

Effective Techniques for Teaching About Other Cultures and Legal Systems

By

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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.

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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.’¹

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 actors². Unlike the comparative law method that merely catalogues difference,

¹ N. Kasirer ‘Legal Education as Metissage’, (2003) 78 Tulane Law Review 481 at 481.

² *Ibid.* 489.

the methodology of *metissage* seeks to confront exchange by exploring exchange as a subjective experience³.

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.⁴

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 *Frigalment Importing Co v BNS International Sales Corp*⁵ 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 *Frigalment* case illustrates

³ *Ibid.* 495.

⁴ G. Steenhoff 'Teaching Comparative Law, Comparative Law Teaching', <<http://www.ejcl.org/64/art64-4.html>> at 1.

⁵ 190f. Supp. 116 (S.D.N.Y. 1960).

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

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4. G.M. Sanchez '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', (1997) San Diego Law Review Association 635.