

Teaching Techniques for Cross Teaching and the Question of “Difference” in Teaching about Other Legal Systems

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“(T)here is a power in the human mind which is at work in our everyday perception of the world, and is also at work in our thoughts about what is absent; which enables us to see the world, whether present or absent as significant, and also to present this vision to others, for them to share or reject. And this power.....is not only intellectual. Its impetus comes from the emotions as much as from the reason, from the heart as much as from the head.”

Mary Warnock, *Imagination*, 1976, Faber, London p196.

Cross teaching and transnational learning

The very idea of ‘other’ legal systems anchors us in our present and places us firmly in a jurisdictional space marked out by local legal norms and nationally enforceable mores. Postmodernists aside, it is ‘other’ legal systems that define our understanding of the laws and legal practices that are ‘our own’.

The IALS already has a proud record of transcending the introspection that had characterised legal education in most law schools. The curriculum of all but a handful of institutions were for most of the last century jurisdictionally focused and local practitioner oriented. Journeys to other legal systems were largely confined to comparative expeditions studying system differences and the efforts to collectivise national commonness-of-purpose norms into internationally enforceable treaties. The Hawaii Conference in 2004 signalled the growing awareness of the distinctiveness of legal traditions, the particularity of much ‘established’ legal orthodoxy and the potential for transnational perspectives. In Suzhou the idea of multiple legal culture(s) broadened the enquiry into the distinctiveness of legal systems, usually defined nationally.

The Planning Committee of the Montreal Education programme have taken reflection a stage further to include the varied processes of legal education and to question the possibility that local legal culture manifests distinctive education practices. They further query the relationship between teaching methods and course or module content, probing whether different subjects warrant different teaching approaches; questions that present themselves universally, but which may receive very different local responses.

Before addressing the questions posed, some pause is necessary to reflect upon some basics from another profession. Educationalists have long pointed out the importance of distinguishing the process of teaching from the complementary but distinct process of learning. Teaching in essence denotes a programme or process emanating from those who are charged with the business of imparting knowledge or information to others. Traditionally it is associated with the educational practices of exegesis, delivered textually or orally in lecture or lesson. It generally connotes a relationship where the teacher is more knowledgeable, experienced or informed than the learner. The idea of teaching focuses upon the techniques and practices of the teacher rather than the learner. Learning on the other hand expresses an internalised process of development. The learner ‘receives’ the ‘teaching’ (ideas, information, pictures etc.) which interacts or engages with the other myriad experiences, perceptions and understandings. The separation of teaching and learning as the complementary modes of education may be trite but our familiarity with describing the practice of educators as teachers tends to eclipse the significance of the learner’s experience. It is an understandable privileging of the importance of the teaching

function and emphasises the realisation that it is the part of the collaboration which the teacher is most easily able to control. Learning, educationalists remind us, takes place in a context of prior experiences amidst a multitude of other thoughts, sensations and beliefs. For many law teachers these reminders may be unnecessary.

Individual teachers are distinctive in their approaches to teaching. Fortunately personality and cultural background brings variety into the classroom irrespective of education or teacher training. An emphasis upon learning is a reminder that learners are also individuals. However we teach, whether we prefer inspirational lecturing or challenging role plays as favoured techniques for expanding students' understanding, each student will approach interaction in his/her own way. The recognition of individual learning styles¹ challenges the teacher by suggesting that they can have little confidence that their teaching practice will suit all of their students all of the time. If this is so, efforts to adopt a teaching style that claims superiority to all other approaches will be undermined. Similarly those who advocate the adoption of a specific teaching method as suited to a particular subject or cultural background may be disappointing some of their students. Students have different preferences for learning by doing, learning by reflecting, learning by theorising or learning by experimentation² or different combinations of such traits. Recognition of distinctive learning personalities cautions against narrow assumptions that any single teaching methodology is the sole medium for effective learning. It recommends instead variance and variety in teaching styles and pedagogic techniques.

