898, six women had completed all but their final year of law school. Not having incorporated their classes as a law school, Mussey and Gillett asked Columbian College to enroll the women for their final year. Columbian College refused on the ground that “women did not have the mentality for law.” Mussey and Gillett founded WCL out of commitment to their students. Upon its incorporation by the District of Columbia in 1898, WCL became the first law school in the world founded by women. Since its creation, WCL has been dedicated to expanding the “traditional” notions of legal education.
(E) promoting social change and international awareness through purpose-oriented programs outside of the curriculum.
INTRODUCING THE ESSENCE OF LAWYERING IN AMERICA TO CHINESE LAW STUDENTS

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A group of law students from Nankai University in Tianjin, China, spent a month at Oklahoma City University in the summer of 2007 to receive an introduction to the American legal system. In preparing the program, we asked ourselves, “Where should we begin?” Despite its enormous economic progress, China’s legal system is still undeveloped. The concept of private property has only recently been introduced. Private lawyers and private litigation are still something of a rarity. (China has fewer than 200,000 lawyers for a population of 1.3 billion; the United States has roughly five times as many lawyers for a population that is only one-fourth the size of China’s.) The adversarial system of adjudication does not exist in China. How could the Chinese students begin to comprehend the America legal system?

To understand how the American legal system works, one must first understand the role of lawyers in that system. After all, lawyers drive the system, whether they work in private practice, government service, a corporate legal department, or a public interest setting. So we started the program for the Chinese students with a short course on the American model of lawyering. It became my task to teach it – in just nine hours spread over only three days.

The task turned out to be a rewarding one. The students were highly intelligent, well-motivated, respectful, and curious. It was enjoyable to address their insightful questions and see them “get it.” After a brief review of the regulation of admission to practice and the disciplinary system governing lawyers, we surveyed the range of responsibilities of American lawyers as set forth in the American Bar Association’s Model Rules of Professional Conduct. Because of time limitations, the method of instruction was primarily lecture, including classic examples of how the Rules apply in practice. There were ample opportunities for questions. These responsibilities were organized under three broad principles: (1) A lawyer’s first obligation is to his or her clients. (2) Lawyers owe certain obligations to the legal system that operate to limit the obligations owed to clients. (3) Even though they owe obligations to clients and to the legal system, lawyers are independent from both.

The survey began by observing that lawyers in America function primarily on behalf of some other person or entity – a client. Thus, principles of the law of agency apply with full force to the work of lawyers. These principles also permeate the Rules of Professional Conduct. They explain, for example, the duties of loyalty (found in our
conflict of interest rules) and confidentiality. The same principles also explain the concept of the lawyer as an actor independent from both the client and the state. And yet, the lawyer has duties to both the client and the state.

It is helpful, however, to consider the first duty as that which is owed to the client. The client determines the objectives of a representation and must be consulted with respect to the means by which the objectives will be pursued. Rule 1.2(a). The lawyer is expected to assist the client in formulating objectives and making decisions concerning the representation, Rule 1.4, and to give the client independent professional advice as to the wisdom of what the client thinks about these matters. Rule 2.1. If client and lawyer cannot agree on the objectives and means, either party to the client-lawyer relationship may veto it before it is consummated or (with certain limitations) terminate it after it has come into existence. Rule 1.16.

If the relationship moves forward, the lawyer is expected to pursue the client’s objectives with reasonable competence, Rule 1.1, and diligence, Rule 1.3, and without subjecting herself to compromising influences. Rule 1.7. The primacy of the lawyer’s duty to clients is emphasized in the obligations of confidentiality, which extend far beyond the contours of the attorney-client privilege and work product doctrine. Rule 1.6.

So the first principle of lawyering in America is that lawyers serve the interests of their clients. In doing so, they are understood to be serving the interests of society. But there are limitations.

If the client’s objective is unlawful, the lawyer must so advise the client, Rule 2.1, and refuse to assist in the pursuit of such objective. Rule 1.2(d) and Rule 1.16(a). In fact, whether the client is an organization (such as a corporation) or an individual, the lawyer is expected to protect the client from the likely harmful consequences that will follow from unlawful conduct. Rule 1.13 and Rule 1.6 cmt. [2].

If the client wishes to abuse the legal system, the lawyer must not be an aider and abettor. The lawyer-agent’s role neither requires nor allows bringing a frivolous claim or asserting a frivolous defense, Rule 3.1, failing to expedite litigation, Rule 3.2, obstructing access to or falsifying evidence, Rule 3.4, or deceiving a tribunal. Rule 3.3.

The second principle of lawyering in America, then, is that, in addition to their duty to clients, lawyers have certain narrowly-defined duties to the legal system and tribunals. These duties limit the scope of one’s obligation and are designed to serve the interests of society in maintaining the rule of law as well as trust and confidence in both the criminal and civil justice systems.
The reconciliation of the first two principles of lawyering (one’s primary duty is to client, but there are also certain duties to tribunals and the legal system that impose limitations on that primary duty) was illustrated through a careful examination of the exceptions to the duty of confidentiality codified in Rule 1.6(b).

The duty of confidentiality does not prevent a lawyer from using or disclosing information relating to a representation when doing so is reasonably deemed necessary to prevent reasonably certain death or substantial bodily harm, Rule 1.6(b)(1), or to prevent a client from committing certain crimes and frauds. Rule 1.6(b)(2) & (3). With respect to the crime of perjury before a tribunal, disclosure is mandatory. Rule 3.3(b). Lawyers are at liberty to disclose confidential information about a client to the extent doing so is reasonably deemed necessary to defend the lawyer against claims of wrongdoing (perhaps in alleged complicity with a client), Rule 1.6(b)(5), to assert claims or defenses against a client, Rule 1.6(b)(5), to obtain legal advice concerning the lawyer’s obligations under the Rules of Professional Conduct, Rule 1.6(b)(4), or to comply with the Rules, other law, or a court order. Rule 1.6(b)(6).

This leads to the third core principle of lawyering in America: a lawyer is independent and autonomous from the client as well as the state, while simultaneously owing obligations to both. A lawyer cannot assist a client’s wrongdoing. Rule 1.2(d). The lawyer is an independent actor in these regards. Lawyers’ independence from their clients is affirmed by Rule 1.2(b), which declares that one’s representation of a client does not constitute endorsement of the client’s views or activities. Lawyers’ autonomy with respect to clients is further emphasized by Rule 1.16(b)(4), which allows them to decline a representation if the client insists on taking action that the lawyer considers repugnant. Lawyers in America also have independence from the state. For example, a lawyer may contest a law or court order directed at the lawyer or the client, Rule 1.2(d), including an order to disclose confidential information about a client. Rule 1.6 cmt. [13]. We thought it was also useful to point out that subordinate lawyers are even autonomous from supervisory lawyers to a certain extent, in that they are not expected or even allowed to follow a supervisor’s directive unless it is clearly consistent with the Rules or at least based on a reasonable resolution of an arguable question of professional duty. Rule 5.2(b). This is true for government lawyers, as well, including prosecutors.

It was clear from the questions that were asked that the students comprehended the intersecting relationships that exist between lawyer and client, lawyer and tribunal, and lawyer and society. Their understanding of these relationships was also evident when, in the fourth week of their program, they prepared and presented a mock criminal trial based on a simulated record. These principles of legal ethics had been further developed in weeks 2 and 3 through an introduction to legal research and writing with American legal materials.
Based on this experience, we conclude that the lecture technique for introducing the role of the lawyer in the American legal system was successful in facilitating the absorption of lawyering skills (research, writing, advocacy) with which the students previously had been unfamiliar.
TEACHING ABOUT "CULTURE" IN MY "ISSUES OF LAW, POLICY AND ETHICS IN GLOBAL TECHNOLOGY" SEMINAR.

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INTRODUCTION

This is a required course for LL.M. students and International Exchange students. I have about 40 students in the class usually, roughly half U.S, including some LL.M.'s and some J.D's, and the other half is international, both LL.M.'s and Exchange Students. Some of the evening students have substantial practical experience in various fields of both law and technology, and some of the day students are interning in big firms downtown.

THE COURSE

My desire is to get them to share their different perspectives on a number of problems that the law faces because of very recent technological advances, such as, embryo research, the genetic engineering of products and persons, organ donation, euthanasia, as well as issues like privacy, freedom of expression, and the role of the media in the age of the Internet, all of which have also been affected dramatically by the new technologies. For the Syllabus of the Course, go to <http://www.law.suffolk.edu/faculty/addinfo/hicks/>

Before discussing in class the role of law in solving these new problems, I suggest that we all have different ways of looking at the problems, because of our cultural orientation. This is a more practical challenge, rather than a theoretical one. In a sense, our culture is invisible or natural to us. I ask how many people have lived in other countries for some period of time.

I ask if they would say they were from the east or the south. My agenda is about "assumptions," and one of the first challenges I introduce concerns our picture of the world: <http://flourish.org/upsidedownmap/>

I tell them about my own background. I ask if they have misunderstood American English, or if they have been misunderstood: <http://download.qsnetwork.com/view_file.php?fileid=223> (slow to load, see slide 9)
CONTEXT: STAGE ONE

I propose a number of hypotheses in my introductory classes with regards to global technology: they are put forward as "assertions" for me to defend, and for students to challenge, such as: 1. that we are witnessing a new stage of human history in the west, at least akin to that known as the Industrial Revolution; 2. that we are in a state of crisis about globalization and technology, that is, there are no limits to them, no normative constraints in them, and that everything is out of control; and 3. I assert that the real crisis is because for the first time in history we are able to remake "life" through technologies, such as genetic engineering, robotics, embryo and organ experimentation, virtual realities and the storage and dissemination of enormous amounts of data.

My point is that this changes: first, the meaning of our "being human," since body parts can be made in the lab, and second, "our world," as if it were out there, objectively real and scientifically knowable, which it is not any more, and third, also, our "way of thinking," since information is now primarily processed by machines not our brains.

I do not attempt at this stage to claim that this is significant in, for example, a postmodern way. I do that later in the course when I propose that media, images, sound bites, the virtual and the visual have constituted our experience in ways that are totally different from our experience of the world, even as recently as in the middle of the twentieth century, to which I can attest, since I began teaching before the advent of copying machines.

The big questions that guide the course, are first, whether we are moving to a global culture, or not, and what that would look like, for example, to the international students in the class, and second, whether that universalism of norms and values rests on a universal human nature. I keep coming back to these two questions.

In this regard, it is suggestive to point out how very different customs are around the world, and how we have to adjust. I show them, for example, "business etiquette" <http://www.cyborlink.com/> The site on the U.S. is illuminating because it demonstrates to the U.S. students how invisible our culture is to us <http://www.cyborlink.com/besite/us.htm>

PREMISE: CULTURE

My first move is to ask them how, and with what concept, we should begin to think about "Issues of Law, Policy and Ethics in Global Technology". Most law students have not thought about this at all. But usually, there is no argument that we might as well use the concept of "culture" as a starting point for further discussion. I do not try to achieve consensus around a definition of culture. It is enough to set the stage with it, as our most
abstract concept today, and I provocatively suggest that it replaces "the world," "reality" or "society."

I mean by "culture" the expressions of our entire basic orientation towards everything: its products, its modes of reproduction, and its articulations. This encompasses everything, all our beliefs, norms and practices. Culture, therefore, is more than the normative information embodied in a tradition; it is also the practices and ways of doing things with such information. In order to understand a culture, we need to see how norms are applied and what that means to people. (I usually hand out this two page report, which shows how very differently a simple injunction is experienced in different countries of what we would think of a single culture).

http://www.law.suffolk.edu/faculty/addinfo/hicks/MuslimsAndApostasy.pdf

"Ways of life" is a good shorthand phrase for understanding the word "culture". This is our subjective, personal experience of being in a collective. I refer to the initial resistance and subsequent acceptance of Japanese “umami,” as a fifth sense of taste in addition to our sweet, sour, salty and bitter, original western senses of taste. We live through the way we taste, and we taste things the way our culture presents them to us.

Obviously cultures may be relatively stable or closed, (think of indigenous aboriginal ways of life in comparison with religious ways of life) or they may open and actively responsive and evolving. In either case they are constructive of meaning, (I tell them to think of different cultural forms of mental illness, such as "amok" in Malaysia), but that meaning may not be simple or beyond contestation (think of heterosexuality and homosexuality, or single parenting and the nuclear family).

I argue to the class that culture is deeper than the contrasts of east and west, developed and developing, religious and secular, ideological and non-aligned. The differences are not just political or economic, but rather lie at the level of social organization, caste, kin or family, within which possession, ownership and exchange; power, control and authority; justice, morality and absolutes, all function for most people. (I tell them to think of differences concerning risk and fate; or what constitutes happiness or beauty; and especially of time, that is, for me history is past, it does not exist in the present as it does for some cultures, and I do think of it as linear, it has gone away.)

Consistent with my earlier assertions, I suggest that global technology changes our basic orientation towards everything, our entire way of life. In other words, it calls into question unquestioned assumptions, about what is natural, real, and obvious, from which we derive our values and judgments upon which we base decisions; that is, our assumptions drive our values, and they are being undermined by global technology.
CONTEXT: STAGE TWO

Of course, some students wonder what this has to do with law. However, I do not articulate a philosophical theory of the relationship of law to culture. That is for the legal philosophy course. But "culture" meaning "ways of life" is nevertheless approachable through the familiar categories of religion, law, ethics and politics; that is, I suggest that these categories are all we need in order to understand our ways of life. In different cultures, there are different proportions of them in the mix. The point here is not to map the world's legal systems, rather, that is for the comparative law course, but only to get everyone, to appreciate that they do have a "culture," a way of life, which underlies their legal, political, ethical or religious orientations.

Using the differences between law, religion, politics and ethics, I develop an account of modern western law as the historical evolution of the tensions and contradictions between the Judeo-Christian and the Greco-Roman traditions which became resolved in the nineteenth century in the nation state in what we now call the rule of law. This defines for the purposes of the class, provisionally with some students' unarticulated reservations, our western "cultural way of life," namely its individualism, separation of the public and private, relative autonomy of the state from society, and direct personal participation in the two forms of community, the state and the market.

I present this as our liberal, democratic and capitalistic arrangement of law, politics, religion and ethics. Law, like politics, ethics, and religion in the west, is a site of contestation, but I assert that it is the primary one, where policies, beliefs and values are harmonized, through the rule of law. With all this up for discussion, I inform them that we are putting aside "law" until we get to the particular topics and problems in the syllabus, and how best to resolve them, whether with law, politics, ethics or religion.

Therefore, at this early stage of the course, I suggest that the place for us to begin is from the bottom, not with the surface arrangements we all know so well, but within ourselves and our acculturation.

CULTURAL ASSUMPTIONS

My next move is to ask about our deepest assumptions. I suggest that we all make assumptions about "man," world and thinking, namely that we are rational, that matter is real, and that there is a dualism of matter and the immaterial (mind, spirit) and that our uncertainty about this dualism makes us pragmatic (at least in the west). Someone will claim that the world is real, the same for everyone, and we all know this. To which I might say the opposite, and use a visual illusion to make the point that we literally do not always see or interpret accurately [http://www.michaelbach.de/ot/] (in particular, the hering illusion and the checker shadow illusion).
However, the point is less to claim that what I say is true, as it is to get everyone to recognize that they do operate within such abstract and general assumptions about the world, and most importantly that these assumptions are culturally conditioned. For example, I show that brain studies reveal differences in perception across cultures. [http://www.boston.com/news/science/articles/2008/03/03/cultural_insights/](http://www.boston.com/news/science/articles/2008/03/03/cultural_insights/)

Of course, with that insight I can ask about universal human nature and global (legal) culture. Are we all the same? If so, or if not, how did we get to be the way we are in the ways of life we live?

