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Effective Techniques for Teaching about Other Cultures and Legal Systems

Creating the Conditions for Cross-Cultural Sensitivity: An Australian Law Dean's Perspective

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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 honours 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,² 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,³ especially in relation to creating the conditions in which this kind of teaching might flourish.

Staff, students, and ethos

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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).

At least three things occur to me⁴ as important in encouraging cross-cultural sensitivity, especially as I think of my experience at the ANU College of Law:⁵ 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 recognised, 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 endeavour, 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;⁶ 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.⁷ But the point I am making, from my 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

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.

⁷ See <http://www.ialsnet.org/meetings/enriching/jukier.pdf> (viewed 5 May 2008).

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 'internationalisation' of legal education⁸ 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.⁹ 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 'outreach' activities.¹⁰ 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

⁸ 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).

⁹ 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).

¹⁰ For more detail, see Michael Coper, *Law Reform and Legal Education: Uniting Separate Worlds*, in THE PROMISE OF LAW REFORM 388 (Brian Opeskin & David Weisbrot eds, Federation Press, 2005), reprinted in 39 U. TOL. L. REV. (2008) 233.

curriculum (including practical measures such as clinics) and more generally into our collective mindset.¹¹

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.¹²

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.

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!

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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.