The importance of experience for learners

Theory is a global phenomenon³. Within education theory the experiential learning approaches espoused by David Kolb⁴, Donald Schon and many others have received global recognition. The idea that we learn from reflecting upon our experiences, evaluating them and adjusting our future behaviour accordingly is a broadly accepted account of human development and learning. There is nothing culturally determined or subject influenced in recognising this learning process, although its relative effectiveness or appropriateness for different educational objectives may be the subject of debate. Its suitability and effectiveness may be more or less popular and the developmental conclusions might differ for different cultures.

Probably the most significant teaching development in the last century to affect legal education in common law countries has been the emergence of clinical approaches, which are strongly dependent upon experiential or constructivist learning theory. Clinical methods are based upon the recognition that law is an active influence in the lives of citizen's and corporations. Its benefits are to be found in the breadth of its understanding of law. The core knowledge, norms and procedural rules, upon which Western schools concentrated for centuries, largely ignored the activities, behaviours

¹ See for example Honey, P. and Mumford, A. (1986), *The Manual of Learning Styles*, Peter Honey Associates.

² For a brief explanation of learning styles see openlearn.open.ac.uk/file.php/1715/Learning%20styles.pdf

³ My point is merely that theories are proposed as holding universal relevance, not that any particular theory is universally accepted. Much modern education theory, particularly constructivism, emanates from the work of Piaget on the development of the human mind. His ideas are not universally accepted but his theory purports to apply to humankind.

⁴ Kolb, D.A. (1984) *Experiential learning: experience as the source of learning and development*, Englewood Cliffs, NJ, Prentice-Hall.

and environment that determine the experience of law⁵. Clinical methods embrace the practices of law. Through the experiences of acting, seeing and feeling law at work, it is argued, understanding is enhanced.

The clinical movement espouses experiential methodologies but claims more than educational innovation and effectiveness. Its adherents find in its capacity to involve students in the experience of delivering legal services and support, mainly for the citizenry and often for the indigent, the mission of justice. The transition from educational method into social and humanitarian service represents a significant development for legal education. The justice education movement has rapidly established itself amongst law teachers, practitioners and law schools worldwide⁶.

The clinical movement would not seek to associate itself with particular legal topics. Exponents are to be found in clinics where students learn about corporate law and practices as well as issues affecting largely individuals. Clinical legal programmes, at least those which involve student learning from participation in advice and representation, derive educational benefit from engaging students in experimenting in the application of their knowledge. Historically the opportunities for clinical learning have been associated more closely with those societies where the legal representation of the citizenry has been provided by private professional lawyers. The rights based approach to dispute resolution familiar throughout the common law world is especially suited to clinical approaches.

Whatever the roots and range of clinical legal education are, experiential learning is now an established and proven approach throughout all levels of education in many parts of the world. Its significance I would argue lies in its capacity to add an additional dimension to the traditional methods of instruction and the accumulation of knowledge. Understanding, insight and competence may be more effectively achieved by experiential methodologies; which is not to argue that the large group, seminar and tutorial are outmoded or ineffective. It does emphasise that content, subject and jurisdiction need not be the determinants of approaches to legal education, although cultural factors may influence its effectiveness and popularity. Crucially it claims to be more effective at engaging students emotionally as well as intellectually.

Teaching methods and substantive fields

The promotion of experiential learning methods and a more diverse and expansive curriculum, does not I suggest require the linking of particular teaching practices to either specific legal cultures or to selected law subjects. It may be that some subjects, such as jurisprudence or legal theory, are more restricted in the opportunities for interactive methods than. Other subjects such as contract or crime, phenomena that feature frequently in the popular cultures of most modern societies, are more obviously amenable to practical engagement or role play⁷. Activities associated with theoretical enquiry and philosophical argument may in fact be more common (thinking, analysing, reading, conversation, gossip etc.) but are largely unobservable. They are harder to stage as activities for students to engage with and are less amenable to many experiential learning techniques, but activities for varying learning opportunities are not beyond the ingenuity of an imaginative philosopher.

⁵ The American Realists in the early part of the twentieth century drew attention to the significance of practical context of law.