This leads me to ask to what extent culture might actually constitute our experience, rather than we be the active creators of culture. This comes up again later in the course when we discuss the new media and what difference computers have made to our experience of the world. So I ask if they think they are "programmed" in any way. If I have time, I show this video, which invariably proves that we overlook the obvious when our minds are led astray by a cultural blind spot, much like a magic trick succeeds when we are distracted off to the side. I tell them to watch the basketballs and tell me what they see in this short video. [http://viscog.beckman.uiuc.edu/grafs/demos/15.html](http://viscog.beckman.uiuc.edu/grafs/demos/15.html)

At this stage of the course I assert that we do have assumptions which color our values and judgments about issues brought to the forefront by global technology, such as genetic engineering. Global technology challenges us to think differently about the meaning of life. Therefore, I urge them to be open with the class in sharing their cultural ways of life so we can all see how problems may be solved differently in different cultures, because of our different fundamental assumptions.

Again I ask if there is a universal human nature, and now I ask if there is a right, universal, or true, or "natural" way of life and culture.
Although there are nearly two hundred summer study abroad programs sponsored by law schools in the United States, few, if any, offer a true international learning experience. The typical American program rents space at a foreign university, hires one or two local law professors to offer courses (usually with a comparative or international focus), and then staffs the rest of the short course curriculum with its own faculty. Usually a few students of the “host” university are recruited to enroll in courses (to give them more of an international flavor), but the vast majority of students are American law students taking classes with other Americans. Students typically take two classes that meet daily for four weeks.

While the American law student enrolled in such a summer program may have an enjoyable summer in a locale that he or she has never before visited, the student does not have the more valuable experience of actually attending a law school in a different country or of studying law with students from another country. A growing number of American law schools do offer semester-long study abroad opportunities but they are normally limited to a small number of students.

By way of contrast to the typical American study law abroad program, I call your attention to the Program in International and Comparative Law operated by the University of Queensland in Brisbane, Australia and Milwaukee, Wisconsin’s Marquette University from 1997 to 2005. The Marquette-UQ program offered American and Australian law students the opportunity to enroll in actual courses offered by the host university and to attend class with law students from the other country.

The program featured a four-week long term offered each July during which students were permitted to enroll in two, two-credit courses. In alternate years, the sessions were held in Brisbane and Milwaukee. The one month term coincided with the Marquette University Law School’s second summer session and the T. C. Bierne School of Law’s intercession.

All courses offered by the program had an international or comparative focus. Public and Private International Law, International Human Rights, and Comparative Constitutional Law were regularly offered, but the curriculum also included a wide array of comparative courses, including courses devoted to torts and compensation systems, real estate transactions, sports law, banking law, insurance, alternative dispute resolution, and indigenous people’s law. The latter courses were usually developed by Marquette and Queensland faculty who normally taught such subjects only in the context of their own national system. The program had the happy side-effect of greatly increasing the number of faculty at each school engaged in comparative legal studies.
Sessions at both sites featured courses taught by Marquette and UQ faculty so that students who took classes only at their own universities had the opportunity to enroll in courses taught by U.S. and Australian professors. Over the course of the eight years significant numbers of faculty from both schools had the opportunity to teach at the home campus of the partner school and become acquainted with many of their colleagues at the other law school. There were also a limited number of faculty visits to the other institution during the regular academic year.

Each summer, between 20 and 100 Marquette or UQ students made the trip across the Pacific to the other campus. Classes were also open to students from other law schools, leading a number of students from other United States law schools to enroll both in Milwaukee and in Brisbane. Housing in both places was arranged by the host institution. At Marquette students tended to live on campus while in Brisbane they lived in apartments or hotels within easy commuting distance of the law school.

The classes at either site could also be taken by students of other nationalities who were candidates for the LLM degree at the University of Queensland, a fact that further contributed to the diversity of the program and enriched the experiences of the participants. My course in Comparative Constitutional Law in the summer of 2002, for example, included two students from Germany and one each from Korea and Colombia. Given the fairly insular nature of the study of constitutional law in the United States and Australia such students greatly enhanced the educational experience of all of those enrolled in the course.

The Australian students were mostly undergraduates who were candidates for the bachelor of laws degree, although a few of the Australians were J.D. candidates who had already received a degree in a field other than law. Neither the different ages of the students nor their different educational backgrounds made a significant difference in the operation of the program. The same examinations were administered to all students in each class regardless of nationality or prior coursework. Grading was done on the same basis, and if it was necessary to make adjustments in grading to conform to the grading system of the student’s home university, such changes were made after the grades were awarded.

The similarities between the United States and Australian legal and educational systems obviously made the program easier to administer than would have been the case had the partner schools been from more dissimilar countries. Furthermore, a common language and very similar culture made the transition from an Australian law class to an American one quite smooth. The fact that the month of July fell between the two regular semesters at both schools (even though they were on opposite sides of the equator) also greatly aided the operation of the program. However, the benefits of a program like the one operated by Marquette and the University of Queensland are so great that it would be worth the effort for two cooperating schools to coordinate their regular academic schedules to insure that there would be a common period between the regular terms. Now that English appears to have emerged as a universal language of legal instruction, institutional
partners would not necessarily have to come from countries sharing a common spoken language.

If the Marquette-University of Queensland program was so successful, why did it cease to operate after 2005? Unfortunately, a combination of events, no one of which would have led to the termination of the program, led to its demise. Some of the factors were political and economic. After 9/11 tightened immigration standards in both countries made the process of organizing each year’s session more difficult. While the added red-tape may have dissuaded some students from participating in the program, these obstacles were largely overcome. The great distance between Brisbane and Milwaukee was also a factor, particularly as the value of the dollar declined after 2000. (The factor, of course, benefited the Australian students while disadvantaging their American counterparts.) Added costs took the program from the black to the red, but that change could well have been reversed.

More significant were changes in the personnel at both institutions. For different reasons, the primary originators of the program, Professors Kinsler (Marquette) and Moens (U. Queensland) both left their original institutions to take positions at other law schools. Also, the deans of both law schools departed after 2002. Dean Howard Eisenberg of Marquette passed away unexpectedly at age 55, and Dean Tony Tarr of the University of Queensland moved to the United States where he became the dean of the law school at the University of Indiana-Indianapolis. Unfortunately for the program, both of their successors had new and different priorities, and neither shared the enthusiasm for the program that had characterized their predecessors. Although it now seems unlikely that the program will be revived any time in the near future, such discussions have been ongoing since 2005.

Even though it no longer operates, the Marquette-University of Queensland program provides a viable model for collaborative legal education. By using a month long academic term to provide law students with a genuine educational experience in a law school in a different country, students can be exposed to the study of law in a different country without having to commit a full academic term to the project. It is a model that should be emulated.
Lessons from an American in the Gulf States

Susan L. Karamanian

I. Introduction

Over the past three years, I have had the pleasure of working with law faculties in the Middle East, principally in the State of Qatar and the United Arab Emirates, on matters relating to the teaching of commercial law. My work is part of an initiative of the US Department of Commerce, Commercial Law Development Program. The project focuses on both substantive legal principles, including the curriculum, and teaching methods.

The experience has opened my eyes to the challenges a foreign law professor faces in presenting what one would consider to be a fairly harmonized body of law. Indeed, certain substantive principles draw on lex mercatoria. Procedural issues relating to arbitration of disputes are set out recognized arbitration rules and treaties. The perceived shared legal landscape, however, has become more nuanced in my mind as I have watched Gulf students tackle mock problems in a more theoretical, formal and arguably structured manner. The experience has also provided insight into the broader issue of the most effective way to teach legal principles in an environment that at first glance appears quite different from the typical U.S. law school classroom.

II. Teaching Activities in the Gulf

By way of background, both Qatar University College of Law and United Arab University College of Law are state-sponsored law faculties. Members of their law faculties and the students, as well, predominately come from the respective host nations as well as from other nations in the Middle East. The fact that the students and faculty are from a number of nations, although predominantly Arab ones, brings an interesting dynamic to the environment.

Courses are offered in Arabic although both schools have recently launched law courses in English. Law is offered as the first degree. The faculties have separate classes based on gender, although during my visits I have sometimes spoken to mixed classes. Interestingly, on a recent visit to the UAE University, I conducted a class session on international commercial arbitration with women students early in the afternoon and later in the afternoon I watched men students conduct a mock criminal trial in the law faculty’s moot court room.

In recent years, the law faculties have undertaken a review of their curriculum with a particular focus on commercial law. International law firms are cropping up in the region. Economic growth, particularly in major cities, e.g., Dubai, Doha, Abu Dhabi, has made commercial law very attractive to qualified law graduates. Students at Qatar
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University and UAE University are fluent in Arabic with some of them fluent in English, French and German.

My work has sought to facilitate the curriculum review requested by the law faculties. I’ve also worked with the faculty regarding course material and teaching methods. In the course of this activity, I have taught class sessions to students and provided lectures to the faculties, as well as helped with a teaching workshop in 2006 sponsored by Qatar University for law faculties in the region. Professors Ronald Brand and Haider Hamoudi of the University of Pittsburgh School of Law also participated in the workshop, which covered a variety of topics, including a strong focus on the use of the problem method in teaching commercial law. Professor Brand, Professor Hamoudi and I have worked with students from various Gulf law faculties in preparing them for international moot court and moot arbitration competitions.

While an essential part of understanding legal education involves the classroom itself, a critical aspect also involves developing an appreciation for the larger societal context in which the law operates. Hence, time has also been spent meeting local judges, government officials, and private lawyers. An interesting fact is that judges are not necessarily nationals of the nation in which they sit as judges. Indeed, it is common for Sudanese and Egyptians to serve as judges in the local courts. Further, both Qatar and the UAE have a foreign population, mainly individuals from India, Pakistan, Bangladesh, the Philippines, and Sri Lanka, which make up a substantial part of the labor force in the region.

III. Lessons

Every law professor brings to the classroom certain pre-conceived notions of what will be the most effective way of teaching a specific subject matter to a certain group of students. The notions are based on a variety of factors, including the professor’s own experience as a student, the environment in which the professor regularly teaches, and the customs and practices of the professor’s colleagues and the academy in general in the professor’s home nation. The notions are also based on the audience, that is, the students, and they typically reflect the expectation and abilities of the students. At times, the subject matter itself may shape the teaching approach. Obviously more factors are involved in the shaping the approach but these are some of the principal ones.

The dynamic gets complicated when the students’ principal language, Arabic, is not the language of the instructor. Further, the manner in which some of the students are

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3 The law faculties participating in the workshop included those from Qatar University, the United Arab Emirates University, Kuwait University, University of Bahrain, Sultan Qaboos University, Ajman University, and Sharjah University.

4 Professor Mohammed Al-Moqatei from Kuwait University (who has been active in the International Association of Law Schools from its inception) organized the first Jessup International Moot Court team from the Gulf. This year both Qatar University and the United Arab Emirates University sponsored Jessup teams at the international competition in Washington, DC. Professor Brand is helping the University of Bahrain’s first Willem C. Vis International Commercial Arbitration Moot team.

5 I say “home nation” but the term must be considered in the context of the increasing number of law professors who teach in law faculties that are removed from the nations in which they are citizens. The development is common in the Gulf with many faculty members coming from Jordan and Egypt.
accustomed to learning, mainly through lectures with a strong theoretical foundation and focus, differs from the traditional case method of instruction, and this fact can lead to interesting developments.

One’s assumptions about the likely differences, even obvious ones, however, may be incorrect. For example, at Qatar University, the problem method was used to focus on the interrelationship between municipal law and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In working through the problem, the Qatar University students drew out many of the issues and concerns that my law students in the United States would raise. The problem, which involved a foreign hotel under construction in Doha, was drafted with the intent of having the students focus on an issue likely to occur in their own business community. A translation issue, however, caused an interesting development as the term “arbitration” when translated from English into Arabic did not convey the sense of finality as intended. When a variation of the problem was used at United Arab Emirates University (and tailored to address a business matter arising in Abu Dhabi) the same translation issue arose. The translation issue aside, the discussion proved quite dynamic and illustrated that the students were willing to engage with the teacher. It also demonstrated that the students had a grasp of certain of the relevant substantive principles.

Another similarity involved the interaction among the students themselves. Like students in U.S. law schools, many of the students preferred to remain silent while a couple of the students took the lead in the discussions. The former, however, were still quite engaged in the class activities as evidenced by side-bar discussions they would conduct with their classmates during the class session. Further, the students in the Gulf, like my students in the States, appreciated some form of mild (self-deprecating as to the professor) humor in the classroom.

The principal difference in terms of what transpired in my classroom in the Gulf versus the classroom in the United States is one of approach. The Gulf students’ approach tended to be more theoretical. The students tended to focus intently on the relevant legal principles and steer the discussion back to them. Students in US law schools, due to the case method, are forced to concentrate and grapple with the facts. This difference may be the obvious one that comes to mind when the two systems are described in the abstract, yet it became very apparent to me after the course sessions in the Gulf.

IV. Conclusion

The difference in approach has caused me to re-examine how the problem method could be used in my work with the Gulf law schools. The use of a hypothetical problem without some substantial discussion of the relevant legal framework is probably not the most effective use of classroom time. Further, the difference has made me appreciate the role of co-curricular activities, mainly moot courts, in forcing the students to use the law as an active and malleable tool for resolving disputes. Indeed, some of the law faculties in the Gulf are supporting their students in moot courts and they are also expanding the curriculum to offer clinical courses. In addition, the understanding of the difference has
caused me in my own teaching in the States to focus more on legal theory, as I appreciate the need for a broader perspective on the cases and problems presented to the US law students.

We will be fortunate to have at the Montreal conference professors from some of the Gulf law faculties. The professors’ perspectives on these issues will shed more light on the effective teaching of commercial law in their own law faculties.
What is ‘other’ about “other cultures and legal systems”?
The phrase “other cultures and legal systems” is a curious one. We cannot talk of ‘other’ until we have some idea of ‘self’. So it seems that what is envisaged is some discussion of comparative law. Yet the terminology of the distinction between ‘self’ and ‘other’ tends to suggest some sort of privileged relationship. ‘Self’ is the norm, ‘other’ the stranger or alien who causes discomfort but who has apparently to be accommodated. Indeed, this is how many teachers of law see the incorporation of materials from legal systems other than their own into their syllabuses. This plural is by design. ‘Syllabus’ is a corruption of the ancient Greek ‘syllabos’ and not originally a Latin word; attempts to render the plural as ‘syllabi’ are therefore misguided.

It is submitted here that the difficulty is actually more one of perspective. As a Brit teaching at an American law school, I do not have any proprietary feelings for English law. While I live and work in Florida, that state’s (and federal) law affects me as much as any American – and yet, equally, I am too familiar with English law to regard it as ‘other’. The issue becomes even more apparent in the context of international law. When I taught the Vienna Convention on International Sales of Goods (CISG) at a law school in Lithuania – which I did for five years before coming to Florida – I have no idea what I might have been supposed to regard as ‘mine’ and what as ‘other’. If someone had insisted on drawing that distinction during my class in Lithuania, I would have denied that the distinction had any validity. CISG was the subject of the class; it could hardly be described as ‘other’. But, as any teacher of CISG knows, the provisions in the Convention can really be understood only if students are given some sense of their origins in the laws of contract within either common law or civil law traditions. Since both systems have contributed to making the
CISG what it is, it is difficult to see either of them as ‘other’. Any suggestion that they are alien, making the task of the teacher more uncomfortable and difficult is the very opposite of the truth.

