

International Association of Law Schools
“Effective Techniques for Teaching About Other Cultures and Legal Systems”
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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. This 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.