⁶ There is a growing body of studies of legal education and legal service as an instrument of justice development (see e.g). The Global Alliance for Justice Education is an active organisation promoting the humanitarian aspirations of the clinical movement (see <http://www.gaje.org/>)

⁷ David Nelken in 'Towards a Sociology of Legal Adaptation' in *Adapting Legal Cultures*, David Nelken and Johannes Feest (eds.), 2001, Hart, Oxford, p.25 describes different types of law. His typology has implications for teach methods.

Technical law or lawyer's law⁸ will be more jurisdictionally focused and practical law, such as advocacy are most suitable for simulation and other experiential techniques.

Teaching methods may be culturally nuanced but the processes of learning reflect human behaviours that are universal. Recent education orthodoxy in the UK and elsewhere stresses the importance of identifying learning outcomes at programme, subject and teaching activity levels. The learning outcomes – the principal knowledge, understanding and skills to be achieved – provide the best indicators for selecting different approaches to teaching. In a text based subject, such as law, the lecture will continue to provide a common method for delivering information, especially to large groups of students. Large group sessions afford opportunities to engage students such as the Socratic method of orchestrating collective argument. The case method similarly offers multiple engagements between teacher and individual students in large groups. Smaller groups, seminars or tutorials allow for more creative use of time and space. The centrality of text based norms and their application to social realities are also suited to electronic media, and computer technologies and the internet now provide fresh opportunities for learning.

Constructing environments for intercultural understanding

Law school mission or programme demands may also shape the teaching and learning methods adopted. For example, the vocational programmes for barristers and solicitors in England and Wales concentrate on the core knowledge and skills needed to perform professional roles. These lawyer competences, such as interviewing and advocacy, which are particularly important in the Common Law world are closely associated with experiential learning. Legal process and courtroom behaviours lend themselves to experiential methodologies and utilise simulated trials, and lawyer-client role plays.

For most law schools however, the study of law and the initial training of lawyers are largely achieved in universities where cognitive understanding and the assessment of knowledge are the staples of teaching and learning. As I have argued above the breadth and range of different teaching techniques can be considered whatever the cultural setting or legal field. Law degrees are defined by the curriculum and content shapes the syllabus. Few law schools today will be content with purely local law and a cosmopolitan curriculum is now within the vision of all. The conference of legal educators in Hawaii in 2004, which led to the establishment of the IALS, illustrated the efforts around the world to embrace globalisation in the curriculum. Craig Scott expressed the potential for all law schools,

“The bottom-line is either that no good law school should allow students to graduate who have taken nothing but ‘domestic law’ courses. Or, at the very least, all good law schools should not only make it possible for a student to choose a less parochial path but also proactively encourage a more cosmopolitan curricular constellation – such that any given student is responsible for any limitations in her own education and, in turn, limited training as a lawyer for our times.”⁹

⁸ Ibid.

⁹ Craig Scott, “Transnational Legal Education: Normative And Methodological Sketches”, Conference on Educating Lawyers for Transnational Challenges, 2004, Oahu, Hawaii

Cosmopolitanism¹⁰ can also be promoted through law school appointments. Warwick Law School, for example, has for years consciously sought to ensure that its staff are recruited from the best staff that it can attract from wherever. About 50% of its current faculty were initially educated outside the United Kingdom and about one third hail from countries beyond Europe. These colleagues bring experiences from elsewhere that inform collective scholarship and provide an environment in which students from overseas are less likely to feel marginalised and the study of law is not dominated by any one tradition.

Many schools are now seeking links and joint programmes with schools from other regions¹¹. Warwick runs programmes which involve a year in 3 partner law schools in Germany and 2 universities in France. It is introducing joint postgraduate programmes with the University of Maastricht, Holland, and Mekelle in Ethiopia. It has concluded memoranda of understanding to further collaboration with law schools in China, India and Kuwait. Four year undergraduate programmes in which UK students spend a year studying law abroad are growing in popularity. The IALS has taken international law school collaboration to a new level.