**Lessons to learn**

So what has this all to do with effective teaching “about other cultures and legal systems”?
I would suggest that it has a very great deal to do with it. I wish to emphasize three lessons of general application, but they are probably more easily appreciated if I begin with a more specific observation. Although especially applicable to those of us teaching within the United States, it does have broader implications too.

Like, I suppose, every other Torts teacher in the United States, I discuss in my first-year class the famous case of *Palsgraf v Long Island Railroad*.\(^2\) This is, of course, one of the most famous cases in the American canon. But note the inherent paradox in that statement. There is, after all, no such thing as American tort law. The United States may boast a common law system, but it does not have a common law. Instead, reflecting the federal nature of the country, there are fifty and a half bodies of tort law.\(^3\) Indeed, as a study by my colleague, Peter Lake, demonstrated a few years ago, one of the most striking features of *Palsgraf* is that, while it is taught in every American law school, only the state in which it was decided (New York) actually follows the majority holding.\(^4\) So the question arises as to which (and whose) law is ‘normal’ and which (and whose) law is ‘other’ when duty of care and proximate causation in negligence are under discussion. The often-overlooked truth is that many classes in American law schools are almost inevitably compelled to discuss laws from more than one jurisdiction. Anyone who teaches torts, for example, has to discuss the law both with and without joint and several liability; so too the law with contributory negligence as compared with pure and modified comparative fault systems. So immediately every torts teacher is engaging in comparative law whether he or she realizes it or not. Indeed, some cases in the ‘American’ canon are actually English, such as *Rylands v Fletcher*.\(^5\) (Indeed, *Rylands* is actually still good law in most American states at a time when it has been emasculated to the point of extinction in England.)\(^6\) When that is understood, any perceived complications or difficulties in teaching comparative law within a standard doctrinal course suddenly melt away. Moreover, the most important requirements for effective comparative law teaching become readily apparent.

\(^2\) 162 N.E. 99 (NY.1928)
\(^3\) While the federal courts no longer apply their own body of substantive law, they do still maintain their own procedures which necessarily have an impact on the resolution of torts cases.
\(^5\) (1868) LR 3 HL 330.
\(^6\) *Cambridge Water Co. v Eastern Counties Leather plc* (1994) 2 WLR 53.
The first lesson is surely self-evident. It is that the attitude of the teacher is fundamental to the success of a comparative approach. Anyone who tries to bring in material from an additional jurisdiction, but who regards that effort as an unwelcome inconvenience, will find that he or she is engaged in a self-fulfilling prophecy. By contrast, anyone who makes points of comparison by willing design or – as with many American torts teachers without actually realizing that he or she is doing it, will inevitably find that the class proceeds very smoothly. If the teacher is comfortable using comparative materials, it just seems entirely normal to the students.

Secondly, comparative legal materials should not be seen as an addition or supplement to the ‘standard’ materials to be used in class. That is not, for example, how differences in the law of torts within American jurisdictions are taught. Despite being in Florida, I do need teach my students that Florida boasts the paradigm of American tort law, and then (if time permits) supplement the Floridian position with a few mentions of cases from (say) New York or California. Cases from several different jurisdictions are, on the contrary, used to explain different aspects of the law. Cases from outside the United States are utilized in the same fashion. So, just as I used Ultramares Corporation v Touche when I was in the UK as a means through which both to discuss liability in negligence for pure economic loss and also to distinguish negligence from the intentional torts, nowadays I employ cases from England and Canada to exemplify, for example, current trends in the application of the doctrine of vicarious liability. (They are also useful because so many suits in the US for alleged child molestation have been settled out of court.) Damages are discussed by comparing torts not just with other forms of compensation, such as workers’ compensation and life insurance, but also by comparing cultures and legal systems with and without jury systems, contingency fees and socialized medicine. None of these cases or issues is additional or supplementary; they are actually central to the syllabus. Without them the picture would be radically incomplete. The notion of ‘other’ is thus, once again, somewhat misleading.

Thirdly, the jurisdictions with which comparisons are made need to be consistent throughout the course. It is no use picking a case from one jurisdiction, a statute from another, and some systemic or cultural issue (like the existence or absence of juries) from a third. At best this looks like some disorganized form of legal ‘lucky dip’. At worst, it looks as though the teacher is just picking bits of law to suit his or her own views. Teaching the law is not about the imposition of dogma. For students to benefit most from the use of comparative materials, regular exposure to the same cultures or legal systems

7 (1931) 255 N.Y. 170, 174 N.E. 441.
8 Lister v Hesley Hall Ltd. [2002] 1 AC 215 (HL).
9 John Doe v Bennett [2004] 1 SCR 436 (SCC).
encourages familiarity and helps students to link issues together. Moreover, regular usage of the same comparators reduces drastically the likelihood that the comparator is automatically consigned to be treated as ‘other’. It is simply evaluated against other options on its own merits. Perhaps in the end, a student will feel that a particular jurisdiction is ‘his’ or ‘hers’ and that the rest are ‘other’. But for me as a teacher, whatever appears on my syllabus is mine: none of it is ‘other’.
Co-Teaching Across Cultures

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Although not an example drawn from law teaching, my experience co-teaching at the Hopkins-Nanjing Center in Nanjing, China might provide insight into the possibilities of co-teaching as a way to teach across cultures. The Hopkins-Nanjing Center is a graduate program in international studies run jointly by Johns Hopkins University and Nanjing University to provide language training and a broad course of interdisciplinary study in international relations based on the Johns Hopkins School of Advanced International Studies (SAIS) model of training.10

The premise of the Hopkins-Nanjing program is to construct a faculty and student body of Chinese and English speakers with a goal of improving language skills and applied knowledge about China and the U.S. Graduates of the program have gone on to government and corporate positions in the U.S. and China. I was privileged to teach in the program in the momentous academic year 1988-1989 that ended with the student movements that led to Tiananmen Square in June 1989. Students were assigned Chinese or non-Chinese roommates so that each student would have a roommate from the other community. The faculty was also a mixed Chinese and non-Chinese group who worked together and met as a group to discuss academic policy and practice. The Center was directed by a U.S. and a Chinese director. The operation was further supported by an administrative office based at SAIS in Washington, D.C.

One of the four courses I was assigned to teach was U.S. Foreign Policy. As a U.S. faculty member, my students were Chinese, but the language of instruction was English. My Chinese colleague, who was assigned to teach the same subject to U.S. students did so in Chinese. Each instructor was allowed to select his/her teaching materials and construct a syllabus. The course was offered in the spring semester.

Based on the experience of the fall semester, we had already learned that because of language, the pace of the course had to be slowed down considerably and the content simplified. The challenge of teaching was not only language, but also of background. As we proceeded through the first semester, it became clear that many of the students were language or literature majors who had acquired the requisite language skills for the program, but did not have the academic background for a subject like U.S. Foreign Policy.

10 For more information about the Hopkins-Nanjing Center and its programs, see The JHU Gazette, June 11, 2007 available at www.jhu.edu.
There was, at that time, little basic knowledge of geography or history including of Chinese history and politics among the Chinese students. My Chinese colleagues reported similar experiences with the U.S. students.

Growing out of the need to reorganize the teaching schedule to allow students the opportunity to take part in activities generated by the student movement in May 1989, the Chinese and non-Chinese faculty met to discuss coverage and teaching during this period. It occurred to my Chinese colleague and me that it might not only be efficient, but also beneficial to combine our classes. We also knew that the Chinese and American students compared notes about classes touching on similar subjects so combining the classes seemed a natural thing to do. Since we were both able to converse in Chinese and in English, we proposed to maintain the English/Chinese approach by lecturing in our principal teaching languages – English for me and Chinese for my colleague. The class would also meet for an extended period that would include discussion. Again, following the method of instruction, we alternated discussions in English and Chinese for the combined Chinese and non-Chinese students. We took turns leading the class discussions alternating between English and Chinese for the combined class.

The class dynamic this created was very interesting particularly in the discussion sessions where the students would help each other to fill in necessary background and who would then discover that events like the Open Door Policy that were very much part of a Chinese student’s general background were barely heard of by the U.S. students. There were a number of areas where neither student group was very well equipped to understand the issue, but since the group was a combined one, it became clear that this was not a peculiarity of being Chinese or non-Chinese, but a general gap in educational background.

This made the instructors’ job much easier as it put the instructor in the role of facilitator rather than being the focus of trying to explain a single event to Chinese students such as the 1950 Korean War where U.S. troops faced off Chinese troops or vice versa. The dynamic was then less one of trying to understand an instructor’s particular interests (or idiosyncracies including points of view) and more one of a group where some may see something as important and others did not. This created a situation where the students enlightened and taught each other as they learned to fill in each other’s information or language gaps.

In essence, this approach took focus away from the instructor to the issues under consideration. It also de-emphasized language because at alternate meetings, English or Chinese would be the primary language so each group had a chance to express themselves more fully. Indeed after the first several meetings, there was much less focus on what language was used and the students helped each other to express themselves more fully in each other’s languages.
Overcoming the skills barrier of language competence and background made time for a broader discussion of Chinese and U.S. history. It allowed for discussion, for example, of what in the two countries’ histories made one group of students keenly aware of some issues under discussion and the other group less so. China’s struggle to regain its independence and sovereignty in the early twentieth century was still a current issue for students even in the late 1980s and so the Open Door Policy was important. For U.S. students, there was much less awareness of the significance of the foreign policy developments of the 1920s.

Here again, a happy convergence of research interests between my Chinese colleague and me in U.S. and China relations in the 1920s was helpful. The 1920s was an important foreign policy decade both for China and the U.S. The U.S. was increasingly becoming a world power and China was beginning to emerge from the turmoil that accompanied its early years as a republic. Helping students understand the effects of this history on their countries in the 1980s was important and done in a much richer and deeper way as the outcome of the combined class than would have been possible in the separate classes. The success of this method required instructors interested in working collaboratively. To accomplish this, my Chinese colleague and I met prior to each class to determine in advance what key points we wanted to emerge from the discussions. These key points also formed the basis for the examinations that the students then took at the end of the semester.

The lesson learned from this experience with relevance to the work of the IALS readership is that crossing boundaries can be facilitated and improved by finding ways to encourage the highest level of interactivity among the largest number of participants in a blended setting. This allows individuals to realize that their difficulties and different outlooks are not the result of something idiosyncratic or peculiar, but something much larger and systemic that requires understanding and management. Learning to manage these kinds of differences was perhaps the most valuable lesson taken away by the students as they worked together.

For the instructors, the approach resulted in immediate hands-on help from the students themselves in filling language and background gaps so that a steady pace of discussion could be maintained. Even without using different languages, co-teaching in a comparative way could produce similar results and would be worth considering where faculty interests converge in law schools. The New York University Global Law Professor program, for example, provides opportunities for this kind of collaboration by drawing on foreign faculty to spend a semester at NYU. The University of Illinois College of Law has also encouraged such co-teaching particularly among research partners.
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Effective Teaching Techniques About Other Cultures and Legal Systems
Teaching Skills in Chinese Law Schools

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I hear and I forget, I see and I remember, I do and I understand.¹

Pacific McGeorge School of Law has undertaken a project in simulation education, in partnership with three Chinese law schools. We are training Chinese law professors in simulation methods of teaching advocacy skills --- negotiation, mediation, arbitration, trial, and persuasive oral and written advocacy. This program is funded by the United States Agency for International Development for a two-year period, under a grant to promote the rule of law. Our other American partner, the Washington College of Law at American University, is providing parallel training in clinical legal education.

TERMINOLOGY

The recent Carnegie Report on law school education urges more emphasis on experiential legal education [where the student goes through the actual or simulated experience of acting as a lawyer].² The report’s premise is that although traditional methods may effectively impart legal knowledge and analytical skills, they tend to ignore or ineffectively transmit professional values and practical legal skills required to represent clients in transactions or dispute resolution. The Report argues that experiential education is the optimal technique for inculcating practical skills and ethical values.

Discussion of global legal education is hampered by the lack of common terminology. Those of us who have engaged in education across national lines have learned that some terms are simply not translatable. For example, the term “advocacy skills education” has no accepted counterpart term in Chinese. Broadly speaking, there are two ways to provide practical skills education: By helping students to work on actual cases or by creating hypothetical case files and helping the students perform lawyering tasks relating to the files. These two techniques are not mutually exclusive. In the United States, clinical education has included both actual cases and training using hypothetical cases. The use of hypothetical cases is generally known as “simulation” education. However, the United States has somewhat artificially recognized two distinct types of skills training: clinical education [which includes a simulation component] and pure simulation courses, such as client counseling, business planning, negotiation, mediation, trial advocacy, appellate advocacy, and the like. “Simulation course” as used in this paper refers to the pure

¹ Attributed to Confucius, Quotation #25848, Laura Moncur, Motivational Quotations, http://www.quotationspage.com/quote/2548.html. Thanks to David R. Chavkin for this quotation.
simulation course, not the clinical course, though the two are closely related and the use of pure simulation courses can serve as a substitute for the simulation component of clinical courses.

BACKGROUND

First, why did we choose simulation education as a technique for promoting the rule of law in China? Our exposure to Chinese legal education had come primarily through our participation as a partner with Frank Wang and Laura Young in a summer program in 2004 at the Kenneth Wang School of Law in Suzhou, a program later joined by Bucerius Law School, Hastings Law School, and Cornell Law School. There we wanted to design a program that could educate law students from both China and the United States. How could we provide a common and rich experience under which students from diverse legal and educational systems and cultures could interact and derive some understanding of one another’s law and culture? We decided on a simulation in which teams of Chinese and American law students would be assigned to represent either an American company or a Chinese company in a business transaction. The students had to negotiate a contract and then address the fallout from a disagreement regarding implementation of the contract. The culmination was oral argument before a tribunal, either in a western style court or in a Chinese style court.

Our other exposure to Chinese legal education had come at a conference in Beijing in 2005 on clinical legal education. A variety of speakers, both Chinese and American, argued that Chinese legal education was unduly wedded to the lecture method of teaching, so that Chinese law graduates lacked practical skills.

We recognized challenges to introducing simulation techniques to Chinese legal education. Since simulation has been only grudgingly and partially accepted as a legitimate element of the American law school curriculum, one might expect similar reactions from law schools in China. The Chinese legal curriculum is loaded with courses required by the Ministry of Education. Chinese culture might be inconsistent with some of the basic elements of simulation education. Chinese law students, who are undergraduates, might be too immature to respond properly to simulations techniques. Most American law professors lack expertise in Chinese law, so, at least initially, we would have to rely primarily on simulations as offered in American law schools rather than ones tailored to Chinese circumstances. Most important, Chinese law faculty are not generally familiar with simulation techniques and might resist change from the traditional lecture method. However, our experience with the summer program at Kenneth Wang School of Law and our interaction with Chinese legal educators gave us hope that simulation might prove a useful technique.
OUR PROGRAM

In order to maximize the impact of our program, we adopted a “train the trainers” approach, training Chinese law professors in experiential techniques. Workshops and an LLM program provide simulation education training to Chinese law teachers. We scheduled three-week workshops at partner schools in China for the summers of 2007 and 2008. At each workshop we would train fifteen or more Chinese law professors in simulation teaching techniques. In addition, we sent professors to our partner schools to offer short simulation courses to Chinese law students. We also created a new LLM program at Pacific McGeorge in the teaching of advocacy skills. In all three settings we stressed the following aspects of experiential learning:

1. Creation of realistic simulations;
2. Lecture on basic techniques;
3. Demonstration of techniques;
4. Role play by the students;
   a. As clients
   b. As lawyers
   c. As mediators
   d. As judges
5. Self-critique after viewing video of self during the role play;
6. Critique by Professor;
7. Critique by peers;
8. Redoing the exercise after the critiques.

