

**Reflections on Comparative Law Teaching and Pedagogy**  
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We have been asked to reflect upon the pedagogical challenges and opportunities of teaching courses that examine more than one legal system, or that focus on a legal system different from the one in which we received our primary training. Here are a few very brief thoughts and observations based in part upon my own experience teaching international and, to a lesser extent, comparative, law to both US law students and a combination of US and African law students.

First, what I hope is an obvious point, pedagogical approaches to law are influenced by the subject matter, the legal system, and the general socio-political and cultural system out of which they developed. Constitutional and most rights-based subjects tend to surface political and policy-oriented discussions, while code and statutory based subjects tend to emphasize interpretation. (Of course interpretation is crucially important to the former, as political and policy concerns are also with the latter.) Adversarial systems place much more emphasis on combative oral argument; civil law systems less so. The role of the lawyer is more central to adversarial systems; the role of the judge in civil law systems. Some cultures emphasize certainty and formalism; others debate and informality. I hope that it goes without saying (but of course I will now say it) that all of these are simplified generalizations, and any one legal system will reveal a much more complex reality than any of these broad statements would suggest.

Second, there are opportunities with respect to engaging with a foreign legal system. There is much one can learn from studying different legal systems. To use a US federalism analogy, the close to 200 legal systems in the world provide close that many laboratories for experimentation. This is obviously a valuable resource for discussing both what the law is in any one system, but also what the law ought to be; or, to be more precise, for discussing the consequences of choosing a particular legal rule or approach. In addition to informing a normative discussion of the law, looking at a foreign legal system also helps to expose some of the assumptions within our own legal system. Seeing that a legal system or society can be organized in a different way helps students (and even we faculty) to see that aspects of our own system that we take for granted – that some may see as “natural” – are in fact conscious choices, and thus things that can, if they want, be changed.

Third, there are dangers with respect to engaging with a foreign legal system. Oftentimes we are quick to judge a rule within a foreign legal system through the lens of our own sense of legal correctness. To use a simple example, the allowance of hearsay in civil law systems looks problematic from the point of view of an adversarial system, but makes a good deal more sense in a judge-centered civil law system. There is thus a need to differentiate between looking from the outside for things familiar, and placing oneself in a position to look from an interior position at a legal system. In the area of human rights, for example, a difficult balance must be struck. On the one hand the context in

which a particular rule has developed is crucial to understanding and explaining it. On the other hand, understanding should not be confused with justifying, though the first can unwittingly lead to the second.

How then do we assist our students in seizing the opportunities of comparative legal study while equipping them to avoid the dangers? My experience suggests three necessary conditions for cross-cultural cross-system learning: faculty and students from different legal cultures, and expressly surfacing cultural and legal assumptions of both faculty and students. This is not to say that some benefits cannot be derived without one or more of these conditions, but it has been my experience that having all three makes for a particularly rewarding educational experience for both students and faculty.

Faculty *and* students should come from different legal systems. Teaching across systems must be a shared project at the faculty and student level. On the faculty level, a professor from one legal system is in a better position to understand the context in which a particular legal rule has developed and in which it operates. Yet such a person is likely to be blind to some of the assumptions of her own legal system. Thus a second professor trained in another legal system is usually better placed to surface fundamental insights and assumptions of the legal system of the first. This is obviously a mutually beneficial relationship.

On the student level, much student learning comes from interactions with their peers. We know this from interactions among our students within our own institutions. We know that the richness of diversity among our students (and increasingly among our faculty) contributes positively to the pedagogical richness of the classroom. Including students from other legal cultures adds a further dimension to this diversity. This is obviously so for courses that focus on comparative law, but also for courses that focus solely on one legal system (which we know from the advantages we observe from having foreign students in our home institutions).

Finally, the class should be structured in a way that emphasizes and engages with, difference, and that emphasizes the fact that we all come to the conversation with our own (sometimes unconscious or unacknowledged) assumptions. It is important to get the students to understand and examine their own assumptions about law. To fully appreciate and understand cultural differences, it is important to understand – more than understand, to really feel – how culture is embedded in one's own life. In other words, to make the invisible visible. Thus as educators it is important to make explicit our own cultural assumptions. Joint teaching can highlight this by having each teacher emphasize the cultural assumptions of the other – and then having students undertake the same exercise.

In exploring the assumptions embedded in our own legal system, it is important not to fall into the trap of using a few characteristics to define a legal culture. In other words, avoid being over-determinative, or essentializing – all Americans think x; or all Africans think y. Doing so reinforces unhelpful stereotypes rather than enhancing understanding. It is useful thus to draw upon some of the pedagogical innovations that

have been developed to unpack the influence and social context of race, gender, birth order, religion, and numerous other characteristics.

There are a number of techniques one can use to further this goal. First, at the faculty level, each professor should address aspects of *both* her system and those of the system from which the other professor comes. Second, the two (or more) professors should engage in a dialogue about their respective systems, exploring the assumptions embedded in both. This dialogue can also draw upon the experience and perspectives of the students. Such cross-system dialogue requires deep listening skills, and an ability to focus on content over style – something that in our graphically-laden information culture is more and more difficult for many students. Finally, such conversations must include space for self-monitoring, self-reflection, and debriefing. For example getting students from different legal cultures to pair with each other and describe the other's system highlights useful assumptions inherent in the other system and problematic assumptions held by outsiders of that same system. Such interactions require a good deal of preparation in order to build the necessary trust and respect among all of the participants crucial for their success.