

TABLE OF CONTENTS

LIST OF PARTICIPANTS3

Program Session Reading Material

LOCAL EXPERIENCES: SIX DELEGATE REPORTS ON EFFECTIVE TEACHING TECHNIQUES

FATOU KINÉ CAMARA15

Delegate Papers

BULGARIA

ALEXANDER VODENITCHAROV33

BRAZIL

FLÁVIA PIOVESAN37

COLUMBIA

ERNESTO LUCENA41

INDONESIA

HENDRA TANU ATMADJA45

ITALY

ELENA IORIATTI49

SOUTH AFRICA

MUSTAQEEM DE GAMA55

TURKEY

SIBEL HACIMAHMUTOGLU59

UNITED ARAB EMIRATES

JASSIM ALI SALEM ALSHAMSI61

UNITED STATES

RONALD C. SLYE65

**International Association of Law Schools Conference
Effective Teaching Techniques about Other Cultures and Legal Systems**

**Le Centre Sheraton Montreal
Montreal Canada**

May 30, 2008

CONFERENCE PARTICIPANTS

William Joseph Aceves
California Western
USA
waceves@cwsu.edu

Mohammed Al Mashhadani
University of Bahrain
Kingdom of Bahrain
Moht.almashhdani@hotmail.com

Osamah Ahmad Abed Al Naimat
Philadelphia University
Jordan
naimat@phlcc.com

Mariam Hassan al-Khalifa
University of Bahrain
Kingdom of Bahrain
malkalifa@law.uob.bh

Hassan Al-Sayed
Qatar University
Qatar
halsayed@qu.edu.qa

Marcelo Alegre
Universidad de Palermo
Argentina
Alegre.marcelo@gmail.com

Jassim Ali Salem Alshamsi
United Arab Emirates University
UAE
Jassim.alshamsi@uaeu.ac.ae

Roberto P. Aponte-Toro
University of Puerto Rico
Puerto Rico, USA
Roband100@hotmail.com

Hendra Tanu Atmadja
Tujauh Belas Agustas University (UNTAG)
Jakarta University
Indonesia
Untag-jk@cbn.net.id

Mohammad Nizam Awang
Islamic Science University of Malaysia
Malaysia
nizamlaw@gmail.com

Reem Bahdi
University of Windsor
Canada
rbahdi@uwindsor.ca

Jeffrey B. Berryman
University of Auckland
New Zealand
jberrym@uwindsor.ca

Ronald A. Brand
University of Pittsburgh
USA
rbrand@pitt.edu

Gregory J. Brandes
Concord University
USA
Greg_brandes@concord.kaplan.edu

Alan L. Button
Handong International Law School
Korea
button@handong.edu

Thomas E. Carbonneau
The Pennsylvania State University
USA
tec10@psu.edu

Juscelino F. Colares
Syracuse University
USA
colares@law.syr.edu

Mary C. Daly
St. John's University
USA
dalym@stjohns.edu

Mustaqeem de Gama
University of Stellenbosch
South Africa
mmdg@sun.ac.za

Nora V. Demleitner
Hofstra University
USA
lawnvd@hofstra.edu

Jay Erstling
William Mitchell College of Law
USA
jay.erstling@wmitchell.edu

Ann Laquer Estin
University of Iowa
USA
ann-estin@uiowa.edu

Kenneth Stuart Gallant
University of Arkansas at Little Rock
USA
ksgallant@uair.edu

Manuel Gomez
Florida International University
USA
magomez@fiu.edu

Claudio Grossman
American University
USA
grossman@wcl.american.edu

Sibel Hacimahmutoglu
Hacettepe University
Turkey
sibelh@hacettepe.edu.tr

Lawrence K. Hellman
Oklahoma City University
USA
lhellman@oksu.edu

Stephen C. Hicks
Suffolk University
USA
Shicks@suffolk.edu

Joseph G. Hylton
Marquette University
USA
Joseph.hylton@marquette.edu

Elena Ioriatti
Trento University
Italy
ioriatti@jus.unitn.it

David Jallah
University of Liberia
Liberia
Dab19512002@yahoo.com

Innocent Fetze Kamdem
University of Ottawa, Civil Law Section
Canada
Fetze.kamdem@uottawa.ca

Susan L. Karamanian
The George Washington University
USA
skaramanian@law.gwu.edu

Timothy S. Kaye
Stetson University
tkaye@law.stetson.edu

Julija Kirsiene
Vytautas Magnus University
Lithuania
Julija.kirsiene@notarai.it

Charlotte Ku
University of Illinois
USA
chku@law.uiuc.edu

Brian K. Landsberg
University of the Pacific-McGeorge School of Law
USA
blandsberg@pacific.edu

Jacqueline Deborah Lipton
Case Western Reserve University
USA
Jdl14@case.edu

Ernesto Lucena
Universidad Sergio Arbodela
Colombia
Ernesto.lucena@usa.edu.co

Emmanual Magade
University of Zimbabwe
Zimbabwe
emagade@law.uz.ac.zw

Tahir Mamman
Nigerian Law School
Nigeria
Mamava54@yahoo.com

Ketevan Meskhishvili
Caucasus School of Law
Georgia
kmeskhishvili@cu.edu.ge

Mohamed Olwan
Yarmouk University
Jordan
moholwan@hotmail.com

Anja Oskamp
Vrije University of Amsterdam
Netherlands
a.oskamp@rechten.vu.nl

Michael L. Perlin
New York Law School
USA
mperlin@nyls.edu

Cathy Powell
University of Cape Town
South Africa
Cathleen.powell@utoronto.ca

H.E.G.S. Schneider
University of Maastricht
Netherlands
h.schneider@ir.unimaas.nl

Anna Williams Shavers
University of Nebraska
USA
ashavers1@unl.edu

Gurjeet Singh
Rajiv Gandhi National University
India
Gurjeetsingh939@yahoo.com

Ronald C. Slye
Seattle University
USA
slye@seattleu.edu

Jakub Stelina
University of Gdansk
Poland
jstelina@prawo.univ.gda.pl

Wasis Susetio
Universitas Indonusa Esa Unggul
Indonesia
Wsusetio07@yahoo.com

Chantal Thomas
University of Minnesota
USA
thomas@umn.edu

Aziz Can Tuncay
Bahcesehir University
Turkey
atuncay@bahcesehir.edu.tr

Alexander Vodenitcharov
Neophyt Rilsky South-West University
Bulgaria
interact@law.swu.bg

Jaroslaw Warylewski
University of Gdansk
Poland
j.warylewski@wp.pl

David A. Wirth
Boston College
USA
wirthd@bc.edu

***SPEAKERS, IALS BOARD MEMBERS, PLANNING COMMITTEE MEMBERS AND
REPRESENTATIVES OF INSTITUTIONAL MEMBERS***

Mohammad Al-moqatei
Kuwait University
Kuwait
mohammed@almoqatei.net
IALS Board Member

Noor Aziah Haji Mohd Awal
Universiti Kebangsaan Malaysia
Malaysia
naha@pkriscc.ukm.my
IALS Board Member, Planning Committee

Roger Burridge
University of Warwick
United Kingdom
Roger.burridge@warwick.ac.uk
IALS Board Member

Fatou Kiné Camara
Université Cheikh Anta Diop de Dakar
Senegal
camarafatkine@yahoo.fr
Speaker

Michael Coper
Australian National University
Australia
Michael.coper@anu.edu.au
IALS Board Member, Speaker

Normen Dorsen
New York University
USA
Norman.dorsen@nyu.edu
IALS Board Member, Planning Committee

Vincenzo Ferrari
Università di Milano
Italy
Vincenzo.ferrari@unimi.it
IALS Board Member, Planning Committee

John H. Garvey
Boston College & AALS President
USA
John.garvey.1@bc.edu
Institutional Representative

Shashikala Gurpur
Symbiosis Law School
India
sgurpur@symlaw.ac.in
Speaker

Chuma C. Himonga
University of Cape Town
South Africa
Chuma.himonga@uct.ac.za
IALS Board Member, Speaker, Planning Committee

Rosalie Jukier
McGill University
Canada
Rosalie.jukier@mcgill.ca
Speaker

Věra Kalvodová
Masaryk University in Brno
Czech Republic
Vera.kalvodova@law.muni.cz
Speaker

Samrieng Mekkriengkrai
Chulalongkorn University
Thailand
samrieng@yahoo.com
Speaker

Obeng Mireku
University of Venda
South Africa
omireku@usa.net
Speaker

I Nyoman Nurjaya
Universitas Brawijaya
Indonesia
nurjayai@yahoo.com
Speaker

Aliza Gail Organick
Washburn University
USA
aliza.organick@washburn.edu
Speaker

Lee Faircloth Peoples
Oklahoma City University
USA
lpeoples@okcu.edu
Speaker

Mónica Pinto
Universidad de Buenos Aires
Argentina
pinto@derecho.uba.ar
IALS Board Member

Flávia Piovesan
Pontifícia Universidade de Católica de São Paulo
Brazil
flaviapiovesan@terra.com.br
IALS Board Member, Planning Committee

V.S. Elizabeth
National Law School of India University
India
Elizabeth_v_s@hotmail.com
IALS Board Member, Planning Committee

Jim Vaseleck
Law School Admission Council
USA
jvaseleck@lsac.org
Institutional Representative

Fernando Villarreal-Gonda
Facultad Libre de Derecho de Monterrey
Mexico
fvgonda@fldm.edu.mx
Speaker

Francis SL Wang
Kenneth Wang School of Law
China
fwang@wangandwang.com
IALS Board Member, Speaker, Planning Committee

Christopher Waters
University of Windsor
Canada
cwaters@uwindsor.ca
Speaker

James P. White
American Bar Association
USA
jwhite@iupui.edu
Institutional Representative

Stephen T. Yandle
LexisNexis
USA
Stephen.yandle@lexisnexis.com
Institutional Representative

Moving from Teaching African Customary Laws to Teaching African Indigenous Law

Dr Fatou. K. Camara

READING MATERIAL (excerpts)

1. **The Instruction of Merikare** (royal instruction and testament attributed to Khety III, given to his son Merikare who ruled during the tenth dynasty of the first intermediate period (2130-2040 BCE).
2. **The Great Edict of Horemheb** (Horemheb was the last [Pharaoh](#) of [Ancient Egypt's 18th Dynasty](#) from [1319 BC](#) to late [1292 BC](#)).
3. **Diodorus Siculus on the Egyptian Judicial System** (Diodorus Siculus was a [Greek historian](#) who was born in [Sicily](#) in the [1st century BC](#). Diodorus' *Bibliotheca historica* ("Historical Library"), consisted of forty books. The first book describe the history and culture of [Ancient Egypt](#) (book I),
4. **Herodotus History, Book II** (a [Greek historian](#) who lived in the [5th century BC](#) ([c. 484 BC](#)–[c. 425 BC](#)) and is regarded as the "*Father of History*" in Western culture).
5. **The Charter of Kurukan Fuga** ([constitution](#) of the [Mali Empire](#) – it covered a portion of West Africa that is equal to the size of Western Europe (1235-1645). *Mansa* (Emperor) [Sundiata Keita](#) presented the document at a plain called Kurukan Fuga, current circle of Kangaba in the Republic of Mali. It has survived through oral tradition passed down by generations of *djeli* or *griots*).
6. **Ibn Battuta Travels to Kingdom of Mali** (Ibn Battuta traveled in Mali in 1352 and described the kingdom and its inhabitants)
7. **Corporal Punishment in Seereer Customary Law** (Lecture of Issa laye THIAW, FSJP/UCAD, September 2007, author of *La femme seereer*, L'Harmattan, Paris, 2005, 250p.; Seereer is a Senegalese linguistic community).
8. **“Women, Love and Family Life in Ancient Egypt”**, Swarupsinh V. Chavda and Ahmes L. Pahor,

OBJECTIVE

Identify common traits in the concepts of law and justice and in the cultural values of the people of Ancient Egypt, Middle Age Mali and contemporary Senegal. Identify what could have been the influence of Islam, colonialism and Christian missionaries in current customary laws.

1.

THE INSTRUCTION OF MERIKARE

The Leningrad Papyrus, which is translated here, was written by a scribe called Khamwese during the Middle Kingdom.

