

Effective Techniques for Teaching about Other Cultures and legal Systems

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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 informations need 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 importances 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 page 4 and 5)

English for Law

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 exemple, 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

English for Law

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