Perhaps the least understood and most important element in education by simulation is the critique --- the feedback after completion of an exercise. We both explain and demonstrate the importance of being specific, repeating back precise words that evoke either praise or criticism, and making the individual critique a lesson that will educate the entire class, not just the person being critiqued.

In Guangzhou, in summer 2007, at the South China University of Technology, thirteen Chinese faculty members participated in what we then called the Advocacy Skills Workshop. It was simulation education training. Six faculty from Pacific McGeorge taught that workshop. We provided Chinese language course materials, power points, and presentations.

During the first day of the workshop Professor Cai Yanmin, a director and co-founder of the Committee of Chinese Clinical Legal Educators, delivered a dynamic keynote lecture on the legal profession in China and its relation to legal education. She noted that China as a society ruled by law was at a beginning stage and that the quality of legal education will
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determine the degree of progress. She argued that Chinese legal education must change, that it relies too much on spoon feeding lectures and does not pay enough attention to cultivating skills and responsibility, ethics and values. There is a gap between curriculum and law practice. She noted a large number of societal problems that should be addressed by the rule of law, and she argued that legal educators have a societal responsibility to help solve those problems. However, only about 40 of China’s more than 600 law schools had clinical and advocacy programs. Professor Cai concluded that the growth of these programs would be a gradual and accumulative process.

The Advocacy Skills Workshop addressed three sets of skills. The first week focused on negotiations/settlements, the second week on arbitration, and the third week on persuasive writing and oral argument. The workshop centered around interactive simulations in which the participants engaged in role play as lawyers, mediators, students, and professors. The participants both went through experiences of a student in an advocacy skills course and also practiced the role of a professor teaching such a course. These are the critical components of the “train the trainers” approach.

Pacific McGeorge professors gave introductory lectures, including some demonstrations of techniques. We then divided the participants into various roles and observed and commented on their performance. They learned techniques of designing and implementing skills simulations and of critiquing student performance. At the end of each day participants filled out a Two Minute Wrap-Up form evaluating the day’s lesson and mentioning questions that remained unanswered. These evaluations enabled the Pacific McGeorge professors to adjust the next day’s course plan to address issues raised by the Chinese participants. In addition, the participants helped create outlines of advocacy curricula that could be used in Chinese law schools. During the last day of the workshop each participant explained how she or he would make use of the knowledge and skills acquired during the workshop. During the entire three weeks the Chinese professors and Pacific McGeorge professors engaged in a continuing dialogue on the differences between our educational and legal systems and the adaptability in Chinese law schools of American techniques of teaching experientially.

Student evaluations of the 2007 Advocacy Skills Workshop were highly favorable. In the last day of the advocacy workshop, participants outlined their future plans. Prof. Lu Wei Feng of CUPL said he would introduce into his Labor Law course workshop methods relating to negotiation, mediation, pretrial preparation, and moot court. All participants said the workshops would have an impact on their teaching. When asked what were the most important things they learned at the workshop, responses from advocacy workshop participants included: “Teamwork, course design and the style of teaching,” “The use of role play and simulations,” and “Encourage students to participate in the teaching method.” Although a skeptic could suggest that they were just telling us what we wanted to hear, we know that many have incorporated experiential learning techniques in their
courses. Professor Shu Yao Zhi of Zhejiang Gongshang University reported that the school was further formalizing and systematizing its clinical program and had introduced skills training techniques into the required course on lawyering. Professor Liu Xiao Bing of CUPL reported that in the fall of 2008, “in the course of lawyering, I divided the class in several groups, some play the role of judges, some the plaintiff party, some the defendant party, and the others play the roles of lawyers presenting each party respectively.” He added, “all of the students showed the greatest interest in such teaching method.”

We have also sought to expose Chinese faculty and students to experiential learning by sending visiting professors to China. Professor Xu Shenjian described Professor Jay Leach’s visit to teach trial advocacy at China University of Political Science and Law: “This kind of teaching method was highly accepted and welcomed by students. They not only learned academically, but also found the shortcomings and merits of their characters and personalities.” Professor Leach taught sixteen Chinese law students, through lecture, demonstration, simulation, and feed-back. Professor Leach reports:

It would be impossible to overstate the enthusiasm with which all 16 Chinese law students embraced our full-on experiential, simulation-based, American-style trial-skills course. Any preconception I had that they would be less inclined to engage in public performance as a means of learning was quickly dispelled at the outset of the first exercise - drills of direct and cross examination styles of questioning – when they vied with one another to ask the best questions and showed no shyness or hesitation.

Professor Leach reached two important conclusions: (1)”those who choose law as a field of study are in many respects the same the world over: eager to do battle and comfortable with conflict;” and (2) “teaching skills in a learning-by-doing, or experiential, setting appears to be universally effective. Cultural, stylistic, and linguistic differences, while noticeable, do not appear to affect either the rapidity of the students’ learning or their enthusiastic embrace of the experience.”

For the 2007-8 school year Pacific McGeorge inaugurated a new LLM in the Teaching of Advocacy Skills. The five participants this year were all Chinese law professors whose studies were financed by US AID and Pacific McGeorge. They have taken intensive simulation courses in Trial and Appellate Advocacy and Alternate Dispute Resolution, as well as a traditional course in Evidence, a course in Comparative Criminal Law, and a course in the Teaching of Advocacy. They have written theses as part of the LLM
requirement. After the initial culture shock of participating in American style legal education, the Chinese professor/students immersed themselves in the courses and showed great capacity to adjust to new methods and a foreign legal system. They have told us that they believe the concepts and techniques they have learned are not only transferable to the Chinese context, but will substantially improve legal education there.

Transference of the concepts of experiential legal education by American law professors, using American materials, has thus been quite successful. The longer term task is to build capacity for Chinese legal education to incorporate experiential education. In the remaining portion of our program we are turning our attention to helping to create a critical mass of Chinese law professors and Chinese simulation materials. China has the opportunity to avoid the artificial division between clinical and other simulation courses. Our Chinese partners agree with this approach and have received some encouragement from the Chinese government to adopt experiential education techniques.

On a broader note, experiential learning is an essential element of legal education, not just in the United States, but wherever law graduates will be called upon to act as professionals. The techniques that American law professors have developed are not only valuable, but are transferable to other cultures and legal systems.
Effective Teaching Techniques

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The faculty involved in the Frederick K Cox International Law Center at Case Western Reserve University have a variety of experiences teaching cross-cultural issues in the context of the programs we offer to J.D. and to foreign LL.M. students. This paper is an overview of only some of these techniques because it focuses on my own experiences and, to some extent, those of my colleague, and Center Director, Michael Scharf with whom I discussed this request for proposals. While my work has focused on international and comparative commercial and intellectual property law, Professor Scharf is an expert in the field of international criminal law and process. Thus, some of our individual experiences are specific to the subject areas we teach.

International Visiting Professors

One program that I have instituted at our law school that I am particularly proud of is our Case Abroad at Home program now offered to upper level J.D. students and some foreign LL.M. students (depending on their availability) in the last week of the summer break in August. This program consists of three to four intensive one credit mini-courses taught by visiting faculty from universities in other countries. The subject matter of the courses varies from year to year, but the overall intention in terms of subject matter is to augment gaps in our existing curriculum and to provide advanced and comparative versions of issues we teach in the existing curriculum. In past years, we have hosted visitors from universities in Canada (University of British Columbia, University of Toronto, McGill University, and Dalhousie University), France (University of Nancy), Australia (University of Melbourne, Monash University), the United Kingdom (Essex University, University of Ireland). We have also hosted judges from the International Criminal Tribunal for Rwanda and from the Dutch Criminal Court. This program covers both public international law issues and private international law issues. More details are available on our Cox Center website at:
http://www.law.case.edu/centers/cox/content.asp?content_id=27

The benefits of this program in terms of cross cultural teaching include the ability for our American J.D. students to not only learn about legal systems in other countries, and on the international level, but to learn about those issues from people working first-hand within those systems. This removes some of the translation problems of trying to have
Americans teach all of the comparative material. It also greatly augments comparative material taught in our standard classes. A collateral benefit of this approach is that having the international visitors in the faculty for a week or more in August gives the students a chance to network with the international visitors outside of formal classes. These opportunities allow students to learn more about the relevant cultures and legal systems and to create and maintain contacts in countries in which they may be interested in working in the future. We try to keep the contacts between visitors and students relatively informal outside the class sessions and, to this end, host lunches and an international law students’ pizza and pool party to facilitate interactions between our students and the international visitors.

*International Business Transactions with Foreign LL.M. Students*

I have also had some interesting experiences teaching the International Business Transactions course to a combined J.D./LL.M. class at our school. This has been challenging because the LL.M. class is comprised of foreign LL.M. students often from many different jurisdictions with different types of legal backgrounds and different levels of competence in the English language. Another specific issue with this course has been that the J.D. students have a particular interest in examining international business transactions from the perspective of an American lawyer looking to trade outside the country, while the LL.M. students regard the subject from an outsiders’ perspective looking in. Initially, I tried to accommodate these different interests and perspectives through a variety of simulations where LL.M. students would represent lawyers negotiating deals from the perspective of outsiders seeking to do business within the United States, while the J.D. students portrayed American lawyers seeking to transact outside the country. This was quite successful but only involved a small number of students and could be quite time intensive.

In later years, I moved to a class format that involved work shopping international business transactions problems in small break-out groups, where each group was comprised of some J.D. and some LL.M. students to ensure that each group was exposed to at least some cross-cultural perspectives. I worked individually with each group to draw out the legal issues and the cultural issues during the break-out sessions, and then we moved to a larger class discussion comparing and contrasting the issues that arose in the smaller break-out groups. Because I spoke to each small group during the work shopping phase of the class, I was able to pull together strands of different legal and cultural issues that came out of each individual small group.

This was quite effective in practice and better involved all students in the problems. The additional advantage is that some of the LL.M. students who were uncomfortable speaking up in class because of concerns about their English ability were much less embarrassed about talking in smaller break-out groups to me and to other students. Thus,
it was a format in which it was possible to get more issues on to the table particularly from students from different cultural backgrounds who were somewhat reticent to participate in a larger class setting. Assessment for the course in this format was based on each individual student’s attempt to write detailed answers to some of the problem sets – having had the benefit of the larger discussion first – as well as a component of the assessment being devoted to class participation in the break-out sessions. This was more time intensive for me in terms of grading, but definitely helped students to develop their writing about cross-cultural issues while getting regular feedback from the professor on both their oral and written skills.

Over the past few years, I have handed over the International Business Transactions course to a new colleague, Professor Jon Groetzinger, who has had much experience in international commercial transactions during the course of his career. I have observed his approach to teaching the mixed class of J.D. and LL.M. students and his approach is very effective because of his unique experiences as an international business practitioner. He is able to draw out comments from LL.M. students from many different countries based on his own experiences negotiating deals in those countries. Thus, he creates a class atmosphere in which the LL.M. students are more comfortable participating because the professor can help them express themselves, and the J.D. students obtain the benefits of the cross-cultural perspectives in the larger group setting.

In-Class Simulations – Public International Law, International Organizations

My colleague, and Cox Center Director, Professor Michael Scharf teaches the International Law and International Organizations courses at our law school. He regularly utilizes simulations to involve students in dealing with cross-cultural and international law issues. In his first year international law elective, he conducts a simulated negotiation and arbitration exercise of the Brcko dispute with students role playing Bosnian Serb and Bosnian Muslim negotiators and lawyers. Professor Scharf is able to draw on his own first-hand experiences from his international consulting work and his prior State Department career to guide the students in these exercises.

In the International Organizations course, Professor Scharf conducts a simulated negotiation between Israelis and Palestinians about the future of the Security Wall, as well as doing a simulated Security Council Emergency session about a crisis between Venezuela and Guyna about the Esequibo territory. He also conducts a simulated international conference to define terrorism, with students assigned to role play countries from various regions around the world. Again, he draws on his own professional experiences and those of his close colleagues in instructing and guiding the students.
Conclusions

From this brief survey of some of our in-class approaches to cross-cultural teaching issues, I think it is evident that my colleagues and I all value genuine, first-hand, real-world experiences of both faculty and students to help illuminate discussions about cultural and legal differences between different countries. We make the most valuable use we can of our own professional experiences and those of our students who have international experiences. Additionally, we bring international professors to our classrooms on a regular basis to expose our students to cross-cultural perspectives first-hand. While we do many other things in the Cox Center to foster and facilitate cross-cultural education (including study abroad programs, regular international law symposia, and placements of our students in international organizations), the ability to serve as an international gateway and to bring international and cross-cultural issues to our students at home in their own regular classrooms has been a tremendous benefit to our programs overall.
Effective Techniques for Teaching about Other Cultures and Legal Systems

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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.
Oklahoma City University School of Law’s (OCU Law) Certificate in American Law Program was designed to provide Chinese law students from Nankai University\(^1\) with an intensive educational and cultural introduction to the American legal system. The inaugural group of thirteen LL.B. and two LL.M. students attended the program during the summer of 2007. Nankai carefully selected students to participate based on their scholastic abilities and English language proficiency. For most of the students the trip was their first time abroad. The students ranged in age from nineteen to twenty five years old. The students were accompanied by two Nankai professors who attended all class sessions and extra-curricular events.

Students attended 150-minute class sessions Monday through Thursday mornings during four consecutive weeks. Outside of class students enjoyed an insider’s view of the legal profession through numerous professional outings to large and small law firms, courts, and governmental entities. Trips to local attractions introduced students to the unique history and culture of the State of Oklahoma.

The academic program began with an introduction to the role of the lawyer in the American legal system taught by Dean Lawrence K. Hellman.\(^2\) Beginning with this subject gave students a frame of reference that was useful during their remaining educational and professional experiences. Examining the role of the lawyer in the American legal system also provided numerous opportunities for comparisons with the role of the lawyer in the Chinese legal system and society. Hopefully, these comparisons will

\(^1\) Nankai University is located in Tianjin, China. Tianjin is a city of 11 million and is northern China’s largest port. The city is “one of four municipalities with province-level status in China, Tianjin’s economy has almost doubled in size in the first half-decade of the 21st century, to 366 billion yuan in 2005.” Jane Macartney, *Booming Northern Port has Hi-tech Designs for China's Financial Future*, THE TIMES, Feb. 7, 2008.