Translation by R. O. Faulkner

Footnotes: William Kelly Simpson (ed.), *The Literature of Ancient Egypt*, New Haven and London, 1973, pp. 180-192.

http://nefertiti.iwebland.com/merikare_papyrus.htm

Copy your forefathers, for [work] is carried out through knowledge; see, their words endure in writing. Open, that you may read and copy knowledge; (even) the expert will become one who is instructed.

(...)

Respect the great; keep your people safe; consolidate your frontier and your patrolled are for it is good to work for the future.

(...)

Do justice, that you may live long upon earth. Calm the weeper, do not oppress the widow, do not oust a man from his father's property, do not degrade magnates from their seats¹. Beware of punishing wrongfully; do not kill, for it will not profit you, but punish with beatings and with imprisonment², for thus the land will be set in order, excepting only the rebel who has conspired, for God knows those who are disaffected, and God will smite down his evil doing with blood. It is the lenient man who [///] lifetime; so do not kill a man of whose ability you are aware, and with whom you once recited writings, but read in the account [///] because of God, and stride forward freely in a difficult place³. The soul comes to the place which it knows, and it will not overstep the ways of the past; no magic can oppose it, and it will reach those who will give it water⁴.

(...) Do not distinguish the son of a man of rank from a commoner, but take a man to yourself because of his actions, so that every craft may be carried on [///] for the possessor of strength.

(...) The kingship is a goodly office; it has no son and it has no brother who shall make its monuments endure, yet it is the one person who ennobles the other⁵; a man works for his predecessor, through the desire that what he has done may be embellished by another who shall come after him.

¹ *degrade magnates from their seats*: Lichtheim: *reduce the nobles in their possessions*.

² *with imprisonment: m zA.w[tj (?)]* lit. with a guardian. Lichtheim: *with detention*. It is generally thought today that imprisonment as a punishment was not the norm.

³ *but read ... a difficult place*: Lichtheim: *Who was brought up . . . --- before god, who strode freely in the secret place*.

⁴ *it will reach those who will give it water*: Libations were of crucial importance to the deceased..

⁵ *yet it is the one person who ennobles the other*: Lichtheim: *But one man provides for the other;*

2.

THE GREAT EDICT OF HOREMHEB⁶

http://nefertiti.iwebland.com/texts/edict_of_horemheb.htm

His majesty took counsel with his heart [how he might] //// [exp]el evil and suppress lying. The plans of his majesty were an excellent refuge, repelling violence behind ///// [and delivering the Egyptians from the oppressions] which were among them. Behold, his majesty spent the whole time seeking the welfare of Egypt and searching out instances [of oppression in the land]. /// [came the scribe] of his majesty. Then he seized palette and roll; he put it into writing according to all that his majesty, the king himself said. He spoke as follows: "[My majesty] commands /// [concerning all] instances of oppression in the land.

If the poor man made for himself a craft⁷ with its sail, in order to be able to serve the Pharaoh, L.P.H., [loading it with the dues⁸ for the breweries and the kitchens of the Pharaoh, and he was robbed of the craft and] the dues, the poor man stood reft of his goods and stripped of his many labors. This is wrong, and the Pharaoh will suppress it by his excellent measures. If there be a [poor man] who pays the dues of the breweries and kitchens of the Pharaoh, L.P.H.⁹, to the two deputies, [and he be robbed of his goods and his craft, my majesty commands: that every officer who seizes the dues] and taketh the craft of any citizen of the army or of any person who is in the whole land, the law shall be executed against him, in that his nose shall be cut off, and he shall be sent to Tha[ru].

3.

DIODORUS SICULUS

Historic Library Vol 1, Chap. 75ff, after a translation by Julius Friedrich Wurm

http://nefertiti.iwebland.com/law_and_order/diodorus.htm

Chapter 60 - Amasis. Aktisanes of Ethiopia. The city Rhinocolura

..... Aktisanes treated robbers in a special way, not wanting to kill them nor letting them go unpunished. He had the accused led before him from everywhere in the country and investigated their affairs most conscientiously. Those found to be guilty had their noses cut off and were exiled to the most distant place in the desert. The city he had founded for them was called Rhinocolura in memory of the punishment of their inhabitants.....

⁶ Footnotes: [1] Barry J. Kemp, *Ancient Egypt: Anatomy of a Civilization*, Routledge 2005, ISBN 0415235499, p.25

⁷ *craft*: this would generally have been a [papyrus raft](#)

⁸ *dues*: [taxes](#).

⁹ *L.P.H.*: short for Life, prosperity, health (*anx wDA snb*)

Chapter 65 - Bocchoris, Sabaco (Shabaka) of Ethiopia

..... Sabaco, a born Ethiopian, who was much more pious and just than former kings, became King of Egypt. As proof of his mercy may count the fact that he abolished the harshest of punishments ordained by law, the death sentence. Instead of taking the lives of the condemned, he put them in irons and ordered them to do forced labour for the cities. With the help of such people he had many dams raised and many canals excavated in the right places.....

Chapter 75 – The Administration of the Law

The Egyptians applied special diligence to the administration of justice. They were convinced that the decisions of the courts had a most important influence on the public well-being. They seemingly thought that errors were best corrected, when one punished the trespasser and gave succour to the injured, and that where the trespasser's fear of the courts was allayed by money or artifice the state would decay. Therefore they appointed the noblest men from the capitals as judges for the whole country; and in such a way they achieved their purpose. Judges were selected from Heliopolis, Thebes and Memphis, ten from each city. This Court of Justice could be compared to the Areopage in Athens or the senate of Lakedaimon. When the thirty convened, they elected the noblest one from their midst as Chief Justice, and his city sent another judge in his place.

What the judges needed for their living, was supplied plentifully by the king. The Chief Justice received a greatly increased pay. He carried a golden chain around his neck, from which hung a picture made of precious stones, which was called Truth.

The court was in session, as soon as the Chief Justice put on the depiction of Truth.

Chapter 77 - The Administration of the Law

Having considered the administration of the laws, we believe it would not be inappropriate to the purposes of our historical work to describe those among the laws of the Egyptians, which are either particularly old or unique, or the knowledge of which would be of use to the attentive reader.

- If someone saw a human being on the highway being murdered or done violence to, and if he were in a condition to save him and did not do so, then he had to die. If it had however been impossible for him to render help, then he was at least bound to denounce the crime and to sue the robbers in court. If he omitted to do so, then he received a certain number of lashes according to the law and was not given anything to eat for three days.
- (...)
- Whoever committed an intentional murder, be it of a free citizen or a of slave, had to die. This regulation was made law firstly because humans should not be prevented to commit wicked deeds by external conditions, but by their own internal free will, and secondly because by caring for the slaves all crimes against the free citizens would be prevented with greater certainty.
- (...)

Chapter 78 - Laws

Concerning the other laws, the martial law intended for desertion and disobedience towards ones superiors not the punishment of death, but deepest disgrace. If they later expunged the dishonor by courageous acts, then they were reinstated to their lost rights of honour. The legislator placed intentionally infamy above the death penalty, so that one got accustomed to regard dishonor as the greatest evil. It was also thought that those who had been executed could not be useful to the state anymore. The dishonoured would cause much good, because they strove to save their honour.

(...)

The laws concerning the female sex were also strict. Whoever raped a freeborn woman was castrated. Thus the threefold crime was punished, which the criminal had committed by a single deed: the act of violence, the dishonour, and the confusion of child descent. However, if the woman let herself be enticed into committing adultery, then the man received a thousand strokes of the stick, and the woman's nose was cut off. They thought one had to remove the greatest ornament of a beautiful face from a woman, who decorated herself, in order to arouse forbidden desire.

Chapter 79 - Laws

The laws concerning monetary transactions are said to have been enacted by Bocchoris. They decree that a debtor who borrowed without signature, can deny on oath a debt he does not want to acknowledge. The first purpose of the law was to bolster the conscientious sanctification of the oath. As one would obviously lose all credit by repeatedly denying on oath, it was to be expected it would be in the debtor's interest to prevent having to swear the oath, so that borrowing would not be made more difficult for him. The legislator believed that by making credit dependent on proper behaviour alone, all would endeavor to act honestly in order not to fall into ill repute as people undeserving of trust. Moreover he held it inequitable that a debtor, to whom one had entrusted money without oath should not be considered trustworthy when swearing an oath precisely because of this debt.

Creditors, who had in their possession IOU's were forbidden to increase the principal debt by interest in excess of double the original amount. When recovering the debts, the property only of the debtor was forfeit, he himself was not subject to bondage under any circumstances. Chattels were regarded as property of the citizens, acquired or received from other owners, they themselves however were bondsmen of the state, because they had to fulfill required duties in war and in peacetime. One thought it unreasonable that a soldier fighting for his native country should not be certain that he would not be arrested by a creditor because of debts, and that because of a few citizens' usury the welfare of the whole people should be in jeopardy.

This law too Solon seems to have adapted for Athens: the regulation which he called Seisachtheia (shaking off) decreed that any pledge including the bondage of the debtor was invalid. Rightly it is criticised that while in most Greek states the law forbids the creditor to take as pledge the weapons, the plow, and other strict necessities, it permits him to seize the debtor who requires these things.

Chapter 80 - Laws

Concerning theft the Egyptians had a completely unique law. It was decreed that those, who wanted to pursue this trade should have their name listed with the captain of thieves, and should present their loot immediately after stealing it, admitting to their deed. He who had lost something had to put in writing a list of all missing articles, indicating the place, day and hour of their disappearing. In this way everything was easily found; and now the robbed person had to pay the fourth part of the value for his own property to be returned. As it was impossible to prevent theft completely the legislator invented this means to retribute all stolen property for a small ransom.

In Egypt priests take only one wife, everyone else however, as many as he wants. Parents are obligated to raise all their children according to the principle that a numerous population contributes more than anything else to the prosperity of the country and the cities. No child is considered to be illegitimate, not even if it is born of an acquired slave..

4.

HERODOTUS, *HISTORY*, Book II

http://ancienthistory.about.com/library/bl/bl_text_herodotus_2.htm

164. Now of the Egyptians there are seven classes, and of these one class is called that of the priests, and another that of the warriors, while the others are the cowherds, swineherds, shopkeepers, interpreters, and boatmen. This is the number of the classes of the Egyptians, and their names are given them from the occupations which they follow. Of them the warriors are called Calasirians and Hermotybians, and they are of the following districts,[142]--for all Egypt is divided into districts. 165. (...) nor is it lawful for these, any more than for the others, to practise any craft; but they practise that which has to do with war only, handing down the tradition from father to son. 167. Now whether the Hellenes have learnt this also from the Egyptians, I am not able to say for certain, since I see that the Thracians also and Scythians and Persians and Lydians and almost all the Barbarians esteem those of their citizens who learn the arts, and the descendants of them, as less honourable than the rest; while those who have got free from all practice of manual arts are accounted noble, and especially those who are devoted to war: however that may be, the Hellenes have all learnt this, and especially the Lacedemonians; but the Corinthians least of all cast slight upon those who practise handicrafts.

5.

THE CHARTER OF KURUKAN FUGA

The Mali Imperial constitution was a landmark achievement in the history of Africa and the world for several reasons. As far as global significance, the document is one of the earliest declarations of human rights. Its importance to Africa is demonstrated in three main achievements. First, it established uniform laws and regulations over a significant portion of West Africa (equal to the size of Western Europe) for the first time in recorded

history. Second, it afforded uniform rights for all citizens including women and slaves, unheard of in many parts of the world. Third, it is uniquely African in that it does not directly borrow from any existing law documents as opposed to the Ethiopian *Fetha Negest*. The prominence of the Mandinka in West Africa allowed the ideas and values within the Kurukan Fougua to spread far beyond the borders of the Mali Empire. Many peoples related to the Mande still abide by its traditions. http://en.wikipedia.org/wiki/Manden_Charter

The Kurukan Fuga divided the new empire into ruling clans (lineages) that were represented at a great assembly called the *Gbara*. There were 16 clans known as the *Djon-Tan-Nor-Woro* (carriers of quiver) responsible for leading and defending the empire. There were also 4 clans known as the *Mori-Kanda-Lolou* (guardians of the faith) that guided the ruling clans in matters of Islamic law. There were 4 *nyamakala* clans (men of the caste) who had the monopoly on certain trades (smelting, woodworking, tanners, etc). Lastly there were 4 clans of *djeli* (masters of speech) who recorded the history of the empire through song. Combined these would make up the 29 seat *Gbara* at the plain of Kouroukan Fougou (named after the event where Sundiata "divided the world"). The 30th seat was likely occupied by the mansa's *djeli* called the *belen-tigui* (master of ceremonies). Or it may have been reserved for a female monitor since the constitution states women are to be represented at all levels of government (edict 16). http://en.wikipedia.org/wiki/Manden_Charter

I. SOCIAL ORGANIZATION

Article 1st: The society of the great Mande is divided into sixteen (16) quiver carriers, five (5) classes of Marabouts¹⁰, four (4) classes of *Nyamakalas*¹¹. Each of these groups have an activity and a specific role.

