

THE THREE MOST IMPORTANT FEATURES OF MY COUNTRY'S LEGAL SYSTEM THAT OTHERS SHOULD UNDERSTAND

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THE IMPORTANCE OF UNDERSTANDING THE ROLE OF STATUTES, REGULATIONS, AND CASES IN LEGAL PRACTICE AND LEGAL EDUCATION IN THE UNITED STATES LEGAL SYSTEM

The eminent comparativist Arthur Goodhart in 1934 expressed the view that the critical difference between continental and common law methods of legal thinking lies in the “*binding force of precedent (stare decisis)*.” This statement is too often accepted without appreciation of the long evolution that has occurred in the development of the civil and common law traditions. The validity of Goodhart’s sharp dichotomy between the civil and common law traditions was challenged in 1998 by Professors Zweigert and Kötz in their highly regarded “An Introduction to Comparative Law¹” text in which they concluded that:

To sum up: on the Continent the days of the absolute pre-eminence of statutory law are past; contrariwise, in the Common Law there is an increasing tendency to use legislation in order to unify, rationalise and simplify the law. On the Continent, law is increasingly being developed by the judges and consequently there is more room for an inductive method and style related to the actual problems; contrariwise, the Common Law is seeing the need to bring the rules developed by judges into a systematic order, so as to make them easier to understand and master. *There are therefore grounds for believing that although the Common Law and the Civil Law started off from opposite positions, they are gradually moving closer together even in their legal methods and techniques.*² (Emphasis supplied).

Because of the new technology and massive globalization subsequent to the 1998 Zweigert and Kötz publication, the pace of common and civil law convergence has accelerated far beyond substantial congruence in the use of statutes and codes, administrative regulations and case law in generating legal norms. This accelerating pace of common and civil law convergence continues in many substantive and procedural areas. The work of regional organizations like the European Community; international conventions like the United Nations Convention on Contracts for the International Sale of Goods³ and the Cape Town Convention on International Interests in Mobile Equipment⁴; the combination of rules taken partially from

¹ Konrad Zweigert & Hein Kötz, *An Introduction to Comparative Law* 271 (Oxford University Press, 1998).

² *Id.* 271. A view substantially concurring with Zweigert and Kötz is found at *Einführung in Rechtsvergleichung*, vol. I (1971) § 20 at 311-328.

³ UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, adopted April 11, 1980, S. Treaty Doc. No. 98-9, 1489 U.N.T.S. 3, 19 I.L.M. 668, available at <http://www.uncitral.org/en-index.htm> [hereinafter CISG].

⁴ Roy Goode, *The Cape Town Convention on International Interests in Mobile Equipment: A Driving Force for International Asset-Based Financing*, 36 UCC L.J. 1 (2003); John Atwood, *The Status of the Mobile Equipment (Cape Town) Convention —Arrival of an International Registration System*, 39 UCC L.J. 75 (2006).

adversary and partially non-adversary systems to establish rules of criminal procedure utilized by the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Court (ICC); and the phenomena of common law and civil law trained lawyers both comfortably citing cases, statutes, codes, and regulations as authority in proceedings before the European Court of Justice (ECJ) all involve utilization of concepts and procedures borrowed from both civil and common law traditions. These are just a few examples of many areas of law in which convergence, harmonization, and in some instances unification⁵ is occurring.

The Goodhart classical sharp dichotomy between civil and common law traditions impacts on practice and teaching in both legal traditions. Introduction in 1870 of the case method by Christopher Columbus Langdell at the Harvard Law School served for over 100 years as a basic pattern for law school curricula throughout the United States. Although it is still used as the primary teaching methodology in the first year of law school in the United States, the call for change has been strongly articulated⁶ and the implementation of change is underway.