\(^2\) Dean Hellman’s area of expertise is legal ethics. He has authored many publications and received numerous awards for his work in the field. He is the co-chair of the Oklahoma Bar Association’s Rules of Professional Conduct Committee. Dean Hellman was recently invited to present a paper at the Third International Conference on Legal Ethics at Griffith University in Australia.
assist the students as they personally participate in the evolution of the role of lawyers in Chinese society.³

Over the past three decades the role of lawyers in China has changed dramatically. The adoption and subsequent amendments of the Chinese Law on Lawyers⁴ have played an important role in the development of the Chinese legal profession. The Law on Lawyers contains many concepts borrowed from the American legal ethics tradition that are discussed in more detail below.⁵ The implementation of the Law on Lawyers in China has been challenging. The law’s prohibitions against influencing judges and officials run against the traditional concept of guanxi.⁶ It is still common practice for Chinese lawyers to use personal contacts and connections to influence the outcome of cases.⁷ Chinese law faculty have observed that lawyers who refuse to try and influence judges would quickly lose business.⁸ Another obstacle in the implementation of the Law on Lawyers is that legal ethics is not recognized as a course by the Chinese Ministry of Education and accordingly

³ As the American Scholar Stanley Lubman has observed, in China “basically, the bar must be invented as a profession without any guidance from Chinese tradition or China’s recent history.” STANLEY B. LUBMAN, BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO 158 (1999).
⁵ Id. Relevant provisions include prohibitions of conflicts of interest in Article 39 “A lawyer shall not represent both parties in a same case, and shall not represent a client in a legal affair that has any conflict of interest with himself or his close relative.” Prohibitions against giving or accepting bribes are found in Article 40 “A lawyer shall not have any of the following conduct in practicing law: 3. Accepting property or any other benefit from the opposite party, maliciously colluding with the opposite party or a third party to damage the rights and interests of his client; 4. Meeting a judge, prosecutor, arbitrator or any other relevant staffer in violation of provisions; 5. Bribing or bribing as an intermediary a judge, prosecutor, arbitrator or any other relevant staffer, instructing or inducing a party to bribe the same, or affecting the handling of a case according to law by a judge, prosecutor, arbitrator or any other relevant staffer by any other illicit means.” The Law on Lawyers discusses obligations of confidentiality in Article 38 “A lawyer shall keep confidential the condition and information that is known by the lawyer in practicing law and the client and other persons are reluctant to disclose, however, except facts and information on a crime compromising the national security or public security or seriously endangering the safety of the body or property of a person, which a client or other person prepares to commit or is committing.”
⁶ Guanxi can be translated as personal relationships. The concept involves more than just favor trading and bribery but encompasses “the entire web of family, kin, and communal relationships in which persons are ordinarily involved and has been based not on instrumental conduct but on renquing or ‘human feelings.’” LUBMAN, supra note 3, at 114. Indiana University Sociologist Ethan Michelson has insightfully explored the concept of guanxi as it relates to the evolving role of the lawyer in Chinese society in Unhooking from the State: Chinese Lawyers in Transition (Aug. 2003) (Ph.D. dissertation, University of Chicago) http://www.indiana.edu/~emsoc/Dissertation.html (last visited March 12, 2008).
⁷ LUBMAN, supra note 3, at 158. The author does not point out these difficulties in the implementation of the Law on Lawyers from a sanctimonious posture and acknowledges that the American legal system also struggles with these issues.
is not taught in Chinese law schools. One goal of including the regulation of lawyers as a
subject in this program was to provide the students with knowledge of legal ethics that
could be useful in the implementation of the Law on Lawyers and possibly even advance
the rule of law in China.9

The assigned materials for this section of the course included the book _Legal Ethics
in a Nutshell_,10 several cases,11 and sections of the Oklahoma Rules of Professional
Conduct12 containing concepts also found in China’s Law on Lawyers, including
prohibitions on representation where a conflict of interest exists;13 prohibitions against
dishonesty, fraud, deceit, misrepresentation, or implying that a lawyer can improperly
influence a government agency or official;14 provisions of the Rules discussing a lawyer’s
obligation of confidentiality,15 and other provisions. Selecting concepts found in the laws
of both countries gave students a chance to see how American law approaches these issues
and allowed for comparative discussions.

In class, Dean Hellman primarily lectured, periodically called on students, and used
student questions as a basis for further in-class explorations and discussions. This
modified Socratic method gave the students who were accustomed to lecture-only style
classes in China an introduction to the format of a typical American law school class.16

Several professional programs and outings focused on the role of the lawyer in the
American legal system. Dan Murdock, General Counsel of the Oklahoma Bar Association,
gave students an introduction to the regulation of lawyers in the State of Oklahoma and

9 Milstein, _supra_ note 8, at 3-4. Knowledge of legal ethics is essential to rule of law reforms.
10 ROLAND D. ROTUNDA, _LEGAL ETHICS IN A NUTSHELL_, 3rd ED. (2007).
11 The cases used were Brady v. State, 434 A.2d 547 (Md. 1981)(finding that prosecutorial indifference in
failing to check for the presence of a defendant already incarcerated on other charges amounted to a violation
of the defendant’s constitutional right to a speedy trial), _and In re Ryder_, 263 F. Supp. 360 (E.D. Va.
1967)(suspending a criminal defense lawyer from practice for knowingly taking possession of a weapon used
by the lawyer’s client in a robbery and money obtained in the robbery in an effort to keep the evidence from
the prosecution).
12 The Oklahoma Rules of Professional Conduct, OKLA. STAT. TIT., 5, Ch.1, App. 3-A (2008), are modeled on
the American Bar Association’s Model Rules of Professional Conduct.
13 Compare Law on Lawyers, _supra_ note 4, art. 39, and OKLA. STAT. TIT., 5, Ch.1, App. 3-A § 1.7 (2008).
15 Compare Law on Lawyers, _id.,_ art. 38, and OKLA. STAT. TIT., 5, Ch.1, App. 3-A §§ 1.6, 1.13, 1.16, and 3.3
(2008).
16 See Mark E. Wojcik and Diane Penneys Edelman, _Overcoming Challenges in the Global Classroom:
Teaching Legal Research and Writing to International Law Students and Law Graduates_, 3 J. LEGAL
WRITING INST. 127, 132 (1997). The lecture only style of class is typical in countries based in the civil law
tradition and engaging students from the civil law tradition in an American style class can be particularly
challenging.
Students toured Oklahoma City law firms and had lunch with lawyers in the firms. Students asked the lawyers a variety of questions including concepts that were discussed in class and how they balanced their personal and professional lives. The Chinese Law on Lawyers contains several provisions regarding the organization of law firms and sole proprietorships, fee agreements with clients, and other matters relating to the management of law firms. American lawyers shared their insights into how they approach these issues, and Chinese professors and students offered their observations of how Chinese firms handle them. American lawyers were curious about Communist party membership and asked the students if they thought party membership would help or hinder them in representing their clients.

The students also visited the offices of Oklahoma Attorney General Drew Edmondson, an elected official whose office provides legal representation to state agencies and represents the interest of the state and its citizens in legal matters. Attorney General Edmondson discussed the challenges of being a politician, an elected official, and a lawyer and the tensions between these roles. The students and professors found these comments to be particularly relevant. They shared observations about how the role of the lawyer in China has developed from a state worker who put the party and state interests first to the more modern conception of lawyers found in the Law on Lawyers where duties to socialism and the state are not mentioned.

The remaining portion of the academic program focused on practical skills training. This type of training is common in American law schools but not in China where the traditional approach to legal education focuses only on theories and concepts. Problems caused by the lack of practical skills training were recognized at the 2005 conference for American and Chinese law school deans in Beijing and at least one other conference since

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17 The Office of the General Counsel of the Oklahoma Bar Association investigates alleged lawyer misconduct or incapacity, reports the results of these investigations to the Oklahoma Professional Responsibility Commission, makes recommendations to the Commission concerning the filing of a formal complaint, and prosecutes or participates in all disciplinary proceedings. Adapted from: http://www.okbar.org/members/gencounsel/about.htm (last visited March 5, 2008).

18 Law on Lawyers, supra note 4, Chapter III.

19 LUBMAN, supra note 3, at 156-57.

20 Su Li, An Institutional Inquiry into Legal Skills Education in China, Keynote Address at the University of the Pacific McGeorge School of Law Conference: Experiential Education in China: Curricular Reform, the Role of the Lawyer and the Rule of Law (Jan. 25, 2008) to be published in a forthcoming issue of the McGeorge Law Review.
Several outspoken deans of Chinese law schools have predicted that if Chinese law students do not receive skills training they will be unprepared to adequately represent their clients as China continues its transition toward a modern commercial and industrial society.\(^{22}\)

The first two weeks of skills training focused on legal reasoning, writing, and research in the American legal system. Designing this portion of the program to deliver meaningful training was challenging. We set out to introduce students hailing from a civil law tradition to fundamental elements of the American common law system in only two weeks.\(^{23}\) The task seemed daunting given the number of glaring differences between the two cultures and legal systems. The most obvious differences include cultures and legal systems based on divergent philosophical foundations,\(^{24}\) differences in the basic sources and hierarchy of legal authority,\(^{25}\) and different roles played by the legal system and lawyers in American and Chinese society.\(^{26}\)

For training in legal reasoning and writing, students were divided into two small sections taught by Professor Emma Rolls and Professor Jean Giles. Small sections facilitated close interaction between the professors and students. The book *Legal Reasoning, Research, and Writing for International Graduate Students* was used for this section of the program because it included material comparing the Asian and American

\(^{21}\) Chinese American Law School Deans Conference (March 31 – April 2, 2005). See also University of the Pacific McGeorge School of Law Conference: Experiential Education in China: Curricular Reform, the Role of the Lawyer and the Rule of Law (Jan. 24 – 25, 2008).


\(^{24}\) Confucianism has played a dominate role in China’s legal history and its influence is still present in the modern Chinese legal system. Confucianism values order, harmony, and the needs of the group over division, strife, and individual needs. Wang Chenguang and Zhang Xianchu, *Introduction to Chinese Law* 4-7 (1997). Law and morality are traditionally blurred in China with morality playing an important role in legal decision making. In contrast the U.S. legal system traces its roots to the separation of the state from morality. Lubman, *supra* note 3, at 13-14.

\(^{25}\) See the comparisons and contrasts between the sources and hierarchy of legal authority discussed in the section on legal research instruction *infra*.

\(^{26}\) Lawyers were not highly regarded in traditional Chinese society where they were viewed with contempt for asserting the rights of the individual over the group and causing strife. In imperial times lawyers were called song shi (shysters) and daobi xiansheng (knife-pen men). Their role was limited to document drafting and they were forbidden from representing clients in court. Daniel C.K. Chow, *The Legal System of the People’s Republic of China in a Nutshell* 225 (2003), Chenguang and Xianchu, *supra* note 24, at 6. In contrast, lawyers played a significant role in the development of the law in the U.S. and other Western societies. Lubman, *supra*, note 3 at 27.
legal traditions and material on legal analysis, writing, and research. Additionally, a blog was set up to give students perpetual access to all the PowerPoint slides and audio recordings of many of the lectures from this and other subjects covered in the program.

A short video was used to introduce students to the American legal system and to provide a segue into reading, analyzing, and briefing cases. Group discussions and in-class exercises were used to introduce students to American style case law and legal analysis and to engage students who were not accustomed to in-class participation. Some students initially had difficulty reading and understanding cases. The two Chinese professors were present in the classes and were extremely helpful in providing explanations of particularly challenging concepts to the students in their native language.

Students read and briefed a case dealing with the immediacy requirement of the tort of intentional infliction of emotional distress. The professors edited the case to remove extraneous facts and reasoning. Briefs were graded and returned with comments. Once students were acquainted with analysis and case briefing the focus shifted to drafting a non-persuasive advisory legal memorandum. To keep the assignment straightforward students were given the cases they would use in writing their memoranda. The memorandum also addressed the immediacy requirement of the tort of intentional infliction of emotional distress. Using a tort with easily defined elements helped simplify the analysis and application portions of the memorandum.

The memoranda and case briefs were graded more for content than for grammar, with an emphasis on clear expression and concept comprehension. In providing written feedback special attention was paid to avoiding overly negative comments or shorthand that only native English speakers would understand. Both legal research and writing professors commented that they were impressed with the English language abilities of the

27 NADIA E. NEDZEL, LEGAL REASONING, RESEARCH, AND WRITING FOR INTERNATIONAL GRADUATE STUDENTS (2004). Many other texts for international law students only cover analysis and writing.
28 OCU Law Summer Certificate in American Law, http://ocu_law_summer_certificate_in_american_law.classeaster.org/blog/ (last accessed March 11, 2008). Students were also mailed DVD’s of their mock trial.
29 AMERICAN LAW: HOW IT WORKS (Promedion Productions 2004).
30 Wojcik, supra note 16, at 132.
32 The memorandum was based on Gates v. Richardson, 719 P.2d 193 (Wyo. 1986) and Contreras By and Through Contreras v. Carbon County School Dist. 843 P.2d 589 (Wyo. 1992). Both cases were edited by the professors to remove extraneous facts and reasoning.
33 See Elizabeth L. Inglehart, Teaching U.S. Legal Research Skills to International LL.M. Students, 15 PERSPECTIVES 180, 181 (2007). The “closed universe” approach has been used in other legal research and writing courses for international students.
34 See Wojcik and Edelman, supra note 16, at 131, for a discussion of the pros and cons of this approach.
students and that a few of the students’ memorandums were as good as some memorandums written by native English speaking J.D. students.35

Legal research instruction was provided simultaneously with instruction in legal analysis and writing. This approach provided context to all three subjects and allowed students to immediately apply what they learned. Legal research instruction began with an overview of primary and secondary sources and an explanation of the hierarchy of authority in the American legal system.36 As each source was discussed, students were introduced to both the print and electronic versions and strategies for using both formats. Students had access to LexisNexis and Westlaw and were shown reliable free electronic sources. Students were introduced to legal research strategies including locating authority by subject using natural language and Boolean searching, locating authority by citation, and the use of citators.

As students were introduced to American primary and secondary sources, analogies and contrasts were made to Chinese legal sources. This technique provided students with context as they encountered the sources of American law. Three major areas of comparison were used when introducing students to American case law. First, the American system of binding precedent was compared with the “de facto binding and precedential effect”37 of certain Chinese court decisions. Second, the format of American cases was contrasted with the lack of citation to authority, lack of dissenting opinions, and the typically “short and non-analytical”38 format of most Chinese decisions. Finally, the publication practices of American courts were contrasted with the publication practices in China where only a small percentage of Supreme People’s Court decisions are published and lower court decisions are not systematically published but instead are circulated.

36 Primary sources including constitutions, cases, statutes, and administrative regulations and decisions were covered. Secondary sources included the Restatement, legal encyclopedias, legal treatises, American Law Reports, form books, and law review articles.
37 Typical of civil law jurisdictions China does not have the extensively developed system of formally binding case law precedent that defines common law jurisdictions. But see RONALD C. BROWN, UNDERSTANDING CHINESE COURTS AND LEGAL PROCESS: LAW WITH CHINESE CHARACTERISTICS 82 (1997) (discussing Chinese lower court judges following “what the Supreme People’s Court has indicated is the ‘absolutely correct’ way to interpret the law” and the statement by the Supreme People’s Court that its opinions and instructions on the application of laws “shall be followed.”).
38 Id. at 78, But see Civ. Proc. Law, art. 138 requiring written judgments of the People’s Court to contain “(a) the cause of action, the claims, the facts of the dispute and the grounds; (b) the facts and reasons ascertained in the judgment and the applicable law on which the judgment is based; (c) the result of the judgment and the apportionment of court costs; and, (d) the time limit for appeal and the court with which an appeal should be lodged (cited in Brown, supra note 37, at 79 n. 372). In Chinese legal publishing an important distinction is made between judgments which only include the facts and holding and cases which include the facts, holding, and the court’s reasoning. WEI LUO, CHINESE LAW AND LEGAL RESEARCH 248 (2005). Because of this distinction the generic term “decision” is used in this paper.
internally in judges’ handbooks. The Chinese decisions that are published are not uniformly indexed, and the decisions do not include any of the editorial enhancements like headnotes or KeyNumbers that are typically added to American cases by editors.

When exploring American statutory law, a comparison was made between U.S. federal session laws published in the Statutes at Large and China’s Gazette of the Standing Committee of the National People’s Congress. The comprehensive subject arrangement of U.S. federal statutory law in the United States Code could not be directly analogized with any Chinese source but was loosely compared with the commercially published Compilation of Law and Regulation of the PRC. A contrast was made between the civil law style codes used in China and the more piecemeal style of common law statutes found in the U.S.