Article 2: The *Nyamakakas* have a duty to tell leaders the truth, be their advisers and defend with the verb the rules laid down, and law and order on the whole territory.

Article 3: The *Morikanda Lolu* (five classes of Marabouts) are our masters and our teachers in Islam. Everyone owes them respect and consideration.

Article 4: The society is divided into age groups. At the head of each age group there will be an elected leader. The people (men and women), born within the course of three consecutive years belong to the same age group.

The *Kangbes*, the intermediate class between the young people and the old men must be invited to take part in the important decisions making processes concerning the society.

Article 5: Each one is entitled to life and safeguard of their physical integrity. Consequently, any attempt to remove the life of a human being will be punished with the death penalty.

¹⁰ Muslim scholars

¹¹ *Nyamakalas* form the caste of the honoured and revered dyelis (traditional jurists/archivists, called "Master of the Speech") and the following class of artisans: weavers, blacksmiths, shoemakers.

- Article 6: To win the battle of prosperity, *Kön gben Wolo* (a mode of monitoring) is instituted to fight laziness and idleness.
- Article 7: The *sanankunya*¹² and the *tanamanyöya* (form of totemism) are instituted between the Mandenkas. Consequently, a dispute arising between these groups should not degenerate, respect of the other being the rule.
Between brothers-in-law and sisters-in-law, between grand-parents and grand-children, tolerance and jokes are the rule.
- Article 8: The Keita Family is designated as the reigning family of the empire.
- Article 9: Education of the children falls on the entire society. Consequently, parental rights belong to all.
- Article 10: Let us address condolences mutually.
- Article 11: When your wife or your child flees, do not pursue them into your neighbor's house (where they have taken refuge).
- Article 12: The succession being patrilineal, never give the power to a son while his fathers (the father and his brothers) are not all dead.
Never give power to a minor because he has bonds.
- Article 13: Never offend the *Nyaras*.
- Article 14: Never offend the women, our mothers.
- Article 15: Never lay a hand on a married woman before you have asked unsuccessfully for the mediation of her husband.
- Article 16: The women, in addition to their daily occupations, must be associated to all our governments.
- Article 17: Lies which have lived 40 years must be regarded as truths.
- Article 18: Let us respect the rights of seniority.
- Article 19: Any man has two parents-in-law: the parents of the girl one did not get and the words that were delivered without constraint. Both deserve respect and consideration.
- Article 20: Do not mistreat slaves, grant them one day of rest a week, and make sure they cease work at reasonable hours. One is master of the slave not of the bag the slave carries.
- Article 21: Do not pursue with your assiduities the wives of the chief, of a neighbor, of a marabout, of an animist priest, of a friend and of an associate.
- Article 22: Vanity is the sign of weakness and humility the sign of greatness.
- Article 23: Let there not be any betrayals among yourselves. Respect your word of honor.
- Article 24: Never do foreigners any wrong.
- Article 25: The emissary does not run any risk in Mande.
- Article 26: The bull that has been given in care should not lead the herd.
- Article 27: The young girl can be given in marriage once she is pubescent, there is no predetermined age. Her parents' choice must be followed regardless of the number of suitors.
- Article 28: The young man can marry once he has reached the age of 20 years old.
- Article 29: The dowry is fixed at 3 bovines, one for the girl and two for her father and mother.

¹² Institutionalized solidarity and mandatory joking between ethnic groups and between clans.

Article 30: Let us come to the assistance of those who need it.

II. GOODS

Article 31: There are five ways of acquiring property: purchase, donation, exchange, work and inheritance. Any other form without convincing testimony is dubious.

Article 32: Any object found without a known owner will not become a collective property before the end of four years.

Article 33: The fourth calf of a heifer given in care is the property of the person in charge of the heifer.

Article 34: One bovine should be worth four sheep or four goats.

Article 35: One egg on four is the property of the person in charge of the hen.

Article 36: To appease one's hunger is not theft if nothing is carried away in a bag or in one's pocket.

III. SAFEGUARD OF NATURE

Article 37: Fakombé is designated Chief of the hunters. He is given the task of protecting the bush and its inhabitants for the happiness of all.

Article 38: Before fire is put to the bush, do not look at the ground, raise your head in direction of the summit of the trees.

Article 39: Domestic animals must be bound during cultivation and released after harvest. Dog, cats, ducks and poultry are not subjected to this measure.

IV. FINAL PROVISIONS

Article 40: Respect family relationships, marriage and neighbor's relationship.

Article 41: kill your enemy, do not humiliate him.

Article 42: In the large assemblies, be satisfied with your own legitimate representatives and tolerate each other.

Article 43: Balla Fasséké Kouyaté is designated great master of ceremonies and principal mediator of the Mandé. He is allowed to joke with all the tribes and in priority with the royal family.

Article 44: All those who transgress these rules will be punished. Everyone bears the task of seeing to their application.

6.

IBN BATTUTA

Voyages, III. India, the Far East, Spain and Sudan, La Découverte/Poche, Paris 1997 (pp. 403- 426, my translation from the French; the sentences in brackets are my comments)

My stay in Iouâlaten was of approximately seven weeks, during which the inhabitants honored me and gave feasts for me.

I saw in Câr sakhoû, in this place of the Nile or Niger, and close to the shore, a crocodile resembling a small boat. One day, having gone towards the Nile to satisfy a need, here

comes a Negro who stands right between me and the river. I was surprised of his bad education, of the lack of decency which he showed. And someone I told that story to said to me: "He behaved thus only out of fear that the crocodile would attack you; he thus placed himself between you and the amphibious animal. »

It happened, during my stay in Mâlli, that the sultan was annoyed with his first wife, Kâçâ, the daughter of his paternal uncle, among the Negroes, the meaning of "Kaça" is queen. She happens to be, in the government, the partner of the sovereign, according to the laws of these people, and her name is pronounced on the pulpit (i.e. the *khutba*, the sermon of Friday – Editor's note), jointly with that of the king.

The condition of these people is astonishing, and its manners are odd. As for the men, they are by no means jealous of their wives; none of them is named after his father; but each one attaches its genealogy to his maternal uncle. The heritage is collected by the sons of the sister of the deceased, to the exclusion of the deceased's own children. I saw this last practice in no other country of the world, but with the heathen Indians of Malabar. However, these Messoûfites are Moslem; they make with exactitude the prayers prescribed by the religious law, study jurisprudence, theology, and learn the Qurân by heart. The women of Messoûfites do not show any feeling of prudishness in the presence of men and they do not veil their face; in spite of that, they do not fail to perform punctually their prayers.

I was one day at one of the sultan's audiences, when a jurist of this country presented himself there, and he was coming from a distant province. He rose in front of the sovereign, and made a long speech; (...). There was beside me a white man who asked me: "Do you know what they said? - No. - The jurist said that, the locusts have come down on their region, one of their holy men visited the spot, he was horrified by the sheer quantity of these insects, and he said: "These locusts are in quite great number! ». One of them answered him: "God sends us to destroy the sowing of the country where injustice prevails." The jurist and the sultan approved the speech of the jurist. »

On this occasion, the sovereign told the commandants: "I am innocent of any kind of injustice, and I punished those among you who made themselves guilty of injustice. Whoever has known of an oppressor without denouncing him to me, let him bear responsibility for the crimes that this delinquent committed. God will draw from him revenge and will ask him account of it. "

Upon hearing these words, the commandants removed their turban of the top of their heads, and declared that they did not have anything to reproach themselves with, neither an act of oppression, nor an injustice.

Another time, I attended the prayer of Friday, when a merchant messoûfite, called Aboû Hafs, and who was also a student or a well-read man, rose and said: "O you who are

present in this mosque, be my witnesses that I am specifically addressing Mensa Soleïman (the sultan) and that I call him to the court of the envoy of God, or Mahomet.” Then several people left the raised platform of the sovereign. They went towards the plaintiff and asked him: “Who made you suffer an injustice? Who took something from you?” He answered: “Menchâ Djou of Iouâtâten, i.e. the governor of that city, he took from me goods of a value of six hundred ducats, and he offered to me, for compensation, one hundred ducats only.” The sultan immediately sent orders requesting the presence of this civil servant. He arrived a few days afterwards. Henceforth, the sultan sent the two parties to a judge. The magistrate ruled in favor of the merchant, who recovered his goods, and that governor was dismissed from his office by the sovereign.

Among the beautiful qualities of this population, we will cite the following ones: The small number of acts of injustice that one observes there; because the Negroes are, of all people, those who detest it the most. Their sultan does not forgive whoever makes himself guilty of injustice.

The complete and general safety which one enjoys in all the country. The traveler, and the sedentary man alike, do not have to be in fear of brigands, robbers, or kidnappers.

Blacks do not confiscate the goods of the white men who die on their land, even if they amount to great treasures. On the contrary, they put them in the care of a trustworthy man among the Whites, until the lawful heirs come and take possession of it.

7.

CORPORAL PUNISHMENT IN SEEREER CUSTOMARY LAW

Lecture of Issa laye THIAW

It seems to me that the informants who claim that the husband had the right to kill his wife and her lover caught *flagrante delicto* are wrong. Myself I was misled when I mentioned in my book entitled “La Femme seereer” (*The Seereer woman*) that: “The husband had the right to kill the lover of his wife, when he was caught in the act in the conjugal home.” (p. 163). In reality, we must understand that there was no public executions as happen in other parts of the world. Caught up in feelings of excessive anger and humiliation, the husband could act under the impetus of a sense of revenge. But once the case is brought to the hands of village elders, they easily resolve the issue amicably. They asked the guilty of adultery to pay the fine set by the wise men. The death sentence of which speak European observers is without doubt a recent judgement. In this connection to this Louis Aujas pointed out the following facts: “Adultery was severely repressed by custom in cases of *flagrante delicto*, the husband had the right to kill the unfaithful wife and her lover. He would then report it immediately to *Bour* (the king), to whom he would pay the blood money by offering a mare, a horse or a sheep. If the adulterous woman was not put to death, *Bour* would impose a fine.” (« *Les Sérères du Sénégal, mœurs et coutumes de droit*

privé» - The Serer of Senegal, manners and customs of private law, Bull. Com. AOF and Sc, 3 jui.sept. 1925, p. 115).

According to the oldest reports, the adulteress would only get a blame or a severe upbraiding by her maternal family. Before the implementation of a kingdom in Siin¹³ (1350-1375), Seereer farmers did not deliver the judgements mentioned by L. Aujas. They settled adultery cases in accordance with the legal rule known as *dak a tiit*.

MBAAX DAK A TIIT or THE RULE OF COMPENSATION

Dak a tiit, or rule of repair of serious misconduct, is a Seereer term composed of the words "*dak*", meaning "to trample", "to stifle", "to repair", and "*diit*" plural "*tiid*" "*tiit*" which means "to panic", "to be afraid", "to be worried". The legal meaning of the term would be the amicable settlement of a lewd case.

When a man caught his wife in *flagrante delicto* with a lover, the offended husband had the right to kill neither his wife nor her partner. He had the option to take the pants (*mbap*) of the lover and attached them to a stick, he would then suspend at the top of the village palavers' tree¹⁴. Passers by who saw a pair of trousers floating on top of the tree would immediately realize that a man had been taken that night. Then, they would look at the pants closely to find out the owner's identity. Once the identification has been made to everyone's satisfaction the *laman* (the head of the village) would call the village elders to convene in order to examine the complaint for adultery lodged by the husband. The *laman* would inform the village elders of the reason why he had summoned them to a meeting. The man charged of adultery or his guardian must accept the criticisms addressed to him and ask forgiveness to the offended husband, and solemnly undertake to pay the fine imposed to him. The custom was that the members of both the offender's maternal and paternal clans would help him pay the fine. The friends also had to bring their material support to the guilty so that he could pay the fine.