Harvard Law School recently announced changes in its first year curriculum which are the most significant since the introduction of the case method by Langdell. Courses will be added in “international and comparative law; legislation and regulation; and complex problem solving – areas of great and ever growing importance in today’s world.”⁷ These courses “will better prepare students to practice in a legal world in which regulations and statutes play an equal or more important role in the creation and elaboration of law as do court decisions; in which transactions and interactions among parties are increasingly global in nature; and in which economic, cultural and technological changes call upon the best lawyers to become skilled in system design, problem solving and creative approaches to issues.”⁸

As these curriculum and legal methodologies evolve in response to changing societal needs, it is important to note the distinction between the Socratic Method and Langdell’s “case method.” The two are not synonymous. The Socratic Method was the “engine” Langdell chose

⁵ Louis Del Duca, *Developing Global Transnational Harmonization Procedures for the Twenty First Century – The Accelerating Pace of Common and Civil Law Convergence*, 42 Tex. Int’l L.J. 625 (forthcoming 2007).

⁶ Dean Claudio Grossman, *Building the World Community: Challenges for Legal Education*, 18 Dick. J. Int’l L. 441 (2000) <http://heinonline.org/HOL/Page?handle=hein.journals/psilr18&id=1&size=2&collection=journals&index=journals/psilr>. In a forthcoming article entitled *A Case for Another Case Method* (scheduled for publication in 60 Vand. L. Rev. 597 (2007), Harvard Professors Todd Rakoff and Martha Minow strongly recommend utilization of a problem methodology using complex problem cases to supplement the traditional case law methodology for developing skills needed for successful lawyering in an increasingly interrelated twenty-first century world. At the outset they lament excessive reliance on the traditional case law methodology as follows:

The plain fact is that American legal education, and especially its formative first year, remains remarkably similar to the curriculum invented at the Harvard Law School by Christopher Columbus Langdell over a century and a quarter ago. Invented, that is, not just before the Internet, but before the telephone; not just before man reached the moon, but before he reached the North Pole; not just before Foucault, but before Freud; not just before *Brown v. Board of Education*, but before *Plessy v. Ferguson*. There have been modifications, of course; but American legal education has been an astonishingly stable cultural practice.

⁷ Quoting Dean Elena Kagan, *HLS Faculty Unanimously Approves First-year Curricular Reform*, Oct. 6, 2006, http://www.law.harvard.edu/news/2006/10/06_curriculum.php; See also Rakoff and Minow, *supra* note 6.

⁸ Quoting Professor Martha Minow, *HLS Faculty Unanimously Approves First-year Curricular Reform*, *supra* note 7.

to power his case method.⁹ The Socratic Method can also be successfully utilized not only in working with cases, but also in working with statutes, codes, administrative regulations and problems.

Lawyers from the civil world tend to “assess the Socratic Method – at least when it extends beyond first year of law school – as a kind of massive overkill and a waste of precious classroom time that could be put to better use.”¹⁰

Quite to the contrary, the Socratic Method properly used provides three very important benefits:¹¹

- a) it gives professors the ability to teach large bodies of students in an active manner;
- b) it is instrumental in teaching cognitive skill development – to teach students to “think like a lawyer”; and
- c) it helps students to hone their verbal skills.

Balanced use of the Socratic Method in conjunction with lectures and other methodologies in working with statutes, codes, administrative regulations and problems as well as cases generates interaction between teachers and students. It also requires close attention and vicarious participation on the part of all students in the classroom discussion since any one of them might be called upon at any time to participate in the teacher/student exchange. The Socratic Method facilitates teacher/student dialogue and communication. It produces an active as distinguished from a passive learning process.

STRATEGIES IN INTERNATIONALIZING LEGAL EDUCATION – CURRENT DEVELOPMENTS IN THE UNITED STATES

The depth and scope of the interest of United States legal educators in developing adjustments in both curricula and methodology in their legal education procedures to meet the needs of an increasingly interrelated world is illustrated by the Symposium on *Emerging Worldwide Strategies in Internationalizing Legal Education*¹² held at the Association of American Law Schools Annual Meeting in January 2000. Addressing the subject of internationalizing legal education in the United States, Dean Robert Clark (Harvard) inter alia proposed inclusion of international, comparative, and transnational law components in traditional law courses such as contracts, torts, property, etc., to enrich the curriculum by supplementing

⁹ Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?*, 43 Cal. W. L. Rev. 267, 271 (2007).