The extensive number of American secondary sources was contrasted with the lack of secondary sources in China. When discussing research strategies the interconnectedness of U.S. primary and secondary sources provided by annotated statutes, citators, and the West digest system was contrasted with the Chinese system. In China “an adequate information structure - a systematized information unit consisting of laws and regulations, case reports, law treatises, law reviews, and finding tools (such as an index and digest) - is still in the early stages of construction.” A basic introduction to the American system of legal citation and The Bluebook was provided. China currently does

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39 Brown, supra note 37, at 80-81. But see Benjamin L. Liebman and Tim Wu, China's Network Justice (January 9, 2007). Columbia Public Law Research Paper No. 07-143 Available at SSRN: http://ssrn.com/abstract=956310 discussing the trend among some Chinese judges of posting their decisions on the internet and using the internet to collaborate on cases. The practice of the Supreme People’s Court of only publishing only a small percentage of its decisions is not unlike the practice of the U.S. federal appellate courts which only release 20% of their opinions for “publication” in the Federal Reporter. However, the remaining 80% of “unpublished” federal appellate court opinions are easily accessible in print and electronic sources. See Lee F. Peoples, Controlling the Common Law: A Comparative Analysis of No-Citation Rules and Publication Practices in England and the United States, 17 INT’L & COMP. L. REV. 307, 320 (2007). The same cannot be said for every case decided by the Supreme People’s Court which are not readily accessible to the general public.

40 LUO, supra note 38, at 248.

41 University of Washington Chinese legal research expert BillMcCloy notes that the Gazette of the Standing Committee of the National People's Congress is the closest thing China has to session laws. Chinese Legal Research at the University of Washington, http://lib.law.washington.edu/eald/clr/cres.html (last accessed March 10, 2008).

42 LUO, supra note 38, at 233. COMPILATION OF LAW AND REGULATION OF THE PRC is published by China Law Press.

43 China does not have a comprehensive legal encyclopedia like the U.S. encyclopedias AMERICAN JURISPRUDENCE or CORPUS JURIS SECUNDUM. Chinese law reviews known as Falu Lucong or Falu Pinglun are edited by professional editorial boards. There are about 92 law magazines and 20 core law journals in China compared with over 1,300 U.S. law journals. China also lacks a comprehensive index to legal periodicals. LUO, supra note 38, at 233-258.

44 Liu, supra note 23.
not have a standard legal citation system, but a legal citation system was recently proposed.45

The research portion of the program was taught in a computer lab enabling students to explore electronic sources and practice research techniques during class. Instruction was a mix of lecture and demonstration using PowerPoint slides and guided live searching displayed on an overhead screen. Students completed individual and group research exercises that were adapted from exercises completed by first year J.D. students. They performed exceptionally well, and some even asked for extra work to complete outside of class.46

The final week of the Certificate program was devoted to an introduction to American trial practice. The traditional model used for civil and criminal trials in China is the civil law inquisitorial model where the judge, and not the lawyer as in the U.S., collects and prepares the evidence for trial.47 The Chinese criminal trial has been evolving toward a more adversarial process over the past several decades. Under the 1996 Code of Criminal Procedure the prosecutor now collects evidence, the defense attorney is able to present rebuttal evidence, and the judge evaluates evidence at trial.48 Given these recent reforms, China’s future lawyers and judges must be “well versed in the adversarial system and understand effective advocacy skills.”49

The introduction to American trial practice was taught by OCU General Counsel and Distinguished Lecturer in Law J. William Conger, a trial lawyer with over thirty years of experience. Students were introduced to the elements of a jury trial including discovery, jury selection, opening statements, admission of evidence, direct and cross examination, impeachment of witnesses, expert witnesses, closing argument, and jury instructions.

46 OCU Law Certificate in American Law Program Promotional Video, supra note 35.
49 Lancaster and Xiangshun, supra note 47, at 362 (2007). Despite differences between the American and Chinese legal systems, training in advocacy techniques from American law faculty is viewed as beneficial in the development of Chinese law students’ advocacy skills. A group of American and Chinese law schools are currently engaged in a multi-year project funded by U.S. Agency for International Development to develop frameworks and teaching materials for clinical and advocacy training to be used in Chinese law schools, http://web.pacific.edu/x5449.xml (last visited March 13, 2008).
Course materials were based on a case file adapted from a trial practice textbook.\footnote{Thomas A. Mauet and Warren D. Wolfson, *Materials in Trial Advocacy, Problems and Cases*, 6th Ed. (2007). The criminal murder case of State v. Merle Rausch was used.} Professor Conger combined lectures on discrete elements of the trial with practice demonstrations where students role-played attorneys, jurors, and witnesses. The week culminated in a half-day mock trial presided over by a federal magistrate judge who is an adjunct professor of trial advocacy. When asked about the performance of the students Professor Conger remarked “I didn’t know whether I was asking too much of them to put them in a trial setting where they played the role of lawyers, witnesses, and jurors, but they did an outstanding job.”\footnote{OCU Law Certificate in American Law Program Promotional Video, *supra* note 35.} The students’ experience in the mock trial was supplemented by a visit to the U.S. District Court for the Western District of Oklahoma where they viewed expert witness testimony in a bench trial.

In addition to the academic and professional programming students enjoyed cultural outings and entertainment. Events included trips to a minor league baseball game, to the Oklahoma City Bombing Memorial, to the National Cowboy and Western Heritage Museum, to the Oklahoma City Museum of Art, and several shopping trips to local malls. Professors who taught in the program hosted small groups of students at their homes for dinner. Students also enjoyed weekend road trips to the historic town of Guthrie, a rodeo, and a Native American Powwow ceremony. The program included an extensive orientation and opening and closing banquets at local restaurants. Several OCU Law students were hired to serve as student ambassadors to assist the Chinese students in adjusting to life on campus and to accompany the group on professional and cultural outings. The involvement of the law student ambassadors was critical to the success of the program. In exit interviews and program evaluations, the Chinese students praised the friendliness and openness of the student ambassadors and were thankful for the additional perspectives they provided on American life and the study of law in America.\footnote{Id.}

The Summer Certificate in American Law provided students with much more than just an introduction to the American legal system. Students gained a comparative perspective on ethical issues faced by American and Chinese lawyers that will assist with the implementation of the Chinese Law on Lawyers and will further the development of the rule of law in China. The professional events and visits to law firms opened students’ eyes to new possibilities. Several students commented that before participating in the program they were certain they would not practice law, but after touring the law firms and visiting with the lawyers they were seriously considering entering practice after graduating and taking the bar exam.\footnote{Id.} The practical skills element of the program provided students
with training that is essential for the next generation of Chinese lawyers. Students improved their abilities to read, write, speak, and understand English. The case briefing, memorandum exercise, and introduction to the Socratic method gave students a glimpse of American legal education. Several alumni of the program are pursuing admission to American J.D. and LL.M. programs and at least one student has gained admission to a top-tier American LL.M. program. The consensus among the faculty teaching in the program was that it was the most enriching teaching experience of our careers.\textsuperscript{54} The students’ dedication, hard work, preparedness, excitement, and respectful attitudes renewed and invigorated our approaches to legal education.

Plans are underway to build upon the success of this program. OCU Law and Nankai recently signed an agreement to offer the program again in the summer of 2008. Eighteen law students and one faculty member are expected to attend the program in 2008. The two schools are also working to bring Nankai professors to OCU as visiting scholars in law and other disciplines and to plan an international conference. OCU Law and the Tianjin Bar Association (TBA) have forged an agreement that will bring a group of fifteen Chinese lawyers, who are TBA members, to OCU Law for the summer 2008 program.

\textsuperscript{54} We are not alone in our experience. See L.K. Robel, \textit{Opening Our Classrooms Effectively to Foreign Graduate Students}, 24 \textit{Penn State Int’l. L. Rev.} 797-800 (2006), and Antonio Gidi, \textit{Transnational Legal Education: Teaching Comparative Civil Procedure}, 56 \textit{J. Legal Educ.} 502 (2006).
International Teaching For Social Change

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If we wish to make social change an essential element of legal education, we need to increase our efforts to bring what we do to other nations. We should do this by: (a) by embracing technological advances that allow us to teach remotely in other nations (especially in those with developing economies), and (b) by working with faculties – especially clinical faculties – in other nations to develop strategies through which we can work collaboratively to enhance clinical experiences for students abroad (again, especially for those in nations with developing economies).

We have been doing this for the past seven years at New York Law School through our online, distance learning mental disability law program.1 We are also in the first stages of doing the second of these in three different (and socially, economically, and politically almost antipodal) nations. This paper will discuss both of these ventures, with a special consideration of how this sort of social teaching can lead to long lasting and ameliorative social change.

I. The pedagogy

The online courses that we have created include these elements:

14 hours of DVDs (or streaming video), the majority of which are “talking heads” and powerpoints, but some of which include simulated trials, simulated interviewing and counseling examples, and roundtable discussions;
weekly reading assignments with "focus questions"
a midterm paper, and a take-home final;
a weekly, synchronous chat room
on-going, threaded, on-line "question-and-answer" message boards, and
taxe live two day-long seminars at the beginning and end of the courses.

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II. The courses

NYLS currently offers six courses, and will be adding three more in the 2008-09 academic year. Our current courses include *Survey of Mental Disability Law; The Americans with Disabilities Act: Law, Policy and Practice; International Human Rights Law and Mental Disability Law; Lawyering Skills for the Representation of Persons with Mental Disabilities; Mental Health Issues in Jails and Prisons,* and *Sex Offenders.* Next year, we will be adding courses in *Forensic Reports, the Role of Experts, and Forensic Ethics; Mental Illness, Dangerousness, the Police Power and Risk Assessment,* and *Therapeutic Jurisprudence.* At that time, we will also be launching an online Masters program in mental disability law studies.

In addition to offering courses at New York Law School, we also have ongoing partnerships with other US-based law schools (at this moment, Southern, McGeorge and Gonzaga; we expect others to be added this year) through which we license our courses to be offered on other campuses; and are also about to launch our first partnership with a graduate school in psychology.

Of special relevance to this presentation, we have taught sections of our courses in Nicaragua (*Survey*), in Japan (*Survey and ADA*), and, in a compressed version, in Finland (*International Human Rights*). With the exception of the course in Finland (taught in conjunction with my time as a visiting professor at the Institute of Human Rights in Abo Akademi University in Turku,), the other three sections have all been continuing education programs: the two in Japan under the auspices of the Tokyo Advocacy Law Office and the one in Nicaragua under the auspices of Universidad Americane Managua.

What we are planning now, however, involves direct partnerships with law schools in other nations.

III. Our plans

We are about to begin new programs in China, Japan, and Uganda (perhaps, Uganda-Kenya). Each brings with it its own challenges, but each brings with it the potential of collaborating with progressive law faculty and students in ways to bring about meaningful social change. Let me address each of these in turn.

**China:** We have a contract with Shanghai Jiao Tong University to offer a section of *International Human Rights and Mental Disability Law* at SJTU’s Human Rights Institute in the fall 2008 term.

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1That course examines the relationship between constitutional mental disability law and international human rights law, primarily as that relationship deals with questions of legislative drafting, legal representation, institutional treatment, community care, and forensic mental health systems. It covers a comparison of civil and common law systems, an overview of international human rights law, an overview of regional human rights tribunals, an overview of U.S. constitutional mental disability law, the role of "sanism" and "pretextuality" in understanding developments in this area, mental disability law in an international human rights context, comparative mental disability law, the use of institutional psychiatry as a means of suppressing political dissension, the "universal factors" in this area of law, and the globalization of disability law. The course focuses on both American law and on international human rights norms and the developing body of case law in the Inter-American and European Courts and Commissions on Human Rights.
**Japan:** We have an agreement with Kanegawa University Law School (in Yokohama) and with Waseda University Law School (in Tokyo) to offer sections of our course in *Lawyering Skills in the Representation of Persons with Mental Disabilities* in conjunction with new clinical programs being created at each law school, designed to provide representation to persons subject to involuntary civil commitment to psychiatric hospitals. The clinics are currently “under construction”, and I expect to return to Japan this fall so as to launch both courses in the spring 2009 term. I will be presenting lectures at Kanegawa University this fall (to both faculty and students) as part of this process.

**Uganda-Kenya:** We have an agreement with Nkumba University Law School (in Entebbe, Uganda) to offer sections of our courses in *International Human Rights: Mental Health Issues in Jails and Prisons,*3 *Survey of Mental Disability Law,*4 and *Sex Offenders.*5 We also have an agreement with the Uganda Law Society and Nkumba to create clinical programs to provide legal representation to persons with mental disabilities in civil and criminal cases, in conjunction with our *Lawyering Skills* course. As an extended part of this partnership (in all, it has seven pieces to it), we will also work with Makarere University Medical School Departments of Psychiatry, Pathology, and Psychology (Kampala, Uganda) and the University of Nairobi Medical School to create an enhanced forensic training program in conjunction with our online courses, specifically, though not limited to, the courses in *Forensic Ethics*6 and *Risk Assessment.*7

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3In this course, students are taught the special lawyering skills - tested in two simulated trials - that are essential in cases involving the representation of persons with mental disabilities. The course covers topics including civil commitment standards, outpatient commitment, issues of proof, dealing with expert witnesses, rights to community services, forensic issues, patient advocacy issues, and dealing with stigma/public awareness.

4This course offers a comprehensive overview of the mental disability law issues in correctional settings. Topics include the historical development of the constitutional right to correctional health and mental health care, issues involving staffing, transfer, record keeping, suicide prevention, the significance of professional standards, the relationship between correctional mental health care and community systems of care, monitoring, informed consent, risk assessment, and privatization of services.

5In this course, students examine the civil and constitutional bases of mental disability law in such areas as civil commitment; institutional rights (with specific focus on the right to refuse treatment); and deinstitutionalization, aftercare, and federal statutory rights (with specific focus on the Americans with Disabilities Act). Students explore all aspects of the role of mental disability in the criminal trial process, including criminal incompetencies; insanity defense; sexually violent predator laws; federal sentencing guidelines; and the death penalty. Students also study the history of mental disability law and why and how it has developed as it has; and most importantly, why judges and fact finders decide mental disability law cases the way they do, to facilitate our predictions of future trends and outcomes.

6This course will deal with both the reports that are prepared by forensic experts for use by lawyers (pre-trial and at trial), and with the ethical issues that are posed when such experts interact with the legal system. The focus here will be on the full range of issues involving forensic experts and the
IV. What this all means
We hope that, by creating these programs, we can accomplish multiple aims:

1. We will be able to bring courses in all aspects of mental disability law to nations where there are currently no such courses available. By doing this, we will help create a cadre of lawyers – those who will work domestically and those who will work internationally – who can provide legal services to this most underrepresented of all minority groups.\(^8\) There is no question that social change in this area of policy – the treatment of institutionalized persons with mental disabilities – inexorably tracks the availability of trained, competent counsel.\(^9\) By providing tools to law students, we can help promote important social change.\(^10\)

2. By helping create clinical programs (there are now virtually none in most nations)\(^11\) – in tandem with a lawyering skills course – we hope to help alter this parched landscape and to encourage advocates for social change elsewhere (especially in nations with developing economies) to follow in this same path.

3. Many of the social problems faced in nations with developing economies are regional ones. We hope that the creation of programs that span two nations – in this case, Uganda and Kenya – we will offer new paradigms for the solutions of some of these problems.