The contributions of parents were divided into four parts: two shares were handed over to the offended husband, one share was given to the village head, and the rest was shared among the members of the council of elders who had attended the trial for adultery.

Before leaving the palavers tree, the offender or his guardian would presented his apologies to the audience and to the husband of the unfaithful wife (informant Jaga Fay of the village of Ñaaxar).

The exposition of the pants of the guilty man in a public square was seen as more painful than a beating. That is why those who were thus exposed preferred to end their life rather than continue to live among their own. They could also leave the village to an unknown destination.

¹³ Siin is the name of a Seereer territory in Senegal.

¹⁴ The palaver tree marks the place of the village public meeting place.

The *Daak a tiit* or the indulgent judgement of adultery makes us think about the Indigenous-African jurists' view reported by S. Kandji in a book entitled *Des droits de la femme africaine d'hier à demain* (The rights of African women from yesterday to tomorrow) where he cites Amadou Hampate Ba:

"We apply the law in effect eye for an eye and all corporal punishments prescribed by Islamic law. However, the woman was respected in practice *peule* (..) a free woman would never received blows. When a woman was convicted offence punishable by corporal punishment, beatings were applied on the roof of his case or on an object belonging to him closely. " (*L'Empire Peul du Macina - 1818, 1853*, Amadou Hampaté Bâ and J. Daget, NEA, Abidjan 1984, p. 50)¹⁵

Joseph Ki-Zerbo, asserts that in that Muslim kingdom it was forbidden to beat women. When women were condemned to be whipped, the punishment was performed not on their body but upon the roof of their homes. That everyone could witness it was considered shameful enough for the condemned woman (*Histoire de l'Afrique Noire*, Paris-Hatier 1972, p. 140).

Thus, verse 24 of chapter 4 of the Qorân, which gives the husband the right to beat his wife, and the verse which punishes fornication with beating were not applied to the black African woman in the theocratic Fulani empire, because they went against the dignity and the consideration the African woman enjoyed, even when Islamized (Kandji, pp. 35-36).

The fact that the adulteress loincloth was not exposed alongside his partner's trousers, may be explained by the dignity and respect due to the black woman. As²a matter of fact, our informant did not say a word about the fate of the woman. But we can guess that she was simply upbraided by her relatives.

Even in homicide cases the culprit was not executed. The verdict of homicide gave two options: forgiveness or revenge. The implementation of the latter option was rare.

THE JUDGEMENT OF HOMICIDE CASES

Masnoox boom or *masduk boom* is a Seereer term composed of two words. *Boom* comes from the verb *a booma*, "he has murdered", "he killed someone involuntarily". *Mass!* Is an interjection which expresses compassion for someone who is hurt and even for oneself. It is a term of excuse when one has inadvertently struck or upset someone. It is also a term of condolence when we say "*mas*" or "*a mboyale mas!*".

¹⁵ Amadou Hampate Ba also reported the following anecdote: "It is told that an Ardo (a nobleman in the Peul ethnic group) one day found himself in the presence of a Peul woman who was about to receive a few whacks with a rope. He asked who had decided to mistreat a noble woman so. He was answered that it was according to Qurân law. The Ardo pointed his spear towards the executioner and said : "if you raise your hand on this woman, I'll send you to sleep at the "village of the small flat-roofs" (the cemetery). Then he ordered his men to deliver the convict and he declared to the marabouts (Muslim religious leaders) who were attending the scene: "Avoid from now on to cross my path and tell your Qurân that I won't obey him as long as it doesn't give noble women the respect that is their due."

This term can not put an end to evil nor prevent it, but it can ease the suffering of the bereaved. The following Seereer proverb says: "Saying 'mas! "Can not heal a wound, but it is pleasant for the injured."

Seereer customary law has two verdicts concerning the convicted murderer: the victim's family can forgive, it can also take revenge. An illustration is given by the following ancestral story:

"When there was a murder, the two families and their respective allies gathered outside the village, where the murder had taken place; towards reconciliation and the purification of the earth. This practice is known as "mas duk boom" in Seereer saafi-saafi, or "mas noox boom" in Seereer seh. This term means to express one's compassion and present one's apologies to the victim's family. As customary law instructs: "When a person kills another, the murderer will go to the victim's parents to express his regret and ask forgiveness." Once that is done, the murderer's family should sacrifice a bull at the crime scene and prepare a lot of couscous¹⁶ for the assistance, to apologize to the bereaved family. The bull's liver is grilled on the set and put on the tip of a pointed spear (called *salma*).

The victim's family will then chose a strong healthy man, and entrust him with the role of avenger. Meanwhile the murderer is waiting with his mouth open, and with his parents gathered around him anxiously waiting for the verdict of fate. With his pointed spear, the avenger moves slowly toward the murderer. If the grilled piece of liver is delicately put in the mouth of the latter, it means that he is saved and that the victim's family has forgiven him. The crowd would utter a cry of joy and reconciliation, and eat the meal. The two families seal a pact of blood that makes them become relatives. But if the avenger firmly thrusts his spear into the mouth of the murderer and kills him, the crowd disperses without eating the couscous. That means a definite break of relations and mutual distrust between the two families."

This story has been communicated by Ablaay Gaan Seen, who has received it from his grandfather, the late Demba Njoon Aali, of the village of Duuka-Saange.

8.

WOMEN, LOVE AND FAMILY LIFE IN ANCIENT EGYPT

http://www.ishm2006.hu/abstracts/files/ishmpaper_255.doc

Swarupsinh V. Chavda¹⁷ and Ahmes L. Pahor¹⁸

Women in Ancient Egypt:

The position of women and the respect they attained stems from the religious belief of the ancient Egyptians. There are two main myths of creation, one emanating from Heliopolis

¹⁶ Local dish made of millet flour.

¹⁷ Consultant Neuroradiology, University Hospital, Birmingham, England,

¹⁸ Consultant Oto-Rhino-Laryngology, Birmingham, England.

(Egyptian Iunu, Biblical On, now Ain-Shams meaning the eye of the sun in Arabic, a suburb of Cairo) and the other from Ashmunein (Hermopolis) in Upper Egypt (Manley, 1996, map p. 25). In the first the great god Aton created his own self, and then created two gods whom he married to create two children who in turn married to produce four more children making four marriages and the eight gods (Kareem, 1994). In the second myth there are four pairs of gods and these eight were the origin of all creation (Noblecourt, 1995). Thus in these two myths the primordial god created eight gods with equal numbers of male and female whom in turn created all things thereafter. In the larger system of gods, there were also equal numbers of male and female gods. Thus the equality in sexes was ingrained in the religious belief (Kareem, 1994).

In the book of the dead one of the sins that tilt the scales against the deceased soul in eternity is fornication (Zaki, 1996). The ancient Egyptians believed in the after-life. The soul would enter into a court room presided by Osiris (Figure 1). The heart of the deceased is put on a scale and the feather of justice on the other scale. The deceased is judged by what good and evil he did. If the good is more than evil then he would enter paradise. If the opposite, hell would be his abode.

The first Queen Regent of Egypt was Nitocris (c. 2180 BCE) of the 6th Dynasty at the end of the Old Kingdom. Then was Sobekneferu (c. 1790 BCE) 12th Dynasty at the end of the Middle Kingdom (Watterson, 1991). The third was Queen Hatshepsut in the 18th Dynasty, from 1490 BCE who reigned for 22 years. Some authors hypothesised that she was the princess who adopted Moses, but this is unlikely though the Jews were in Egypt during her reign (Ratie, 1998).

The last of this line of queens was Cleopatra VII (51-30 BCE) who ascended the throne when she was 17 years old and was the last of the Greek ruling Ptolemies. She was charming and intelligent and, as Plutarch stated, knew eight languages including Egyptian, beside her own native Greek (Samson, 1985). She captivated Julius Caesar and Mark Anthony and her affairs ended with Egypt as a Roman colony in 30 BCE.

There are other queens who ruled beside their kings and/or were very powerful. Hetepheres the wife of Snefru the founder of the 4th Dynasty and the mother of Cheops the builder of the great pyramid (Shaw, 2000) was an early example. Cheops had her sarcophagus made of silver as silver then was more precious than gold being less available. This sarcophagus can be seen in the Egyptian Museum in Cairo (Natheer, 1965).

Three queens played a role in the struggle to overthrow the first known invaders of the Kingdom of Egypt, the Hyksos. These were the wives of Tao I, Tao II and Ahmes I the founder of the 18th Dynasty (Watterson, 1991). It is of note that the Royal lineage, and

hence the legitimacy of the ascendancy to the throne, was through the female line (Murray, 1998).

Other positions held by women included the divine wife of Amun in Thebes. Nitocris the Daughter of Psamtek I is the most remarkable of those that held such a position (see above in Late Period). Nitocris was followed by her great niece Ankhnesnefibre daughter of Psamtek II and she in turn was in this position for over 60 years. She was the last to hold such a position as Egypt fell to the Persians at her time in 525 BCE.

Women doctors were known in ancient Egypt. Peseshet was referred to in the Old Kingdom section above. She was overseer of other female doctors in the palace. Another female doctor, Tawe, was referred to in a papyrus from the Ptolemaic period (Fayad, 1996).

Girls and women were involved in sports like swimming, jumping, gymnastics, acrobatics, playing with balls and fishing. Ample examples of these activities can be seen painted on walls of tombs (Natheer, 1965). When boys and girls are portrayed in sporting activities usually they are depicted separately but on occasions together (Janssen and Janssen, 1990). Women looked after their beauty, they had make-up, applied kohl to their eyes, dyed their hair, dressed well, used perfume and jewelry (Fayad and Adeeb, 2000).

Art displayed the affection the pharaohs had for their consorts, and also among the nobles, an intimacy seen nowhere else in the art of the ancient Near East before the first millennium BC (Roberts, 2002).

Women had civil rights. In the late period they could initiate divorce and had legal protection regarding the division of property. A prenuptial agreement was sometimes negotiated in which a woman could list her own possessions on entering a marriage. She could retain these possessions in case of a divorce (Manley, 1996).

Ramses III (1184-1153 BCE) was a defender of women's rights and he used to urge his officials to respect and protect women (Zaki, 1996).

There were severe laws against sexual crimes and prostitution (Zaki, 1996). Diodorus Siculus recounted that rapists would have their male members removed. For fornication the man would receive 1000 whips and the woman would have her nose cut (Zaki, 1996). In earlier periods the punishment for adultery was death (Houssni, 1986). The judgment for false accusation was equal to the judgment of the offence allegedly committed (Houssni, 1986).

DISCUSSION

1. What is the concept of Justice as depicted in each document?
2. Is there a common concept of human right in the laws of Ancient Egypt Middle Age Mali and contemporary Seereer linguistic community?
3. How does capital punishment come across in the various documents? Is it a favoured punishment?
4. What punishment is seen as worse than death or corporal punishment?
5. What is the origin of the people who cast slight upon those who practise handicrafts?
6. What are the common traits in the legal status of women?
7. In what ways do you think Islam, Christian missionaries, the slave trade and colonialism have influenced, if at all, current customary laws?

The Bulgarian Experience on Effective Teaching about Other Cultures and Legal Systems

*Prof. Alexander Vodenitcharov, PhD
Dean of the Faculty of Law and History
Neophit Rilsky South-West University
Blagoevgrad, BULGARIA*

Legal education in the Republic of Bulgaria has a long tradition. It has reflected the changes in the state systems throughout the centuries, the transformations in the legal system, as well as in the concepts of philosophy and higher education, and in the concepts of training law students in particular. In the different historical periods there were a lot of changes, some of which went in dramatically opposite directions. The society transformed from one built on the principles of the capitalistic system into a typical socialistic society with all the totalitarian characteristics inherent to it, and then finally it grew to be a democratic social system regulated by the rules of the market economy.

Now legal education in the country has its foundation on the standard national regulations, as approved by the Council of Ministers. These set 19 obligatory academic subjects, plus the minimal number of classes, which vary from 75 for subjects such as Taxation Law, Insurance Law, Law of Estate, etc., up to 180 classes for Criminal Law, Contractual Law, Administrative Law, etc. This means that the curriculum consists of three elements, the first being the obligatory subjects as set by the Council of Ministers, which provide the fundamental basis of knowledge needed for obtaining the relevant educational and professional degree. The second element are the electives, which provide the students with specialized learning. The third element are the optional subjects, which serve the individual needs and interests of the students. The number of the approved applicants is also to be agreed with the Council of Ministers; the law faculties are of no power to decide on the number themselves.