¹⁰ Herbert Hausmanner, *Legal System of Austria*, Legal Education and Legal Professions, 85-101 (1997).

¹¹ Jackson, *supra* note 9, at 271.

¹² *Symposium on Emerging Worldwide Strategies in Internationalizing Legal Education*, 18 DICK. J. INT'L L. 411 (2000) <http://heinonline.org/HOL/Page?handle=hein.journals/psilr18&id=1&size=2&collection=journals&index=journals/psilr>.

international, comparative, and transnational courses. Dean Claudio Grossman (American University) inter alia vigorously challenged the almost exclusive use of the case law methodology and called for a more balanced methodology in preparing lawyers to meet challenges in an increasingly globalized world. Dean John Sexton (NYU) inter alia discussed his “global law school” concept and the manner in which different types of law schools might respond to the challenge and opportunities of globalization. Dean Frans Vanistendael (Leuven – and a founder and then immediate past president of the European Law Faculty Association) addressed *European Community Erasmus and Socrates Programs, Creation of the European Law School Association, and The Bologna-Sorbonne Declaration of 1999 re Structure of Legal Education in Europe and 5 Year Program Possibility*. Professor Sang-Hyun Song, from the Seoul National University addressed *Korean Students in U.S. Law Schools and Foreign Students at Seoul National University Law School*; Csilla Kollonay Lehoczky (Head of Department of Legal Studies at Central European University in Budapest) addressed *Cumulative Effects of International Legal Education in the Shaping of Legal Systems of Central and Eastern Europe*; Dean John Attanasio (Southern Methodist University School of Law) addressed *Partnerships, Joint Ventures and Other Forms for Building Global Law Schools*; Assistant Dean Charles Cramton (Cornell Law School) addressed *Joint Degree Programs*; Charlotte Ku (Executive Vice President and Executive Director at the American Society of International Law) addressed *American Lawyers and International Competence*.¹³

Representatives from the Universities of Michigan, Pacific McGeorge, Columbia, Villanova, Georgetown, and American University addressed the topic of *Techniques To Internationalize The First Year Curriculum*¹⁴ in a Symposium held at the January 2006 Association of American Law Schools Annual Meeting. Included among their suggestions are the following:

- ❖ Use of a mandatory transnational law course to develop specialized skills needed for Twenty-First Century law practice as a building block for further advanced courses or as minimal exposure for students who will not be enrolled in such courses. Professor Mathias Riemann refers to this as the “separation model.” It puts together “in an overarching theme the emergence of a more complex world which is not the traditional law of nations anymore.” Professor Riemann and his colleagues have offered this type of course for the past six years at the University of Michigan Law School.
- ❖ Incorporation of transnational materials into traditional first-year courses (e.g. contracts, torts, property). Professor Riemann refers to this as “the integration model.” In his presentation, Professor Frank Gevurtz describes the preparation of supplements to existing first-year books which will enable law professors to implement internationalization without unduly extending the volume of material already covered. He also comments on use of the “integration” approach at the University of the Pacific McGeorge School of Law. A detailed description of this very useful series is found at

¹³ An Introduction and Overview of the papers presented by the Symposium participants is contained at the beginning of the published Symposium. See Louis Del Duca, *id.* 411.

¹⁴ 24 Penn St. Int'l L. Rev. 801 (2006).