4. When I have shared with others our vision of working in sub-Saharan East Africa, those others have often scoffed, suggesting that the problems faced in that part of the world are so profound that it is almost frivolous to create the programs we are seeking to launch. I disagree profoundly. People with mental disabilities are among the most disadvantaged and vulnerable in any society, more so in developing nations, where the daily struggle to survive is difficult enough for the many who do not face such additional mental disability law system: the rights of persons subject to institutionalization and who have been institutionalized, and the role of mental disability in the criminal trial process, in the civil trial process, in the criminal trial process, and in the family law process.

\(^7\)This course will deal with the relationship between mental illness, dangerous behaviour and the police power, the ability of mental health professionals to predict dangerousness, and the significance of risk assessment instruments for a variety of decisions to be made in the legal system, including the detention and institutionalization of persons who have committed no act that violates a jurisdiction’s criminal code.


challenges. Of the estimated 600 million worldwide who have a disability, two-thirds of those are living within developing nations where they are too often subject to a wide range of human rights violations. The recent publication of the UN Convention on the Rights of Persons with Disabilities\(^\text{12}\) is a welcome step that may actually begin a reversal of centuries of ignorance, inaction and brutal actions.\(^\text{13}\)

In arguing why the U.S. should ratify the new UN Convention, Tara Melish focused on the “deeply entrenched attitudes and stereotypes about disability that have rendered many of the most flagrant abuses of the rights of persons with disabilities ‘invisible’” from the mainstream human rights lens.”\(^\text{14}\) Our hope is that, by bringing our program and these courses, to other nations, we will help make the “invisible” visible.\(^\text{15}\)

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\(^{15}\)On this dilemma in general, \textit{see} \textit{MICHAEL L. PERLIN, THE HIDDEN PREJUDICE: MENTAL DISABILITY ON TRIAL} (2000).
Effective Techniques for Teaching about Other Cultures and Legal Systems

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The techniques that should be used to teach about other cultures and legal systems vary depending on the location and if the teacher is (1) instructing students from a different culture and legal system (target) about the teacher’s home culture and legal systems (source) or (2) instructing students from the same culture as the teacher (source) about other cultures and legal systems (target).

1. Instructing Students from a Different Culture and Legal System

Until the lions have historians, the tale of the hunt will always glorify the hunter.
African proverb

If the teaching occurs in the teacher’s source location but the students include those from other locations, it is often assumed that the students must simply adapt to the methods and materials traditionally used when the teacher and students are all from the same source culture. Effective teaching, however, includes recognition of the presence of students who may not be familiar with the legal methods and systems being discussed. Arguably, these target students have chosen to immerse themselves in the source culture and have resources other than the law teacher to help them understand differences in their culture and the source culture. Thus, less pressure may be placed on the teacher to understand the students’ culture. In such situations, the learning experience nevertheless can be enhanced if the teacher embraces some of the same techniques that are effective in a situation where the teacher’s location is the target environment rather than the source environment.

When teaching in the target location, an attempt must be made by the teacher to understand the students’ culture as well as their legal system and establish rapport with the culturally different students. The teacher should first identify similarities and differences between the teacher’s source culture and legal system and that of the students. A lack of understanding of the values, behaviors, history and traditions of the students’ experience will make it difficult to effectively communicate about a different experience. An understanding of the reasons behind the various practices adopted in the culture generally and the legal system specifically can be used to help explain the difference in the treatment of a legal issue in the target country and the source country. As there are increasing global connections between countries and therefore increasing international legal practices, the

16 See generally Stephen C. Hicks, Global Alternatives in Legal Education for a Global Legal
motivation for the students to grasp the new material is strong. But this strong interest convergence in learning about the source law cannot be divorced from the culture of the students. The divergence of the familiar legal system from the one being taught should be more easily grasped.

When the teaching of the source legal knowledge is integrated with considerations of the target students’ culture as in other disciplines, “Students [should be] encouraged to reflect upon how their cultural backgrounds affect what they say and when, and how and why they say it. [And the] speaker and listener must be sensitive to and willing to accommodate differences in each other’s cultural background.”\(^{17}\) To develop a cultural understanding, the teacher must incorporate the teacher’s knowledge and experience with the values, mores, beliefs, and traditions of cultures of the students.\(^{18}\) An understanding is needed of both nonverbal and verbal cues in the students’ culture. But how does a law teacher acquire this cultural understanding in order to align legal instruction with students’ culture. Of course, the teacher can invest significant time and energy in learning about the target culture. Another successful technique may be to teach the course as a comparative law course and co-teach with a law teacher from the target location. Teaching from a comparative analysis approach that includes cultural concepts can help the students understand why certain aspects of a legal system foreign to them may have developed in the way that it did. Co-teaching of courses, faculty exchanges and international student exchanges are methods being used at various law schools to accomplish this task.\(^{19}\) One such cooperative effort which demonstrated its effectiveness and was discussed at the IALS Conference in October 2007 involves Bucerius Law School, Germany; Monash Law School, Australia; University of Lund, Sweden; and Kenneth Wang School of Law, China. While this program seemed to rely heavily on a travel experience by the students, another effective technique relies upon technological advances. This method was demonstrated at the same conference by Nin Tomas, Faculty of Law, University of Auckland, New Zealand in connection with a course on aboriginal law. This course involves a mixture of the teaching of aboriginal law by each source teacher in New Zealand, Australia, the United States and Canada, but also benefits from the cultural understandings provided from the students in each of these locations who interact over live video feeds.

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19 See, e.g., Washington University School of Law launches unique Transnational Law Program http://news-info.wustl.edu/news/page/normal/11101.html and University of Nebraska College of Law’s Space and Telecommunications LL.M (Master of Laws) http://law.unl.edu/spacelaw
When trying to develop a course and be “effective,” the teacher must keep in mind the target population and the limitations that may be encountered. This includes a consideration of the level of difficulty that can be mastered in the period of time allotted for the course. Even the title of the course may need to be deciphered. In addition, what works well for a group of students that come from a small homogenous population may not be as successful in a large heterogeneous student population which demands the understanding of several cultures and legal systems. Perhaps the most important tenet to remember is that the source teacher should not enter the teaching environment burdened with erroneous assumptions about the target student population. I had a related and humorous experience when teaching in another country. The class was taught in English and the students were from a number of different countries. I did not anticipate any problem with the students understanding the material. I did have some concern over whether I would be able to clearly understand the students’ accents. After the first couple of days I became accustomed to the accents. At the end of the class while chatting with some of the students, we had a laugh when I realized for the first time that they had the same concern over accents that I did, only they were all wondering if they could understand my accent. They told me that after the first couple of days, they became accustomed to my accent. It had not occurred to me that I also had an accent they had to deal with.

2. Instructing Students from the Same Culture about Other Cultures and Legal Systems

The task here for the teacher is also to understand the law and legal system of both the target and source environments. But there is less of an effort needed to focus on the students’ culture. Presumably there are some shared experiences. The greater task is presented in conveying information to the students about a legal system that perhaps neither the teacher nor the student population has experienced.

The need to understand the culture of the people that live with the legal system being explored is also important in this setting. If the course is being taught in conjunction with an international program, experience of other cultures may be built-in by providing “intensification of semesters abroad, joint programs, joint degrees, or summer school programs for students [and] distance learning.”20 These experiences have become more attainable with the increasing ease of travel and technological advances.

When the legal system is being explored in a less intensive program, the teacher can also use relatively low cost low-tech means of technology to convey some cultural information. The teacher can use presentational software such as Microsoft PowerPoint to create visual depictions. Virtual tours of the country can be created along with various

20 Hicks p. 3
graphs and charts to compare the source country with the target country on such issues as economic trends, demographics, and trade balances. Maps, diagrams and charts may also be helpful in demonstrating the interrelationships between the target culture and its legal system on a global and regional level. For example, in a US law class on European Union law, the teacher might start out comparing the US legal system with that of Canada and then transition into a comparison between the Canadian legally system and the United Kingdom and finally transition to the EU. The use of popular film or documentary film can also enhance the learning about the culture of the target location. A more effective technique may be to provide short video clips within the PowerPoint presentation. These clips are becoming more readily available from news sources on the internet. The films and other videos can be quite helpful in providing background information on the culture of the legal system. Websites with links to information about the culture can also be created and made available to the students.

Although law has been traditionally taught in a highly textual format, presentation software can be used to make the learning of textual information more efficient as well. For example, when case studies are used to learn legal principles, visual depictions of the facts of the case as well as of legal principles can be quite elucidating and stimulate active engagement in the discussions of the why such factual situations may occur and how they are and should be handled in the legal system. Venn diagrams are particularly helpful to demonstrate the overlapping or contrasts and similarities of legal concepts.

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21 See generally The Use of PowerPoint in Teaching Comparative Politics, Steven F. Jackson May 1997 http://technologysource.org/article/use_of_powerpoint_in_teaching_comparative_politics/
Teaching U.S. Legal Cultures and Legal Systems Outside the U.S.

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Most of the papers submitted in conjunction with this theme will address the issue of teaching within U.S. law school classrooms about non-U.S. cultures and legal systems. In the spirit of broadening the discussion and also linking it with other themes discussed in this Educational Program, this paper considers the converse: teaching about U.S. legal systems and legal cultures in non-U.S. environments. The following short essay reflects on this particular model of “transnational teaching.”

The Internationalization of Legal Education

Increasingly, United States law schools and law professors are building partnerships with law schools in other countries – precisely what makes this General Assembly meeting, and the initiative to create an International Association of Law Schools, such a welcome development.

Transnational law teaching, of course, has been around for quite some time. The most traditional model is the summer-abroad program, well-established with over 200 such programs offered by ABA-accredited law schools.¹ Though a valuable experience for faculty and students alike, the transnational aspect of such endeavors is often limited to location, because the programs are administered entirely according to U.S. requirements, and students come from U.S. law schools.

Another example which requires greater institutional involvement is the exchange program in which students and faculty from law schools may be in residence at each other’s institution for a semester or longer. The exchange program model as such is nothing particularly new – though there has been a proliferation of such programs in recent year, with more than 50 now offered by ABA-accredited law schools.² Recently, U.S. law schools have begun to initiate the most extensive form of transnational collaboration in legal education yet, the joint or dual degree program, though there are still relatively few of these.

What, exactly, are the reasons that U.S. law schools increasingly expend energies in such efforts? On a perhaps relatively superficial level, law schools may see these programs as

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  ¹ American Bar Association, Section of Legal Education and Admissions to the Bar, List of Foreign Study Programs, [http://www.abanet.org/legaled/studyabroad/foreign.html](http://www.abanet.org/legaled/studyabroad/foreign.html).
  ² American Bar Association, Section of Legal Education and Admissions to the Bar, List of Foreign Study Programs, [http://www.abanet.org/legaled/studyabroad/coop.html](http://www.abanet.org/legaled/studyabroad/coop.html).
helpful to their marketing and recruitment efforts, as they seek students and donors who might be interested in these educational networks.

Looking at the “market” of legal practice in both private and public sectors, U.S. law schools also enjoy a comparative advantage in an international environment often heavily influenced by U.S. legal norms and practices.

Notwithstanding U.S. influence, however, today’s successful legal professionals will be those most able to adapt to shifting geographies, and most able to work with parties from diverse legal systems and sociolinguistic contexts.

This hybridized space -- influenced by U.S. legal cultures and norms, yet shifting in place and space -- presents one facet of globalization. And viewed from that perspective, initiatives by U.S. law schools to form partnerships with their counterparts from other countries make a lot of sense. Conversely, foreign law schools and law students are often eager to gain both the institutional connections and the educational perspectives and expertise offered by such partnerships.

Of course, there is another impulse behind these ventures, at least for the faculty members who pursue them on behalf of their institutions – and that has to do something with the ideal of internationalism as such, of transcending borders to exchange knowledge.

But if we can agree that teaching U.S. laws and legal cultures in other countries might be a good thing, the question is how to do it?

**Towards the Ethical Exportation of U.S. Legal Education**

In recent years, much commentary on economic development policy has rejected the “one-size-fits-all” approach. Several considerations arise for the U.S. law professor seeking to teach in foreign classrooms and institutions. This paper can do no more than list them briefly, but they are worth considering. They are:

**Legal materials**

First, the cost of U.S. law books may well be prohibitive for students abroad, and particularly for those in developing countries. U.S. law school tuition is probably the highest in the world, and attracts students who can support associated books and materials costs that are relatively high as well. Assigning a U.S. casebook, however, may not be feasible in another socioeconomic context. Law professors may find the need to create their own materials.

Second, it will come as no surprise that the best courses will include a comparative dimension. The students in such classrooms are interested in transnational practice, and
comparative presentations of the legal themes of the course will be especially useful and interesting to them.

**Pedagogical Style**

In countries where legal education tends to be delivered in the form of large lecture halls – national universities in civil law countries often share these features – students may have had relatively little ability to interact in the classroom. “Socratic” dialogue in class can therefore come as a bit of a shock. Most students will quickly adapt, but it can be important to find ways to introduce a more interactive approach in a way that is sensitive to the pedagogical experiences of students.

Similarly, in countries where the large lecture hall is the featured component of legal education, the opportunities to conduct written research may be relatively minimal for students. Consequently, a pedagogical approach that focuses heavily on writing and research may provide particularly useful opportunities for foreign students. At the same time, these students may be familiarizing themselves with research methods for the first time, with the associated difficulties in transition.

**Legal Culture**

This is one of the more fascinating elements of teaching in a foreign country. For example, legal systems differ in their conceptualization of institutional competence. The respective roles of the judiciary and the legislature may be viewed quite differently. A common law system may be more likely to view judges as rightly retaining a greater degree of discretion in matters of legal interpretation – though of course it is much more complicated than that. Nevertheless, teaching subjects with a heavy focus on case law may not only tax students not used to reading common-law style lengthy judicial opinions, but may also perplex students who might be accustomed to thinking of the legislature as the more appropriate source of law. A similar perplexity may arise when attempting to convey the effects of a federal system on the interpretation of legal principles.

**Conclusion**

The foregoing only sketches a few examples of the challenges that can arise in teaching U.S. laws, or in a U.S. law school style, in a foreign institution. Needless to say, the discomforts associated with such challenges are greatly outweighed by the opportunities for learning across boundaries – not only by the students in such settings, but by the teacher.
LEGAL EDUCATION IN A GLOBALIZED WORLD

JAMES P. WHITE

When I reflect on the changes of the past thirty years relating to legal education and the legal profession, it is clear that globalization is perhaps the most significant development that has taken place. Demands of human freedom and a growing economic prosperity are an attribute of globalization. With the growth of the European Union, now comprising twenty-seven countries, and the free movement of members of the legal profession within the Union, transcending different languages and both civil and common law, it is clear that free movement of legal professionals and corresponding reciprocity of ability to engage in the practice law is a result of globalization.

Globalization of law includes global connections, global interdependence, global information, global finance, global governance and global rights.

A discussion of the legal profession in the 21st Century must focus on the rapid changes in legal education and the legal profession that are taking place not only in the United States but throughout the world, the phenomenon that is often referred to as the globalization of legal profession. Lawyers in every country now are involved in the whole range of legal practice with their counterparts throughout the world. Increasingly we see multinational law firms with offices and partners throughout the world.

As John Sexton, then dean of New York University Law School and now the University President observed in his 2000 remarks to the London meeting of the American Bar Association.

"...today clients are represented in the same transaction by lawyers from American law firms who are graduates of American law schools and by lawyers from European firms who are products of a much more typical legal education consisting of five years of education after secondary school. These clients report that the American trained lawyers and those trained elsewhere bring comparable skills to the table. This observation, if true, will become more palpable as the American firms and the European firms begin to hire lawyers from each other's pools -and these lawyers begin to practice side by side as associates and partners."