The accession of Bulgaria to the European Union and the rapid increase of the political and economical collaboration with the other countries have led to the emergence of some brand new requirements, which should be met by the law-students. The process of globalization has brought forward the need of getting profoundly acquainted with the legal systems of the other countries. These objective, as well as some subjective factors call for a radical improvement of legal education. The tendencies of the changes taking place are as follows:

1. Radical changes in the students' lecture load. Those changes are to affect mainly the contents of the lectures delivered: an emphasis should be laid on examining the legal systems of the other countries, as well as on carrying out comparative studies and analyzes. Both aspects have their advantages. By becoming aware of the other legal systems' structure and way of functioning, the students are now able to acknowledge what is pertinent to the sphere of competence of the different legal organs. In regard to the

comparative studies, we see that they aim at outlining the role and the field of operation of the organs in comparison to the Bulgarian institutions. At this point, the problem about choosing the right methodology would seem to be of primal importance. Using visuals proved to be exceptionally useful – for example, viewing images about France’s legal system aroused big interest among the students. And by the means of sliders, containing information about the Bulgarian legal system as compared to the Danish one, the students were able to easily master the new material.

With regard to the above said, it will be wise if our organization takes the initiative to encourage the working out of additional materials that would lend a helping hand to the assistance professors in the course of their professional training.

With a view to becoming acquainted with the legal systems of the other countries, the seminars are also considered of some importance. We have recently put into practice various practical forms, among which simulating law proceeding as being heard by the European Court of Justice have proved to be the most effective ones. During the classes the students discuss real cases, and often become not only much engulfed in the game but also fiercely determined to persuade the rest of the team into the correctness of their ideas. Quite recently the some students participated in one such simulated case dedicated to the fight against drugs in some African countries. While getting ready for the “case hearing” the students did a long and scrutinized research into the legislation of six countries.

Solving cases, taken from the actual practice of the supreme courts of some countries, has proven to be a helpful tool in presenting the academic material to the senior students of law. In class, students had to discuss a couple of cases taken from the Belgium legal practice, which was quite a hard task to handle, for they had to first get acquainted with the laws of the country in question. A Belgium judge was specially invited to attend the discussions. Resolving such cases can be of practical use especially when dealing with International Private Law, Corporate Law, Refugee Law, etc. We have to mention, though, that we are better at organizing various forms of direct and indirect introduction to the European law and the law of the European countries. Still not much is known about the law systems of the countries in the Americas and Asia, and in Australia – in this respect our organization can offer a helping hand.

2. More efforts are being put into making the studying process more personalized and changing the role of the student from that of an object of the educational process into a subject. For some time now we have had the practice of assigning papers (on a competitive principle), which aim at investigating into the legal systems of various countries. Thus students can obtain a more profound knowledge about each system’s specific characteristics, and what is more, they are much more resolute and ambitious to write a good paper based because of the competitive nature of the assignment.

Other helpful methodological tools are or game-organizing game-quizzes with questions about the legislative systems of other countries, and setting up study groups led by a lecturer of European Competitive Law, Muslim Law, Common Law, etc.

A huge role is ascribed to libraries, that is why we have been trying to make their activity correspondent to the needs of the students. We receive a considerable amount of specialized foreign literature on a monthly basis, which, however, we consider to be inadequate to meet all the needs we have. Still much has been done in an attempt to expand the scope of the library activities, so that every student can find the volume one is interested in. There is also free access to the internet. But we are not yet satisfied with the assistance we can offer our students – actually they have to manage by themselves. It will be of mutual interest if we start exchanging information on relevant web-addresses.

3. We strive toward bettering the staff's methodological skills. It is beyond doubt that the human factor is of primal importance when it comes down to efficiently examining the other legal systems. We know that the students' interest in the subject matter depend mostly on the way the university instructor delivers the lecture. That is why newly employed-assistant professors are supposed to pass a one-week training course organized in September each year. Every three months all the instructors of the law department are given specialized methodological seminars.

For all the reasons mentioned above we do believe that the present conference will play a significant role for the further enhancement of the legal education's efficiency.

Effective Techniques for Teaching about other Cultures and Legal Systems

Flávia Piovesan¹

Pontifícia Universidade Católica de São Paulo

1. Introduction

As professor of Human Rights at the Catholic University of São Paulo, the purpose of my discipline has been the study of global and regional human rights protection systems, focusing on normative and jurisprudential aspects from a critical and questioning perspective that includes historical, political, social and cultural aspects. Special emphasis is given to the discussion of values associated with human rights. The vocation of the subject I teach involves, therefore, the comparative study of other cultures and legal systems. My students are legal professionals (lawyers, judges, human rights advocates, prosecutors) from Brazil and other Portuguese-speaking countries, including Mozambique, Angola and East Timor.

Having students adopt this international and comparative approach is a challenge in Brazil because the country's legal culture is still self-centred and self-referenced, and rooted in domestic legal notions. Few court decisions, for instance, enforce international human rights treaties, international jurisprudence, or other nations' jurisprudence. Unlike what is seen in Western Europe today, where the contemporary mark is of horizontal and vertical dialogue in the field of constitutional jurisdiction, leading local court decisions to be guided by decisions issued by courts of other countries or international courts – such as the European Human Rights Court – in Brazil only incipient efforts are made towards embracing International Law and Comparative Law.

I will address here those techniques that I have found to be effective for teaching about other cultures and legal systems in my experience as human rights professor in this challenging environment.

2. Effective Techniques for teaching about other cultures and legal systems

I will highlight six teaching techniques that have proven effective in my experience teaching about other cultures and legal systems:

a) Lectures that encourage discussion and student participation

Key topics in the human rights agenda are introduced first with background reading materials from diverse sources and then with lectures, when students are encouraged to participate actively.

¹ Professor of Constitutional Law and Human Rights Law, *Pontifícia Universidade Católica de São Paulo*, Professor of Human Rights in the Post Graduation Courses at the *Pontifícia Universidade Católica de São Paulo*, the *Pontifícia Universidade Católica do Paraná* and the *Universidad Pablo de Olavide* (Seville, Spain); member of the governing board of the International Association of Law Schools (IALS), visiting fellow of the Human Rights Program at Harvard Law School (1995 and 2000), visiting fellow at the Centre for Brazilian Studies at Oxford University (2005), visiting fellow at the Max Planck Institute (Heidelberg, 2007-2008)

Applying the the Socratic method, the lectures focus more on questions than on answers, thereby engaging students and requiring them to play an active role in class.

It is important to always impact students with current facts and figures that can help them to have a better picture of, for instance, human rights violations in Brazil and in the world, aiming at switching from normative abstraction to concrete reality, considering that the normative text must be understood in the social context in which it is applied.

b) Seminars led by students

In the beginning of the course, different human rights topics (such as, for instance, racial discrimination, fight against torture, protection of children's rights, etc.) are assigned to students for them to prepare seminars. Students are also asked to identify three thought-provoking key issues related to their topic to be discussed in class.

c) Debate about controversial theses

During this activity, the class is divided into two groups, who must argue for opposite positions (e.g., ban on vs. right to wear the Islamic veil; ban on women's genital mutilation vs. respect for this cultural practice; promotion vs. elimination of quotas for African-descendants in Universities).

The debates that ensue are always heated and are a great opportunity for an in-depth reflection on chosen topics from different vantage points. A fruitful educational exercise comprises assigning to students who are personally against specific ideas the task of defending those very ideas.

d) Simulation of cases

In this activity we simulate human rights violations cases being examined by international bodies, such as the Inter-American Commission on Human Rights, the European Court of Human Rights, or the African Commission on Human and Peoples' Rights.

Students work in groups that represent different players: an NGO that submits a petition to a regional body, a State that argues the case, or a member of the international organisation that is looking into the case.

In such exercises, not only do students gain a better understanding of the dynamics of international process cases, but also have the opportunity to participate actively and creatively.

e) Participation of foreign students and professors

Because of an exchange student program, the Human Rights course is also attended by students from countries other than Brazil, including Angola, Mozambique, Guinea, and Timor. These students can share their experiences in their countries, cultural practices, customs, and different perspectives on human rights issues. The experience has been highly valuable.

Also fruitful is the participation of foreign professors who come as guests to teach classes at the course, then revealing different realities, prospects, and problems.

f) Comparative analysis

The human rights course encourages comparative analysis when it approaches, for instance, regional human rights protection systems, such as the European, the Inter-American, and the African regional systems, as well as the incipient efforts for the establishment of Arab and Asian systems, considering their different historic background, different degrees of institutionalisation, different jurisprudences, and different impact on local orders. The strengths and weaknesses of each system are highlighted, with a view to promoting inter-regional dialogue to enhance these systems.

The comparative perspective allows us, in addition to knowing “the other” as "diverse" and "different", more importantly, to better understand ourselves, seeing clearly that laws result from historic constructions and inventions that are subject to be reconstructed.

3. Conclusion

Globalization bears an impact on legal courses, allowing professors to introduce new contexts, cultures, and different legal systems to students.

Inspired by the value of respect for diversity, both professors and students can develop a better understanding of their own cultural identities and learn more about plural and diverse identities. The potential is there for the emancipatory and transforming power of cross cultural dialogue to be engaged, with the hope that we can move from a "clash of civilizations" to a "dialogue among civilizations".

EFFECTIVE TECHNIQUES FOR TEACHING ABOUT OTHER CULTURES AND LEGAL SYSTEMS

COLOMBIA AS A GENUINE CULTURE TO TEACH LAW

*ERNESTO LUCENA
UNIVERSIDAD SEGIO ARBODELA*

Universal history has shown that education was, is and will be the most important instrument for the development of individuals and society, but techniques make no sense if culture is set aside. Colombia's history has not been the exception, specially when for the past two hundred years of independent history many variables have affected the development of our legal system. This has made teaching difficult even in the most trivial topics of law.

Since august 7th 1819 our country was immediately divided in two political parties (federalists and centralists), this made the intellectuals and legal practitioners develop many different conceptions of our legal culture. The influence of Roman and French law has been the basic scheme for the universities to teach law. Codification origins have ruled judges, politicians, teachers, and all those involved with this career. This puts us on the traditional occidental view of how to teach and use techniques to assemble curriculums and programs in Colombia. For this reason we do not differ from most Latin American and European legal structures. The real important factors to analyze and to take in to account are the individual political, cultural and social circumstances of each country and their impact on the legal mind scheme of students.

Given the complexity of Colombia's history and problems, it's a particular and very genuine case of study. In this manner teaching and developing proper legal programs, is not only a regular and basic issue. The real task of institutions and professors is to do a sociological research of the environment where the future lawyers are going to work. This means that the proper ways to satisfy the needs of this individuals has to be and integral and interdisciplinary technique.

First of all, violence has been a determining variable that impregnated Colombian society and has disoriented individual and community values. Ethics has become subjective case bringing a collapse in the moral interpretation of law. When students enter a law school their teachers have to be very careful as to what to include in their programs. Giving basic historical, moral and ethical subjects has to be and obligatory task. Today in our educational curriculums a student has to first reinforce his fundamental humanistic side rather than learn a basic topic of law. As said before violence and violent cultures affect directly the minds and the ideas of how law has to be practiced. Colombia has lived 40 years of continued guerrilla, paramilitary and drug traffic terrorism this has made people very insecure not only physically but mentally. Things like everyday killings, kidnappings, extortions and all other forms of criminal conducts, make people evaluate

negatively law areas like fundamental rights, civil rights, government institutions etc. Also common grounds on essential coexistence between individuals have been lost, directly affecting educational institutions and all its community. For this reason the adaptation of curriculums have to tend to areas of knowledge such as philosophy, general culture, ethics and history during the first year at school.

The second important variable and circumstance that has had great impact on education has been corruption. For the past 3 decades politicians and public employees, in a very big percentage, have drained state budget, making Colombian society completely skeptical of institutions and all the governing law. Our actual constitution, made in 1991, was a product of a peace process between a guerrilla group, and the two traditional political parties bringing one of the longest constitutions in the world (380 articles) and also one of the most confusing. Again law schools, in a great majority, have not prepared either teachers or students to adapt to these realities and specially to successfully resolve their professional day to day problems. Corruption has become an “institutionalized practice” making young lawyers vulnerable if they don’t have a strong ethical and moral background.

