

**A Meaningful and Enriching Experience:
Introducing Other Legal Systems and Legal Cultures to U.S. Law Students**

Nora V. Demleitner

Dean, Hofstra University School of Law, Long Island, New York

Paper for Educational Program on
Effective Techniques for Teaching About Other Cultures and Legal Systems
May 29-30, 2008 – Montreal, Quebec, Canada

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.¹ Much cultural knowledge is 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? And 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 allow 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 liaise with foreign government attorneys. How can we make our students competent to do so?

¹See, e.g., Nora V. Demleitner, *Combating Legal Ethnocentrism: Comparative Law Sets Boundaries*, 31 ARIZ. STATE L.J. 737, 739-40 (1999).

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.

²See, e.g., Mathias Reimann, 11 TULANE EUROP. & CIV. L. FORUM (1996).

³See, e.g., JOHN KAPLAN, ROBERT WEISBERG & GUYORA BINDER, CRIMINAL LAW: CASES AND MATERIALS (5th ed. 2004); NORA V. DEMLEITNER, DOUGLAS A. BERMAN, MARC L. MILLER & RONALD F. WRIGHT, SENTENCING LAW AND POLICY (2nd ed. 2007).

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.