The curriculum is the main vehicle for the law school to make sure that its graduates are exposed to other legal cultures. Public and private international law courses are the most common subjects that take domestic law out of itself. Theory, as I have argued above, is unboundaried and inclusion of subjects such as legal theory, jurisprudence, constitutionalism and human rights as mandatory topics can bring ideas from other places to bear on domestic law. Within the curriculum opportunities abound within the syllabus of the individual subjects for cosmopolitan scholarship. The study of law in context embracing perspectives from sociology, economics, philosophy and the humanities has familiarised students with approaches from other disciplines which are not as jurisdictionally hide bound as law. For the Suzhou conference I argued that the “English experience, along with all others, only has meaning in an international context and can only be understood by reference to its international location both historically and geographically”¹².

Cosmopolitanism begins at home

However imaginative the curriculum or well endowed the institution, it is the academics who are the single most important resource for the law school. Whatever the limitations on personal enthusiasm or academic autonomy that we may have in the design and delivery of the courses that we teach, can usually be found for learning innovation or syllabus reform. Trans-culturalism in legal education, boosted by market considerations and promoted in no small degree by international associations of academics such as the IALS, is becoming widely accepted. Such conditions bring to the role of the individual law teacher fresh opportunities for re-invigorating the curriculum and wider visions for study. Few law teachers in higher education today are able to rely only upon domestic law for understanding their discipline. Legal systems are not hermetically contained or uncontaminated by invasion¹³ from alien legal ideas. Subjects, such as family law, which are particularly

¹⁰ I am using the term to express what I understand is the IALS aspiration of forging a community of law schools around the globe. ‘Cosmopolitanism’ has been described elsewhere as “the idea that all human beings, regardless of their political affiliation, do (or at least can) belong to a single community, and that this community should be cultivated”. (Stanford Encyclopedia of Philosophy, <http://plato.stanford.edu/entries/cosmopolitanism/>). More lies beneath the expression than this brief paper can address. A topic for the next legal theory class?

¹¹ New York University’s Hauser Global Law programme and the ATLAS programme described by Craig Scott in his Hawaii paper (supra note 9) are amongst the most notable.

¹² Roger Burridge, ‘Three most important characteristics of the English legal system; Accidents of geography as much as history’, paper prepared for the IALS Conference, Suzhou, China, October 2007

¹³ See generally David Nelken and Johannes Feest, note 7.

reflective of local norms and customs, offer rich opportunities for comparative perspectives and international treaties influence private law relationships in most fields. The success or otherwise of transnational legal scholarship rests mainly with the academics themselves, although law schools can do much to encourage or deter.

Our own practices will ultimately determine the extent to which law teaching can accomplish 'cross teaching' or 'inter-cultural learning'. Mary Warnock provides valuable counsel on the processes and values through which the law teacher's transnational role may be fulfilled. The human capacity for imagination may be hard to teach but is crucial for the development of our students' scholarship and professional practice. If, as Warnock suggests, it is a power that comes from the heart as much as from the head, emotion as well as intellect has to have a place in our curriculum. The key lies in complementing the intellectual ideas that we address with a learning practice that engages with more than students' cognitive faculties. Education theorists would have us believe that a powerful vehicle for developing imagination is to be found in understanding how our students learn and constructing programmes accordingly. Clinical and other experiential or constructivist methods are widely acclaimed as more holistic; we have much still to learn from each other about how we teach as much as what; and many opportunities to do so.

Whilst I have argued that the pursuit of cosmopolitan education lies largely in our own hands, there is much that law schools can do to provide an environment conducive to its fulfilment. I offer the following trans-cultural suggestions for cosmopolitanism in law schools:

1. ensure that cosmopolitanism is addressed in law school missions and programme aims.
2. provide a curriculum that affords or prescribes a range of subjects that transcend domestic or national perspectives
3. include legal theory or jurisprudence as a compulsory subject
4. promote clinical or experiential approaches to learning in the curriculum
5. seek to broaden the local student base by recruiting students from other cultures
6. promote an ethos that encourages contextual study and intercultural perspectives in its courses
7. explore opportunities to provide joint programmes with schools in other countries, year abroad programmes and student exchanges.
8. encourage all law professors to learn more about modern education theories to inform their professional teaching practice.