Having presented above two of the most significant problems of Colombian society and specially Colombian lawyers, solutions have to be presented. Teaching techniques have to start with very close interpersonal relationships between students, professors and directives. This means knowing personal backgrounds so that a proper assessment on how to handle each individual case, can be made. Then the programs on each subject have evaluated with them (students and directives) in order to create responsibility towards the quality and the quantity. Consequently, classes become two way disciplines that enable students to participate and loose the fear to interact. Also, teachers have to procure to attend their problems in a manner that helps them prepare for real life. Using mechanisms and activities that reinforce teamwork, cooperation and human values, for example: workshops, extracurricular activities, models of real life institutions (U.N., Congress, Moot Courts, and Festivals), makes students feel identified not only with the class but with the university.

Another essential aspect is to instill discipline and responsibility from an ethical point a view. Fear cannot be a way in which professors manipulate pupils to do work or assist to class. When they are permitted to understand the importance of discipline and responsibility as a way to become better people their own self esteem raises, favoring integral education. For Colombian students universities become a second home and they want to feel safe spiritually and intellectually when interacting with the community.

This is why teaching techniques have to adapt to many variables, not only academic but historical, social and political. People and countries are a product of these variables and when it is successfully understood by them, societies have a tendency to change. Cultures have a direct impact on curriculums, programs and legal frameworks, in that sense if academic institutions absorb it as part of a way of life, helping students learn, becomes

easier. Taking this into account, structures and techniques for the short and long term becomes adequate in the formation of integral pupils. After all, this has to be the fundamental goal pursued by law schools all over the world. Specific techniques make no sense if cultures are set aside.

Mayo 13 de 2008

TO BUILD A SYSTEM OF EDUCATION OF LAW IN INDONESIA

*Hendra Tanu Atmadja**
(UNTAG) Jakarta University

The ideally high quality stratified education in Indonesia is the one extending from the lowest to the highest level of study (from Elementary School to University). These levels represent the significant part of education technology, which is the essential aspect of quality education. In the education technology (formally known as Didactic and Educational Method) there are three teaching systems (method and technique) that have already developed: teaching, teaching-and-learning, and learning-to-learn. Education in Indonesia had used 'teaching' since the Dutch colonial era. This system was developed based on a paternalistic view in the former education. Until the 1960's, 'teaching' is a perceivably dominant education system in Indonesia. The Active Students' Learning Method (known as CBSA System) adopted in the 1970's was not expanding as expected.

In the 1990's, the learning-to-learn system was introduced. This system is the vital part of quality education. An excellent learning-to-learn system could be regarded as the processes of educational service that stimulate the student's various potentials to grow and develop well independently. Under this system, the teacher typically functions as a motivator and facilitator. Thus, students grow and become independent; and self-independence is the main quality target in the learning-to-learn system. Teaching is no longer a one-way process, from teacher to students, but a two-way process in the form of answers and discussions. Students are motivated to raise questions and express their opinions. Certainly the students' age levels should be considered. Beside performing the classroom activities, they are also motivated and facilitated to observe the environment and the community life, including the business realm.

The essential of education by learning is a process of curriculum implementation. Therefore, the quality attainment would also depend on the curriculum. Since curriculum is considered as part of the strategic plan of an educational institution, the learning is part of an Annual Plan. For this reason, the learning should be excellent, and accordingly the term 'quality learning' is used. In quality education, learning means quality learning. There are three principal plans of learning: *first*, Learning Quality Design (*RMP*), which contains the principles of leaning contents for each session during one semester, if a semester system has been adopted. The *RMP* is formulated on the basis of curriculum and general syllabus (if any). At the University, this *RMP* is called as Lecturing Quality Design, which makes up a lecturing contract to be distributed to each student at the beginning of semester; *second*,

* Dean School of Law, 17th August 1945 Jakarta, Indonesia (UNTAG Jakarta).

Presentation Material Unit (*SMS*), the primary content of which is the description of the learning subjects (topics) contained in the *RMP* to be presented in the classroom at each session, and *third*, Transparent Material (*MT*), which contains the subjects of presentation based on the *SMS* and written on transparent material that will be displayed on OHP screens (if possible). *RMP*, *SMS*, and *MT* are fully the services (products of teachers/ lecturers). If teachers/lecturers always develop these three types of learning plan, they will be able to write excellent teaching books.

In the application of a quality education standard, the education quality planning and the understanding of the education quality outlined above gives an implication on the need for education quality standardization and planning. In the business circles, a quality standardization has currently been applied, mainly the management quality resulting in such a quality standard as ISO-9000. This kind of standardization need also be applied in the educational area comprising the seven^{*)} educational products mentioned earlier and their supporting facilities and infrastructures. The standardization could also be made on the basis of the eleven^{*)} attributes of education quality described above.

Education in Indonesia has four educational strata: *first*, primary education, public or private, such as Elementary School (*SD*), which includes religious primary education such as Islamic Elementary School (*Ibtidaiyah*) and similar schools. *Second*, lower secondary education, comprising public lower secondary education, such as Public Junior High School (*SMPN*) and private lower secondary education, general, or religious, such as Islamic Junior High School (*Tsanawiyah*) and similar schools. *Third*, upper secondary education comprising public upper secondary education such as Public Senior High School (*SMA/SMU*) and general/vocational, or religious, private upper secondary education, such as Islamic Senior High School (*Aliyah*) and similar schools, and *fourth*, tertiary education comprising public tertiary education such as state or private universities (general, or religious), with the following levels of study: Diploma Program, Strata I (*SI*) Program, Magistrate (*S2*) Program, and Doctorate Program, particularly in legal science.

Providing a classroom atmosphere that is enjoyable for the students to learn is the main priority in performing the School-Based Management. However, this activity cannot stand alone, rather, it involves all potentials of the teachers and the manner the schoolmaster manages the school. The readiness of the teachers to teach is one of the indicators as to whether they could create an enjoyable atmosphere or not. Then the teachers should note the number of students and how the desks and chairs should be arranged in the classroom to make the learning condition enjoyable. In such a condition, the teachers' ability is determinant: What should be done first they encounter students' certain circumstances in the class, and then how to set the sequence of activities to avoid any chaos situation. Every teacher should improve his/her emotional intelligence, often known as instincts and feelings, be responsive to any indications of tiresome shown by the students. This ability needs to be practiced on a continuous basis because the students they will handle always have different characters.

Recently the Department of National Education, in this regard the Directorate General of Primary and Secondary Education of the Republic of Indonesia, has introduced a new concept of education and the management of education, which seemed to be quality oriented as contemplated above, i.e., Community-Based Education (*PBK*), School-Based Management (*MBS*), and Competence-Based Curriculum (*KBK*) or...^{*)} Effective and Pleasant Education. Besides, the expression 'service' in term of education has also been introduced.

Principally, education is a matter of service in the form of circular, rather than linear processes. The product of service has essential meaning: a good/meritorious act that is sincerely and heartedly performed to meet the needs of others to their satisfaction. Further, this meaning implies the existence of: *first*, servant (who serves) and customer (who is served); *second*, good and reciprocal relationship between the servant and the customer; *third*, dialogic, democratic and open minded human relations, and *fourth*, honesty, sincerity and integrity in serving or being served. These are the essentials of the service product, in the context of quality education, not business like, which is commercial in nature. In this context, the informal education within the family is also informal service. Parents serve their children what they need until they are grown up. Reciprocally, the children serve their parents by giving responds and even helping them in the future. The parents and children are serving each other compassionately. This kind of relationship is also built between teachers/lecturers and education administrators and students. They are serving each other compassionately. To live in a society is in fact to serve each other compassionately. These are the values of egoism that grow and develop through the education taken as service.

In line with the foregoing concept, and from management point of view, the educational institutions (schools, universities/colleges, etc.) are basically a service industry like hospitals or hotels. However, once again, the difference lies with their main objectives, which, in the educational institutions as a service industry, are not a financial investment, and that the education is a system consisting of various integrated components, meaning that they are interrelated and supportive to each other. These components are, among other things, basic policies (laws, statutory regulations, etc.), human resources (teachers/lecturers, supporting personnel, administration staff), facilities and infrastructures.

The quality of education is the suitability/conformity of its product attributes with the needs of its customers, either the primary, secondary or the tertiary customers/users. The educational institutions' graduates are the source of distribution of pedagogic values, which they gained through the five educational services they have experienced and become their competence, to the public in general, mainly to the business world where they are employed, or, if they run their own business, to the employment sector. It is for this particular reason that graduates are called as the partial products of educational institutions.

In conclusion, a quality educational institution is the one which is able to generate educational products, mainly the five products described above, which suit the needs of education customers, so the graduates have the competence that satisfy the needs of the community, business and employment sector. Under this concept, the quality of education is

not measured merely based on the absorbability of the students and the number of graduates, but mainly based on the conformity of the educational attributes with the needs of customers stated above. Since these attributes constitute an indicator of quality of education products, they are also called as attributes of education quality.

BIBLIOGRAPHY

- Department of Education and Culture, Language Development and Advancement Center, the Republic of Indonesia, *Kamus Bahasa Indonesia II*, (Indonesian Language Dictionary II), Jakarta: Gramedia (Publisher), 1993.
- Bell, Daniel, *On Meritocracy and Equality in Education*, Karabel et al (eds), New York: Oxford University Press, 1978.
- Berquist, William H. *Quality Through Access, Access With Quality: The New Imperative For Higher Education*, San Fransisco: Jersey Bass Publishers, 1995.
- Comesky, Robert. *The Quality Professor; Implementing TQM in the Classroom*. Madison: Magna Publication Inc., 1993.
- Darmaningtyas. *Apa Yang Salah Dalam Penanganan Pendidikan di Indonesia* (What is Wrong in Dealing with Education in Indonesia). Seminar, IBI, Jakarta, May 12, 2005.
- Deddy Supriady. *Otonomi Penyelenggaraan Pemerintah Daerah* (Autonomy in the Regional Government Administration), Jakarta: Gramedia Pustaka Utama (Publisher), 2001.
- Fsli Jalal and Deddy Supriady, *Reformasi Pendidikan dalam Konteks Otonomi Pendidikan* (Reformation of Education in the Context of Educational Autonomy), Yogyakarta: Adicita karya Nusa (Publisher), 2001.
- Rinerhart, Gray. *Quality Education*, Milwaikee: ASQC Quality Press, 1993.
- Suyanto. *Reformasi Pendidikan Melalui Otonomi Pendidikan* (Educational Reformation through Educational Autonomy). Kompas Daily, November 7, 2001.
- Sulaiman, Abdullah, *Sistem Pendidikan Hukum Dalam Reformasi Humum Secara Nasional Untuk Mengantisipasi Perkembangan Arus Global* (Law Education System in the National Reformation of Law to Anticipate the Development of Global Relations), Law Reformation Journal, Universitas Islam Jakarta, Vol. 2, 1999.
- Kompas Daily, *Manajemen Berbasis Sekolah Segera Diberlakukan* (School-Based Management to be Applied Immediately), September 26, 2001.
- Tampubolon, Daulat P. *Perguruan Tinggi Bermutu: Suatu Reformasi Manajemen Pendidikan* (Quality Tertiary Educational Institution: Reformation of Education Management), Paper, IBBI, Jakarta, May 12, 2005.
- Tilaar, HAR, *Paradigma Baru Pendidikan Nasional* (New Paradigm of National Education), Jakarta: Rineka Cipta (Publisher), 2000.

**THE LAW AND LANGUAGE PROGRAM
(FACULTY OF LAW, TRENTO UNIVERSITY, ITALY).**

LEGAL EDUCATION FOR LEGAL TRANSLATION.

Elena Ioriatti Ferrari – Faculty of Law, Trento, Italy.

1. The background to the Law and Language Program.

Nowadays in Europe the close relationship between law and language can be taken for granted¹.

This relationship may be considered as one of the cornerstones of the harmonisation and unification process of the law in Europe: since language is the means of expressing the law², any attempt at harmonisation or unification of the law in Europe must inevitably go through a translation process.