The vast development of means of communication facilitates the globalization of law practice and the cooperation and exchange among law schools. The freer flow of students between recognized institutions in various countries, the recognition of legal studies undertaken outside of one's own country, procedures for recognizing degrees, greater integration of institutions and joint research projects all assume mutual trust. We as legal educators must foster mutual trust. The Internet is but a tool that must be used wisely to foster cooperation and exchange.

We must consider certain issues affecting the globalization of legal education. First, the level of resources of the institutions of different communities may be different. Efforts
at internationalization are expensive. They demand investment, which may not yield fruit immediately. The institutions of the various communities do not necessarily have equal resources for undertaking the task.

Second, the indirect resources for supporting the educational task are likewise not similar. In terms of internationalization initiatives, the funds allocated for education, which are channeled through students, may be especially significant. A student who has state-supported financing his or her participating in an international program will be much better prepared to benefit from such programs than a student who has to pay the cost of participation out of family assets.

Third, the forces favoring the internationalization of legal education sometimes clash with forces seeking to protect specifically national level interests that may also have a valid space in the life of some institutions. For example, universities in some countries feel strongly identified with the national character of the lectureships. They see the lecturer as a government employee who, barring extraordinary circumstances, by that very fact ought to be a citizen of the country. As valid as such perceptions may be they do not encourage the internationalization of faculties. Initiatives such as those promoting joint appointment of professors between institutions in different countries as a linking mechanism, may run up against obstacles of this nature.

Fourth, the differences in the organization arrangements of law schools and departments of the different traditions also tend to impede interrelations. A North American style institution, which operates as a whole without subject-based departments, may take a long time to understand that in relating to their counterparts in another tradition they must communicate with an academic department, not simply the law school as a whole.

These are the issues that, in my judgment, influence our efforts to speed our transnational cooperation. The manner in which we deal with them can greatly affect the success of our efforts.
TEACHING AND LEARNING IN INTERNATIONAL ENVIRONMENTAL LAW

David A. Wirth*

This paper is a personal reflection on nearly a quarter century of working in the field of international environmental law as a government attorney, public interest lawyer, and legal academic. More specifically, this paper addresses international environmental law as a sub-discipline of "another" legal system -- in the sense of other than the domestic legal system in which I was formed -- namely public international law.

Teaching and learning in the field of international environmental law present opportunities, challenges, and demands quite different from those encountered in a strictly domestic milieu. In contrast to domestic environmental law, the international law of the environment must be understood in the larger context of public international law, the law governing the relations among states. A course in international environmental law is an excellent occasion to demystify international practice, including but by no means limited to its legal aspects.

Simulating Multilateral Negotiations

Simulated negotiations are an excellent way not only of “teaching” but also of demonstrating to students firsthand both the law and the policy dynamics surrounding international interactions. In a simulated multilateral negotiation on global warming students representing a small island nation that stands to be inundated by sea level rise learn a great deal about how to accomplish policy objectives in this unfamiliar setting when a superpower that bears more than a superficial resemblance to the United States refuses to reduce its emissions of greenhouse gases. Some students will have had prior experience with exercises such as model United Nations, on which they can then build in this more sophisticated setting.

First, student negotiators begin to appreciate the role of law in the state of nature that is the international system. They see firsthand and sometimes all too painfully that concepts of law and legality all too often may have trivial significance in an international setting. Second, the student participants discover how states actually behave and what motivates them. Without exception, students in the roles of instructed representatives of governments rapidly rise to this challenge, occasionally shocking their peers in their

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single-minded pursuit of narrow national interests to the near-total exclusion of concern about the integrity of the global commons.

Understanding International Organizations

A course in international environmental law is also a wonderful occasion for addressing the structure and functioning of international organizations. A course instructor can easily traverse at least a dozen international organizations without the slightest conscious effort while teaching the course. One of the lessons for students is that of the lot only one, the UN Environment Program, has environmental protection as its principal mandate. Some might see this as a weakness, others might see it as a strength of the international system. But the essential point for students is that they must come to grips with environmental issues as defined in light of the functional missions of organizations designed to lend money for development projects (World Bank and regional development banks), or to create and enforce trade rules (World Trade Organization), whose functional mandates may accommodate environmental considerations only peripherally if not with outright difficulty.

International organizations, while a useful starting point, of course are not the only setting in which international environmental policy and law is crafted. Once again, this subject matter is a perfect vehicle for addressing international regimes that may have less formal institutional structures but that are nonetheless highly efficacious. The Antarctic Treaty system is an excellent concrete example, which also provides an entry point into an important substantive inquiry. Another is the framework-convention-with protocols model, supervised by a conference of the parties, found in such subject matter areas as acid rain, stratospheric ozone depletion, global warming, and biodiversity.

In addition, these structural templates assist students in developing an appreciation for international agreements as establishing dynamic structures for cooperative decision making by states, as opposed to articulating a static set of obligations. Having mastered the basics of the structure and functioning of international organizations and having gained some appreciation for treaty-based structures, students are then well-positioned to move into the more sophisticated realm of conflicts among regimes. The quintessential example is the trade-and-environment debate, now effectively \textit{de rigueur} in courses in this field.

Synthesizing Disparate Legal Systems

If a course in international environmental law seems the perfect setting for teaching basic concepts of public international law, that is no coincidence. Indeed, international environmental policy is at the forefront of many progressive developments that prefigure more general trends in public international law, a relatively primitive legal system whose limitations in responding to the all-too-pressing demands of globalization are all too apparent. So, for instance, environmental considerations were a principal motivating force in the creation of the World Bank Inspection Panel. This major development is not just the
first instance in which any multilateral institution has submitted the question of the adequacy of its own operations to external review. Perhaps more importantly in the long term, the Inspection Panel is an important entry point through which non-state actors such as citizens organizations can enforce public rights in a legal system that does not even acknowledge the complainant’s existence.

A course in international environmental law also should require students to learn to integrate international legal requirements and the domestic regulatory structure. In the United States we live in a dualist legal system, in which the international and domestic legal systems do not intersect except through the operation of some mechanism linking the two. At a relatively straightforward level students need to learn to analyze the interaction of international agreements and domestic law. The little-taught Japan Whaling case in the United States Supreme Court, concerning domestic implementation of the 1946 International Convention for the Regulation of Whaling, is an excellent example of the way in which legal and policy considerations unique to the foreign relations area may generate conflicts with domestic statutory mandates.

For a thorough understanding of the field, students should also be able to grapple with cognate questions in foreign legal systems. For example, one of the favored techniques at the international level is harmonization of national requirements. International agreements or non-binding instruments that adopt such approaches can be explained only partially, and not entirely satisfactorily, as involving a traditional flow of rights and obligations. Instead, harmonization more typically involves a multiplicity of undertakings by states simultaneously to alter their domestic policy and legal infrastructure in an agreed manner. Potentially a highly effective policy and legal strategy, harmonization is often desirable to overcome competitive disadvantages that otherwise might impede unilateral domestic action or a concerted multilateral response. The prevalence of international instruments employing strategies of harmonization strongly suggests the need for students to have at least some exposure to comparative law and the structure and functioning of the legal systems of other countries, not strictly for its own sake but also as an instrumental tool for better appreciation of the efficacy of international undertakings.

As a subset of international law, foreign law, or more accurately sui generis as supranational law, students cannot avoid the law of the European Union (EU). But EU law is exceedingly complex and treating all the EU legislation on environment is probably a task that can be accomplished only in a course dedicated exclusively to that purpose. Successful courses on European Union environmental law have been offered at a number of schools. In any event, in a basic course in international environment law students should be exposed to at least a qualitative description, if not an analytically rigorous legal treatment, of the basic Community institutions and the forms of EU legislation. It is also helpful to analyze at least some EU instruments from an in-depth textual point of view, preferably a directive as opposed to a regulation because of the unfamiliar form.
Working With Texts

International environmental law also inescapably spotlights the need for students to work with primary materials of various kinds, including most particularly international agreements. It is surprising how frequently students fail to understand how to interpret operative language. Given the importance of international agreements in this field, at least one treaty interpretation exercise involving close reading of operative text is highly desirable as, if nothing else, a diagnostic tool. Choosing an agreement with relatively accessible language, together with straightforward, crisp obligations that are arrayed in a simple temporal sequence, clearly communicates to students what the expectations are in this area. Such an exercise is also an opportunity to address the apparently mundane, but nonetheless conceptually important, final clauses addressing such matters as signature, ratification, and entry into force.

Perhaps the most important lesson is the most obvious to come from conducting a simulation exercise, namely that the multitude of international agreements that students study in this discipline are not handed down like stone tablets to Moses, but instead memorialize brokered deals. As lawyers, scholars, and students, we read these instruments as legal authorities, but they must also be understood in a fundamental sense as what they are: the international analogues of contracts. This experience also makes the task of treaty interpretation considerably more immediate and the experience of teaching this essential skill that much more satisfying and effective. Further, participation in the negotiation of an international agreement heightens students’ appreciation of the practical significance of other crucial analytical concepts in the discipline, such as the distinction between binding international agreements and non-binding “soft law” instruments.

Creating Clinical Opportunities

No discussion of teaching opportunities in international environmental law would be complete without mentioning the “real world” opportunities presented by the subject matter. Many students come to the course motivated by personal interest, oftentimes with highly useful prior backgrounds in the natural sciences, in the Peace Corps or other on-the-ground overseas experience, in government, or in other relevant settings. Some have hopes, not always reasonable, of creating career opportunities or of “breaking into the field.” While it is obviously not possible to find post-law-school jobs for each of the students in a class in international environmental law, it is not at all difficult to deliver on legitimate expectations of a real-world perspective into the course, particularly if students are actively engaged in research, as for a seminar paper.

The next logical step would be to set up a true clinic involving direct client representation. The potential for clinical offerings involving representation of private parties is rapidly expanding through such channels, as noted above, as the World Bank’s Inspection Panel and citizen submissions to the North American Commission on Environmental Cooperation, created by the side agreement to NAFTA. Entry points for
non-state actors are also expanding into the work of such previously difficult-to-crack institutions as the World Trade Organization (WTO). There is a loose analogy with citizen suits under the domestic environmental laws, which have not only empowered the public but have also provided significant clinical opportunities for student lawyers.

One has to remember, however, that client representation on the international level is very complex and requires a great deal of effort as far as logistics are concerned without necessarily much in the way of payoff to student lawyers, at least so far as management considerations are concerned. One possibility would be team up with an organization such as the Earth Justice Legal Defense Fund (previously the Sierra Club Legal Defense Fund) and to let the partner group handle the mechanically, and often politically, complicated relationships with clients, particularly those located overseas. Students could then take, on a referred basis, particular projects or even entire cases, without the responsibility associated with being the “attorney of record.” It is important to emphasize that outside funding is not necessary to implement many of these initiatives.
Effective Techniques for Teaching about Other Cultures and Legal Systems
Creating Partnerships

Stephen Yandle – Vice President for Global Law School Programs, LexisNexis

The challenges to developing effective techniques for teaching about other cultures and legal systems include not only complicated issues of creating new pedagogy but also identifying new resources as it is inescapable that such a transformation of the curriculum will require more resources than traditional legal instruction. Such instruction not only expands the breadth of instruction, but compels more intensive student faculty interaction if it is to be meaningful.

A call for additional resources in a time in which legal education almost everywhere is engaged in increasingly intense competition for limited resources demands creative deployment of resources at hand and the expansion of the resource base. Three potential sources are suggested in this paper; two, which to some extend have been tested already, and a third, which may be a new and promising idea.

Though it may very from university to university, law schools have generally not been well integrated with other departments and schools. To the extent that legal education has been somewhat narrowly doctrinal, drawing on special knowledge of legal rules and procedures, this is understandable. In the current expansive thinking about teaching law from a broader perspective, crossing cultures and legal systems, instruction becomes much more complex than imparting the knowledge of a commonly defined legal cannon. In such a yeasty environment, one’s faculty colleagues from the full spectrum of study in the university can be vital, invaluable assets. Drawing upon these assets enhances legal instruction, but also gives back to the new contributors returns that enrich their teaching and scholarship. Truly, the whole is greater than the sum of its parts, so the first source of resource is the broader university.

While it is easier in terms of physical proximity and commonality of university purpose to develop synergies within the same university, there are no insurmountable obstacles to expanding collaborative initiatives across traditional university and geographic boundaries. With the extraordinary connectivity that exists in our remarkable new technologies, only our imaginations limit the potential to develop a global academic community sharing its knowledge and experience.

A second source of additional resource is the practicing bar. For many years practicing lawyers have played an important role in legal education. In some systems that serve as part time adjunct faculty, teaching primarily practice oriented courses to supplement full time academic faculty more aligned to legal scholarship than to the particulars of practice. In some countries practitioners are the primary instructors. What is new is the rapidly
breadth and complexity of law. It is increasingly rare for someone to develop a narrow area of expertise to be exploited in a relatively static way over a long career in law. Successful practitioners have to be life long learners to remain at the top of their profession. There is no better way to learn than to teach. A grand way to refine and perfect one’s knowledge in a dynamic field is to share what one knows with inquiring, challenging students. The time is ripe to create a vital partnership between the study of law and practice in which those leading practitioners share their special knowledge with those training for law practice and in so doing ensure that they refresh and hone the legal acumen that will keep them at the top of the profession.

The term practitioner is used loosely to include a broad array for individuals in the life of the law; not only those in traditional law firm or solo practice, but also government lawyers, judges, public interest and social justice advocates, business people and more. By including such a broad array the mission of teaching about other cultures and legal systems can be fully supported by a robust cadre of teacher practitioners.

The third source of new resource is perhaps an unlikely suggestion. It is the providers of the legal materials that students and faculty use in their work. Simply put it is the vendors of the books and on-line materials that law schools acquire for their students and faculty. These companies are in the business of selling their materials, typically for a profit (though some are public entities). They are in the business of developing in law students familiarity with and, they hope, preference for their materials so that when students graduate they will ask their employers to provide these material and when they become decision makers they will purchase them.

It is a simple and quite reasonable model, but as yet not fully exploited by the law schools to their potential advantage. These are highly profitable businesses with much future business depending on the image and reputation that they are able to create with student and faculty. The wise law school would recognize that fact and rather than shun the companies as interloping vendors, embrace them as educational partners in a common enterprise – the education of students. By engaging the companies in a real dialogue, they can understand that the companies’ business interests and the law schools’ educational interest are congruent, not antithetical. These companies have valuable products that are integral to the successful practice of law. The law student’s education and career opportunities are enhanced if learning how to use these products is included in the educational experience. There is significant economic value to the companies in exposing future customers to their products so they should be open to providing them at substantially less cost that practitioners would pay.

Further, the companies are expert in the use of their products and have a strong interest in the instruction on the products so they should be receptive to providing instruction and support at their cost. Schools, of course, should control the pedagogy at their institutions and should set the parameters regarding what the companies do in the law school environment. In a true academic collaboration there can be a refinement tailored to the unique needs and perspective of each school. That which the school might be unable to
purchase at full market rates could be provided to increased the educational needs of students with no compromise of academic values. Also, some of these companies are quite advanced technologically so bringing them and their products into the school may also bring with it technology infrastructure and bandwidth that can serve additional educational needs that might have been otherwise unaffordable.

Legal education has never been more exciting or more challenging. The successful law schools will be those that seek to meet rapidly changing needs through creative partnership with alliances drawn from both the known and the new.