<http://www.westglobalissues.com>.¹⁵

- ❖ Introduction of a new course called *Lawyering in Multiple Legal Orders*. Professor Katerina Pistor stated that “this title reflects the basic philosophy of the course, mainly that legal practitioners will invariably work in more than one legal order, a concept that is not unfamiliar to lawyers practicing in federal systems, such as the United States.” She further stated that the course enables students “to navigate in a complex world, where different foreign legal jurisdictions may be relevant for resolving a particular case, or where international treaties or conventions need to be consulted.” The course also sensitizes students to the fact that “lines not only between common and civil law, but also between comparative and international law are blurring.” This course was offered at Columbia Law School beginning in the fall semester of the 2006-2007 academic year and is co-taught by Professor Pistor and Professor George Bermann.
- ❖ Incorporation of transnational materials into legal writing, lawyering and advocacy courses. Professor Diane Penneys Edelman advocated for this incorporation model based on her more than twenty years of experience in teaching similar courses first at Brooklyn Law School, and then at Villanova University. Professor Edelman shared her insights on how to most effectively implement this approach by offering specific recommendations regarding the choice of materials and teaching techniques.
- ❖ Introduction of a *Law in a Global Context* course. This course was offered as a one week program to first-year students at Georgetown beginning in the first week of the second semester of the 2006-2007 academic year. Dean Alex Alienkoff reported that this course is “an intensive program for integrating transnational perspectives into the first year curriculum. . . .” Students will work with a single, complicated transnational legal problem that relates to one of the first-year courses taken during the first semester.¹⁶

¹⁵ The Global Issues series with Frank Gevurtz as Series Editor, includes the following:

Global Issues in Civil Procedure by Thomas Main

Global Issues in Constitutional Law by Brian K. Landsberg, Leslie Gielow Jacobs

Global Issues in Contract Law by John A. Spanogle, Jr., Michael P. Malloy, Louis F. Del Duca, Keith A. Rowley, and Andrea K. Bjorklund

Global Issues in Corporate Law by Franklin A. Gevurtz

Global Issues in Criminal law by Linda Carter, Peter J. Henning, Christopher L. Blakesley

Global Issues in Family Law by Ann Laquer Estin, Barbara Stark

Global Issues in Labor Law by Samuel Estreicher

Global Issues in Legal Ethics by James E. Moliterno, George Harris

Global Issues in Property Law by John G. Sprankling, Raymond R. Coletta, M.C. Mirow.

Development of the Global Issues series and in depth discussion of the “integration” approach can be found in the *Report Regarding the Pacific McGeorge Workshop on Globalizing the Law School Curriculum*, 19 Pac. McGeorge Global Bus. + Dev. L.J. 268 (2006)

¹⁶ See also Rakoff and Minow, *supra* note 6 where the authors in their article entitled *A Case for Another Case Method* also propose use of the “complex problem legal methodology.”

- ❖ Incorporation of international components into the first-year curriculum. This is being done by Professor Claudio Grossman at American University Washington College of Law as part of a larger program to present legal phenomena to students as a totality, rather than in isolated units like torts, civil procedure, constitutional law, and environmental law.

The challenge of adjusting curricula and methodology and making other adjustments in legal education in the United States to address the problems and opportunities created by an increasingly interrelated world has been addressed in several other recent forums which are noted to facilitate ready reference.¹⁷

¹⁷ *Symposium on Globalizing Legal Education – Educating Lawyers for Transnational Challenges*, 23 Penn St. Int'l L. Rev. 741 (2005) <http://heinonline.org/HOL/Page?handle=hein.journals/psilr23&id=1&size=2&collection=journals&index=journals/psilr>; *Symposium on Globalizing Legal Education – Transnational Law: What Is It? How Does It Differ From International Law and Comparative Law?*, 23 Penn St. Int'l L. Rev. 795 (2005) <http://heinonline.org/HOL/Page?handle=hein.journals/psilr23&id=1&size=2&collection=journals&index=journals/psilr>; *Symposium on Developing Mechanisms to Enhance Internationalization of Legal Education*, 22 Penn St. Int'l L. Rev. 393 (2004) <http://heinonline.org/HOL/Page?handle=hein.journals/psilr22&id=1&size=2&collection=journals&index=journals/psilr>; *Symposium on Continuing Progress in Internationalizing Legal Education – 21st Century Global Challenges*, 21 Penn St. Int'l L. Rev. 1 (2002) <http://heinonline.org/HOL/Page?handle=hein.journals/psilr21&id=1&size=2&collection=journals&index=journals/psilr>; *Symposium on Working Together: Developing Cooperation in International Legal Education*, 20 Penn St. Int'l L. Rev. 1 (2001) <http://heinonline.org/HOL/Page?handle=hein.journals/psilr20&id=1&size=2&collection=journals&index=journals/psilr>.