However, it is well known that translating legal terms causes more difficulty than translating information to do with other sciences³: since words express concepts, the translation of a word with another word is possible to the extent that the two words express the same concept. But, as distinct from what happens in sciences such as biology or medicine, in law there is not necessarily a correspondence between a word and a concept in all the different European legal systems⁴ and frequently within a single language there is not just one uniform legal jargon⁵.

Furthermore, legal terms of European Community Law (EC law) often are not translated literally, but by means of a neologism, that's to say a new word which has been expressly created by the translators at Community level, in all the official languages of the European

¹ R. SACCO, *Langue et Droit*, in *Les Multiples Langues du Droit Européen Uniforme*, Torino, 1999, p. 163. R.L. Creech, *Law and Language in the European Union. The Paradox of a Babel "United in Diversity"*, Europa Law Publishing, 2005.

² R. SACCO, *Einführung in die Rechtsvergleichung*, 2001, p. 34; V. Heutger, *Law and language in the European Union*, *Global Jurist Frontiers*, 2003, Vol 3, Issue 1.

³ G. R. DE GROOT, *Language and Law*, in *Netherlands Report to the Fifteenth International Congress of Comparative Law*, Atwerp/Groninge, 1998, p. 22. The problems of legal translation have stimulated an increase in both legal and linguistic literature in this field. See for references in M.J. CAMPANA, *Vers un langage juridique commun en Europe*, *European Review of Private Law*, 2000, p. 37, footnote n. 13.

⁴ B. POZZO, *Harmonising of European Contract Law and the Need of Creating a Common Terminology*, *European Review of Private Law*, 2003, p. 756 ff. Finally, as an example the concepts of offer and acceptance see S. CHATILLON, *Droit et Langue*, R.I.D.C., 2002, 3, p. 692.

⁵ See G. R. DE GROOT, *The quality of bilingual legal dictionaries*, (Editorial), *Maastricht Journal of Comparative Law*, 2000, p. 331.

Community, with the scope of introducing the same legal concept in all the Member States.

Because of the system-bound character of legal language, it is clear that the difficulties of legal translation can be managed only by jurists trained on the basis of a proper methodology⁶.

Given the increasing importance of supranational law, a basic knowledge of the techniques and instruments of legal translation should be part of the core curricula of any European jurist.

In fact European supranational integration and the globalization of social, economic and cultural relations require jurists to have an appropriate background, and they must achieve a basic ability to handle all the current legal terminologies in legal relationships: national, foreign, EC and international.

These brief observations on the relationship between legal translation and legal education are intended to contribute to the understanding of the background and structure of the specific education program at the University of Trento's Faculty of Law – the “Law and Language Program” – and of the different choices which underlie this methodology, reflecting different levels of complexity and the different techniques which should be distinguished in teaching legal translation.

2. The basis of the Law and Language Program.

Since its creation, the educational philosophy central to Trento University's Faculty of Law has been inspired by the idea that studying and understanding legal phenomena must also include comparison with other legal systems and supranational organisations; therefore foreign language instruction has always played an important role in the curricula of Trento's law students. This cultural choice has also been influenced by the geographical location of the University in Trentino Alto Adige, an Italian region where four different languages are currently spoken (Italian, German, Ladino and Mocheno-Cimbro).

The knowledge of at least one foreign language is compulsory for Trento's Law students, who can choose between French, Spanish, English, German, Russian and Chinese.

Besides the language courses, a specific legal language program has been created in cooperation with the Interfaculty Language Center in order to offer students the chance to attend courses in legal French, Spanish, German English and, so far as foreign students attending Trento Faculty are concerned, Italian for law. Each of these courses is offered entirely in the relevant foreign language by a teacher who is a native speaker and provides

⁶ R. SACCO, *Entry “Traduzione giuridica”*, in *Digesto IV*, ed., Vol. Aggiornamento, Torino, Utet, p. 726. From a linguistic point of view, translation implies the research of the meaning of the word to be translated and the simultaneous search of a word suitable of rendering that meaning in the language of the translation. It has been underlined that in the case of legal translation, both the first and the second operation can be done by a jurist, but the two operations together have to be fulfilled by a jurist who is able to decide whether two ideas originating in two different legal systems correspond, *Ibidem*.

a general overview of the specificity of legal terminology (or of the legal terminologies) of each legal language.

3. The structure of the Law and Language Program.

After an initial introduction to language and legal language, the program focuses more specifically on legal translation.

Teaching this important but, at the same time rather new, subject means being aware of its special features.

- a) A significant point concerns the different categories of legal translation, depending on the kind of legal information which is to be transferred: the rules of a national system in a different language or the different types of EC rules into the language of the Member States.

The translation of a legal system into a different language, with the aim of rendering this system understandable to all the other foreign jurists, is an operation which has been called “transposition”: this operation implies not only the translation, but also the shift from one system to a different system and the consequent judicious use of comparison⁷. Frequently, specific techniques must be adopted in order to overcome the different meaning of a concept in two or more legal systems, such as homologation⁸.

These techniques are taught to students from their second year onwards, as part of a compulsory course – “Comparative legal systems”, whose content specifically includes comparative law methodology and legal translation.

- b) A further level of complexity is the case of the transposition of the EC rules into national law.

While most EC legislation falls within the so-called “technical sectors”, which deal with harmonisation and uniformisation of branches of law containing mainly factual concepts (e.g. the agricultural market), the terms contained in the directives and regulations enacted in the area of private law, and particularly contract law, contain culture-bound concepts: given the specific features of private law, which deals with basic social relationships, these concepts are very abstract⁹ and represent different meanings related to the presence in Europe of two distinct legal families, the Civil tradition and the Common Law. Therefore,

⁷ E. DIDIER, *La traduction juridique en Europe. État et perspective del la Common Law en Français (CLEF) et du Droit Civil en Anglais (DCA)*, in *Les multiples langues du droit européen uniforme*, Torino, 1999, p. 37.

⁸ R. SACCO, *Legal Formants: a Dynamic Approach to Comparative Law (Instalment II of II)*, American Journal of Comparative Law, 1991.

⁹ A. GAMBARO, *The Plan d’Action of the European Commission – A Comment*, *European Review of Private law*, 2003, p. 774.

translating EC legislation in the area of contract law means confronting the problems arising from the absence of legal categories common to all European legal systems¹⁰.

As a consequence, a new legal terminology has been created at European level, consisting of words (neologisms) expressed in all the official languages, which have new or different meanings when compared to the national legal terminology of the Member States: for example the *habitual residence* - *residenza abituale* in Italian, *résidence habituelle* in French, *gewöhnlicher Aufenthalt* in German - is a new concept with a specific Community meaning, which does not coincide, for example, with the Italian concept of “residenza” (art. 43 Italian civil code).

This new terminology is imparted to students in the course of some practical language workshop sessions, during which, with the aim of ensuring fuller understanding of the problems and techniques of legal translation of EU law, the teaching activity is complemented by seminars held by a professor of linguistics, a translator and a lawyer-linguist of the Council of the EU. Lectures are offered on EC terminology relating to either French or English.

2) Secondly, an education program for legal translation cannot be efficient unless it is based on the reality of language use in European and International contexts.

It is indisputable that nowadays English is the most widely-used language in Europe both by the citizens¹¹ and also by two of the European Institutions (the Commission and the European Council). According to Fletcher¹² this language is also becoming the dominant source of the new world-wide legal terminology. Even if the spontaneous trend towards English as the language of European and international legal relationships is a reality – and as legal professions in Europe¹³ are still mainly organised on a national basis – the legal language program is currently offered not only in English but also in French.

For example: students who choose French as their first foreign language may start learning the general language, as well as French legal language, during their first and second years of studies. Still in the course of the second year, while attending the course in Comparative legal systems, students can acquire a preliminary understanding of the

¹⁰ *Ibidem*. See also A. GAMBARO, *Interpretation of Multilingual Legislative Texts*, in *European Journal of Comparative Law*, 2007.

¹¹ According to the European Commission, (http://europa.eu.int/comm/education/policies/lang/languages/index_en.html) after the enlargement of May 1st 2004, the total proportion of European citizens speaking English in the EU (as mother tongue or as a foreign language) is 47%. Therefore this language still remains the most widely spoken one in the European Community. When asked what language the European citizens find most useful, beside their mother tongue, most people answered English (69%), followed by French and German. It is also interesting to note that 45% of European citizens can take part in a conversation in a language other than their mother tongue.

¹² G.P. FLETCHER, *Fair and Reasonable. A Linguistic Glimpse into the American Legal Mind*, in *Les multiples langues du droit européen uniforme*, Harmattan, 1999, p. 60.

¹³ See R. TONIATTI, *The European lawyer: phantom and reality?*, *International Journal of the Legal Profession*, vol.9, n. 2, 2002, p. 95 ff.

general problems of legal translation and can continue their studies in this field by following the practical language workshop sessions on French Community terminology.

In the near future, the complete program could be extended to include Spanish and German, by adding practical language workshop sessions of EC law terminology as expressed in these languages.

Students can further explore issues relating to legal translation theory by following a series of lectures offered in the framework of the PhD School of Comparative and European Legal Studies. Lectures are intended for PhD students but are also open to students of the Law School. Single topics are offered by foreign experts in different languages and concern mostly the methodology of legal translation and the connexion between translation and interpretation.

Moreover, seminars and conferences on legal translation are organised every year (La traduzione del diritto comunitario ed europeo:
<http://www.jus.unitn.it/dsg/convegni/2006/traduz/home.html> Interpretazione ed traduzione del diritto: ed <http://www.jus.unitn.it/dsg/convegni/2007/interpretazione/home.html>) also in collaboration with lawyers employed within the EC institutions.

Teaching in a multi-cultural environment: Promoting a culture of tolerance and mutual understanding.

Mustaqeem de Gama
University of Stellenbosch

Introduction

Knowledge is power and often times this aspect of teaching is not properly asserted. Cultural misconceptions are a result of ignorance. South Africa is emerging from a period of racial oppression during which a large part of the population was disenfranchised. Both a private and public level the scars of three hundred year of oppression are still clearly visible. The process of healing has begun, and as educators, we have taken it upon ourselves to implement curricula that contribute to this process. The political settlement that was reached after the transfer of power to the new government required that the truth be told about past atrocities. This resulted in the now world famous Truth and Reconciliation Commission that was chaired by Bishop Desmond Tutu. The result of this commission was that victims of the system of Apartheid could get closure with regard to such atrocities. In such a system, the values, belief and practices of others were demeaned and disregarded. The education system must promote a common respect for culture and right to a cultural identity.

Language as a tool for healing

Culture is probably the most important consideration when teaching at a South African institution. The Republic of South Africa recognizes 11 official languages. I teach at a historically Afrikaans¹ (language spoken mostly by people of white and mixed descent) which requires an acute awareness not only of language, but also other cultural values. Most of the students who attend this university are white and Afrikaans speaking. There is also minority student body prefer English as a primary medium of instruction. The official university policy is that all undergraduate lectures should be conducted in Afrikaans, or to be more precise – predominantly Afrikaans. The interpretation of this requirement has varied from faculty to faculty. Some faculties interpret this to mean those lectures are to be conducted in Afrikaans only. Others have created parallel medium classes that separate English and Afrikaans speaking students. This later approach has severe cost implications and is not commonly done. In the law faculty, where I teach, we have taken the approach that all English speaking students would have to be accommodated.

¹ Afrikaans is essentially 16th century Dutch as influenced by some African and Eastern languages. It is very different from any of the Nguni languages spoken by indigenous peoples of the region.

Most of the members of staff at the law faculty practice what we call “concurrent language teaching”. We endeavour to teach both languages in the same lecture, taking into account the “predominantly Afrikaans” requirement set by the university. All materials are produced in both languages and students may choose which language they want to be examined in. English speaking students are further accommodated with separate tutorials conducted in English.

This approach is not optimal for various reasons. However, since dual language use is promoted through such a compromise, one invariably finds a mix of students with various cultural, religious or racial backgrounds. Since language can be a tool that promotes certain values of belief, it is of critical importance to take note of such differences that have been alluded to above. The ability to use both languages correctly is a *sine qua non* for introducing and operating a current dual medium approach. The use of examples to illustrate legal problems may also create tension if the cultural context is not taken into account. In order to sensitize both new and existing staff members diversity workshops have been conducted to bring across this message. Interaction with students is not limited to the class room.

Cultural and religious practices: What happens outside the classroom?

Most interaction occurs outside of the classroom and here to the cultural context of interaction must be taken into account. A few examples here may be of value. Students sometimes fall ill and cannot write a test or an exam. The university regulations state that students must submit a doctor’s certificate in order to qualify for an alternative test. Since some of our students come from rural areas with very strong cultural identities, it is not surprising that some of them will submit a “sick note” or certificate that has been issued by a traditional healer. Until recently, the status of traditional healers has been dubious in South Africa. For most rural people the traditional healer is the only person they can turn to when they become ill. The university has not taken note of this fact and certificates issued by traditional healers are not accepted.

In recent years the issue of cultural or religious holidays and practices has been hotly debated. For Muslim students who write examination during *Ramdaan*, it is essential to break their fast at precisely the right time. Since the practice is to write examinations towards the evening, Muslim students are often busy writing exams when the time comes to break their fast. Such students are now accommodated through a system of supervision that provides *Iftar* and a *jamaat khana* where the communal prayers may be said. During this time, the examination is interrupted and resumed 20 minutes later. Religious holidays for Hindus² and Muslims are accommodated within the academic calendar.

² South Africa has the largest expatriate Indian community outside of India.

Changes have occurred in the way we approach cultural difference and how we teach with those differences in mind. It is hoped that the positive examples cited above is testimony to endeavours to take culture into account within our curriculum. Canada is perhaps a good example of a country where different cultures co-exist in a bilingual setting. It the ideal place for people from around the world to get together and to discuss their approaches to culture. Globalization has brought us closer together in many ways, but it has also exacerbated perceived difference between peoples. Organizations such as the IALS are perfect platforms to further engage other people and learn from their experiences.

Effective Techniques for Teaching Anglo-American Legal System in Turkish Legal Education

*Dr. Sibel Hacimahmutoglu**
Hacettepe University Faculty of Law

Introduction

Following establishment of the Republic of Turkey in 1923, one of the most important developments in Turkish legal history was the adoption of the Civil Code and the Code of Obligations of Switzerland in 1926. Since the Swiss Civil Code enacted in 1912 had been influenced by Roman-German legal systems, Turkish legal system has necessarily been built on the foundation of Roman law or Continental legal system. For example, the separation of the public and private law in Turkish legal system relies on Roman law tradition. Statutory law is the main source of Turkish law in contrast to judge made law of the Anglo-American legal system. In 1926 the commercial law of Turkey which was later replaced by the Commercial Code of 1957 had been enacted. Turkey adopted its Penal Code from Italian Penal Code of 1889 in 1926. A new Penal Code of Turkey implementing the relevant provisions of European Union (EU) law came into force in 2005. A new Turkish Civil Code also came into effect in 2000. A draft Commercial Code implementing EU company law directives is expected to be enacted in the near future. In general, Turkey's public law has been influenced by French law while a Swiss-German influence can be seen on Turkish private law. The implications of the influence of Swiss-German law on Turkey's private law and that of French law on Turkey's public law have been, predominantly, the use of the languages of French and German in Turkish legal education as well as in legal profession.

Recently, however, Turkey, stemming from its EU membership agreement has started to implement all EU law provisions. The main language used to translate all EU law to Turkish is English. Further, the domination of use of English language in international business transactions, international securities market and information technology has led to English language to gain substantial importance in Turkish legal education while Anglo-American legal system influences on certain areas of Turkish law such as securities market law, consumer protection and competition law. Indeed, some elements of Anglo-American legal system such as self-regulation (soft law) have already been introduced into Turkish legal system as a result of the implementation of EU law provisions.

Both academics and those in legal profession, such as judges, lawyers now attach great importance to understand Anglo-American or common law system while English language is now used in Turkey's legal education more commonly.

* Assistant Professor in Commercial Law and Vice Dean of the Hacettepe University Faculty of Law.

Language and Case Based Approach as Techniques for Teaching Anglo-American System in Turkish Legal Education

In Turkey the formal language in legal education is Turkish. Turkish law faculties accept students after high school. Students are admitted to the law faculty from all over the country after the university entrance examination which is held nationwide by the Higher Education Board (Yuksekk Ogretim Kurulu “YOK”). The university entrance examination is very competitive. There are two types of universities, namely private universities and state universities in Turkey. Both state and private universities are supervised by the Higher Education Board.

While the formal language in legal education is Turkish, the growing number of universities’ law faculties has introduced English Language into their curricula as a compulsory course which lasts one year term. Following the entry to law faculty students who cannot demonstrate that they have certain level of English by a written exam should study English language one year period if the curriculum of the faculty includes English language on a compulsory basis.

The legal education takes four years as a rule in Turkey. However, a number of private universities’ law faculties add to their curricula general courses such as legal philosophy, sociology, economics, which lasts one year period before students take their legal courses. If the faculty which adds general courses to its curriculum has also one year compulsory English course, the legal education will take for six years at most. Students who are taught English language and those who are exempted from taking English language as they already have certain level of English, are also offered some courses, on a voluntary basis, such as European law, international law, international human rights, international transactions in English during their four or five year legal education period.

English language is becoming an essential technique for teaching common law cultures and legal systems in Turkish legal education. The ability of using English language provides law students and those in the legal profession such as judges and lawyers with the access to materials of Anglo-American system. Nevertheless, both Turkish law students and those who have already completed their legal education in civil law tradition are not familiar with the basic features of common law systems, and therefore they cannot use English to gather information about common law systems, even though they know English. To response to this problem, the increasing number of law faculties offers their law students some courses, on a voluntary basis, providing them with the legal terminology as well as basic elements of the Anglo-American legal system during their formal legal education. Some law faculties also organize certificate programs and short – term courses for both law students and those in legal profession to teach them basic principles of common law tradition.

Besides teaching English language, case based approach is adopted as a technique in teaching common law legal system in Turkish legal education. Cases relevant to the course are examined in the classes so as to convey basic principles of common law system and cultures.

“Effective Techniques for Teaching about Other Cultures and Legal Systems”

Prof. Dr. Jassim Al Salem Al Shamsi
Dean, College of Law, UAE University, UAE

In today's era of globalisation, the field of law and legal profession hold significant implications for legal education and the legal profession. A dramatic transformation is taking place in the field of law and legal and financial institutions. Lawyers everywhere are on the cutting edge of those developments. This rapidly changing scenario holds significant implications for legal education and the legal profession in the world.

Present day law graduates will need expertise and skills that will aid them in meeting the professional challenges of the future. And this will depend not solely on their ability to learn and assimilate legal information, but also on the strength of the study materials and methods of instruction they are exposed to. They need interactive, thought provoking and clinical teaching sessions.

Interestingly, the Clinical Legal education Method based on casebooks and the case method of instruction are not modern innovations. Indeed, they were created and introduced by Christopher C. Langdell, the Dean of the Harvard Law School in 1870.

A typical casebook includes readings, carefully selected excerpts of judicial decisions so that students/readers get the judges' reasoning without getting mired in procedural details and introductions that set the cases or readings in a legal historical and political context.

Notes, comments and questions appear either before or after each reading or case that offer a variety of perspectives and challenge the students/readers to think about the judges' creative thinking and the extent to which the cases either follow precedent or break new ground. In short, casebooks are not descriptive but analytical in nature.

A natural corollary of using an analytical textbook such as a casebook is that the professor has to adopt a teaching strategy that includes asking students questions, having them discuss a judicial opinion or other materials used in the casebook and challenging them to predict how a court would decide a case similar to, but slightly different from, the cases in the course book. This necessitates that the students read the relevant chapter beforehand; think about the issues rose therein and come prepared to class.

The professor also needs to have strong analytical skills since he/she has to pose skillfully framed hypothetical cases to draw out the significance of the cases (in the course book) or to extend or limit the scope of the doctrine under discussion.

The teaching session is therefore not a monologue but a dialogue. This is, in sum, the Socratic or the case method of instruction that is prevalent in American law schools.

Clearly, casebooks and the case method of instruction are powerful pedagogical tools since they contribute to training the "legal mind" and inculcating in students the habit of rigorous and critical analysis — behavior that is integral to a lawyer's job.

Casebooks are valuable study aids since students gain practice in briefing cases, i.e. dissecting and analyzing cases, weighing and appraising material, independent thinking and the skill of self-learning. The case method of teaching serves as a catalyst. Interestingly, casebooks and the case method of instruction are not modern innovations.

Furthermore, this style of teaching places some responsibility on students to think even while taking down notes in class. The format of law school exams in the U.S. in turn demands and rewards such analytical thinking of students since they are required to bring their knowledge to bear on a complex problem.

What the examiner looks for is not memorized knowledge, but the ability to apply the knowledge to a new problem or use that knowledge as a basis of thinking about new facts or new issues. Unfortunately, descriptive and non-analytical textbooks and cheap "question and answer" study guides are the only learning aids available to most law students.

In some institutions what is passed off under the stylish name of a "casebook" is not intellectually rigorous: it is simply a collection of excerpts of leading judicial decisions arranged either alphabetically or chronologically!

So far as teaching is concerned, the lecture method remains the dominant mode of instruction in law colleges. And even if a professor were to pose a few questions to students in class, the teaching style does not come anywhere close to the case method of instruction.

Since students are not required to come prepared to class, they are assigned a passive role and copy down as notes the information given by the professor. Even where exams pose hypothetical problems, they are not intellectually stimulating. They do not contain elaborate fact patterns that test students' abilities to spot the relevant issues and the applicable rules, to discriminate between relevant and irrelevant facts and to show how the issues inhere in the stipulated facts. Where problems are given, students are merely asked to cite to and discuss the relevant cases, not apply those cases in solving the problems.

Unfortunately those at the helm of legal education have not yet recognized the direct correlation between the quality of the methods and materials of our education system and the competence levels of our graduates.

Students trained on a diet of cheap guides, descriptive books and predictable essay type questions will have no practice in reading and briefing cases, synthesizing rules from a series of cases or independently preparing a legal analysis — skills that are crucial to functioning as a competent lawyer.

Culture Shift Needed For More Effective Legal System

A Legal system of a country differs from the other states' as it has been developed for centuries and primarily influenced by its distinct culture. Again it is also based on various factors; Historical, religious, economical and political. Keeping the traditional cultural values in tact, the legal system always adapts the changes that take place in the other legal systems of the world. In this culture shift, the legal system will not loose its aboriginal cultural values. It adapts only those changes which suit to their culture.

The culture shift that provides lawyers with new attitudes, skills and knowledge is the only way to help the justice system resolve disputes more effectively and efficiently. Resolving conflicts through methods other than the court system is the key to civil justice reform in the 21st century. But this new approach to resolving disputes can only be effective if it is made a fundamental part of ongoing legal education

"Law schools, law societies, continuing legal education programs, and above all lawyers themselves each of these groups must participate in a profession-wide culture shift that looks at the courthouse as a last resort for dispute resolution, not the preferred destination," says Dr. Moira McConnell, professor of law at Dalhousie Law School.

"If this culture shift doesn't take place," adds Dr. McConnell, "many of the alternative dispute resolution processes already in place, as well as those still to come, will slowly but surely take on the adversarial nature of the traditional court system, which will not benefit the public."

Canadian Bar Association Working Group in its report made 27 recommendations to help achieve this culture shift, including:

- Law schools should expose students to the theory and practice of conflict resolution practices, encourage teachers to learn about these practices, and institute research into their effectiveness.
- Bar admission courses should teach conflict resolution to new lawyers and effectively evaluate Bar candidates on their dispute resolution skills.
- Judges should have access to conflict resolution education and training opportunities.

Conclusion:

There is a dire need for this type of an analytical textbook for virtually all the law subjects. Talented professors must be given study leave and provided financial and administrative support to prepare such casebooks.

Judges and leading members of the bar also have a responsibility to give their time and expertise to such much-needed pedagogic endeavors and if possible, even participate in

them. Only books of this type should be prescribed in the curriculum and as more of them appear on the scene, descriptive books should be completely phased out.

Workshops need to be conducted to expose law teachers to the concept of the case method of instruction and the rationale for its adoption.

A discernible improvement in the competence levels of our future lawyers is possible only if we prioritize formulating and introducing high quality study materials such as the case books and the method of instruction such as the Socrates or the case method of instruction in our education system.

Reflections on Comparative Law Teaching and Pedagogy

Ronald C. Slye
Seattle University School of Law
University of the Witwatersrand School of Law

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.

