

Teaching Inter-Cultural and Bilingual Legal Competence: The Role of U.S. Law Schools

By:

Raquel Aldana

University of the Pacific McGeorge School of Law, USA

Three years ago, the Pacific McGeorge School of Law offered me the directorship of a new innovative Inter-American program whose genesis came as an initiative from the University of the Pacific to which we are affiliated. Conceptually, the idea was the university and its affiliated professional programs, the Dental and Law Schools, would create programs designed to graduate students who were professionally competent to work on Latino issues or on issues pertaining to Latin America. Dean Elizabeth Parker contacted me with the idea as a way of potentially making Pacific McGeorge a more attractive lateral move for me. It worked. For the last three years, I have been directing the Inter-American program which promotes bilingualism and cultural sensitivity principally among U.S. law students to better prepare them as lawyers who will represent Latino issues or clients working on Latin American matters. In this short reflection, I offer a brief description of the Pacific McGeorge program and offer a few preliminary reflections on the benefits and challenges associated with this type of program. I infuse my reflections with a few recommendations on best practices.

I. The Pacific McGeorge Inter-American Program

The Pacific McGeorge Inter-American Program seeks to introduce principally U.S. law students meaningfully the most pressing issues affecting Latinos in the U.S. as well as in Latin America. The program offers students the option to pursue a domestic or transnational track. The domestic track exposes students to the Latino experiences in the U.S. and emphasizes skills to assist lawyers in the representation of Latino clients and issues before U.S. legal institutions. The Transnational track emphasizes principally U.S.-Latin American relations and issues, including issues of trade and its implications on labor, environment, development and other human rights.

In a nutshell, the program offers substantive legal instruction and bilingual experiential and service learning opportunities in both English and Spanish as part of a Latin-American or Latino-focused curriculum. In addition, to offering courses in Legal Spanish, for example, we have offered courses in Spanish and English that include Comparative Latin American Law, Immigration Law, International Environmental Law, Comparative Free Speech in the Americas, and Latin American Trade Law and Development. These courses are either taught as part of our course offerings on our campus in Sacramento or as part of a summer abroad program in Antigua, Guatemala. Our Summer program in Antigua, Guatemala, is unique not only in offering substantive law courses in Spanish but also because it co-enrolls Guatemalan and other Latin American lawyers or law students in the program, all of whom are also bilingual or are seeking to become bilingually competent in English. Those students either take the courses we offer in English in Antigua or complete a semester exchange on our campus in Sacramento.

The decision by Pacific McGeorge to start a program in Guatemala was quite intentional but not an easy one. My colleagues, as did I, rightly worried about safety; Yet, Guatemala offered meaningful opportunities for the type of deep learning about transnational social struggles for justice we hoped to encourage in law students. Guatemala has enormous cultural and natural wealth and beauty; yet, its social struggles are fierce and daunting. At its twenty-fifth anniversary of signing the peace agreement

to end a civil war that lasted 36 years, it is hard sometimes to recognize progress. The country remains one of the most unequal in the world in terms of wealth distribution and the nation's commitment to social programs, despite alarming degrees of poverty, is shamefully weak. And yet, Guatemala is also a land of tremendous opportunity for democratic and economic development where transnational actors, whether public or private, have invested time and resources in ways that have transformed the nation, even in its most local spaces. This transformation, while perhaps inevitable, even necessary, and sometime good, has introduced new conflicts and challenges to issues of governance, legal development, economic sustainability, and cultural cohesion, to name a few.

While in Guatemala, students who are proficient in Spanish can participate in bilingual intercultural experiential placements. As well, in the U.S. we place students in Latin American Consulates and not-for-profits working principally with Latino clients. Altogether we have about twenty bilingual placement opportunities to date, including in the areas of sustainable development, immigration, family law, housing, human rights, commerce and trade, and environmental justice. These placements have been invaluable to students. In a recent piece I wrote soon to be published in the Pacific McGeorge Global & Business Development Law Journal titled, *Transforming Students, Transforming Selves: The Power of Teaching Social Justice Struggles in Context*, I reflect on the deep and challenging learning experiences of four of our students working on projects related to Canadian mining investment in Guatemala.

In addition, the Pacific McGeorge Inter-American Program creates bilingual service learning opportunities, most dealing with immigration matters in the U.S. Our most successful program, done with conjunction with our clinics, is our Citizenship Fair, through which we have serviced nearly 500 persons with their Naturalization petitions in just two years. We have also provided right-to-know sessions during our hosting of the Guatemalan consulate in our campus in Sacramento or to participants in community-based programs, whether here or in Guatemala. Finally, students may take substantive law courses taught in Spanish through a semester-abroad exchange program at the Universidad Francisco de Vitoria in Madrid, Spain.

II. Reflections

Preliminary, let me state that when Dean Parker proposed that I direct the Inter-American program, I had two immediate thoughts: Of course this project makes sense. We have in the U.S. a population of Latinos that the latest census preliminary puts Latinos at 45.5 million, which is up 29% from a decade ago. Latinos are the largest and fastest growing group of ethnic minorities in the US. As well, of course, geographically, Latin America, and Mexico especially, is our neighbor, which makes economic and political relations incredibly important. For California, for example, Mexico represents its number 1 partner. My second thought (more a reaction), however, was surprise that Pacific McGeorge could be very serious and committed to undertake bilingual instruction in law schools. I imagined some of the following questions: Should not linguistic and cultural competence be done at the university level in other others appropriate disciplines? Relatedly, is training in bilingual and inter-cultural competence sufficiently legal? How will it prepare out students for the bar? Are such programs discriminatory is that they favor Latino (an erroneous assumption) or Spanish-speakers at the exclusion of monolingual students? Will there be enough students interested or adequately prepared to participate in such a program? Relatedly, will the program be economically viable? Thankfully, Pacific McGeorge as a whole – that is, also the faculty – has been very receptive to the innovation of the program, which has proven to work, even if small. Still, these questions are legitimate and merit some discussion. I offer these preliminary reflections based on my experiences so far directing the program.

Let me address first the place and value of teaching bilingual and inter-cultural legal competence in law school. Forgive me for beginning with my own personal story. I am an immigrant from Central America. I grew up in the US from the age of 10 and was educated in US schools, including a US law school (Harvard). I was fortunate enough to have been hired a year out of law school in an international human rights NGO, the Center for Justice and International Law, to litigate cases out of Latin America in the Inter-American Court and Commission on Human Rights. I was hired because I spoke great Spanish, and I like to think because of my professional competence. However, I soon became the “Yankee” lawyer (for them an endearing term). I lacked bilingual legal proficiency and even inter-cultural competence to really understand the work that I was doing. The learning curve was steep the first year. Growing up in the U.S. had robbed me of my history, and I knew next to nothing about Latin America’s and legal institutions [I had spent a summer in Costa Rica while in law school]. I was a quick and passionate learner, true. But I felt deficient until the second year. That experience, however, taught me a few lessons. First, legal Spanish meant more than simply learning legal vocabulary in Spanish. It meant understanding the differences in law; it meant understanding how legal institutions function; it meant understanding the social context in which these laws would be applied. I also learned that despite being culturally Latina, not having grown up in Latin America made me very different from my colleagues, all of whom studied and practiced law in Latin America before moving to the U.S. I was a little “Yankee,” and I made some “cultural” mistakes not only in dealing with my immediate colleagues but with Latin American lawyers, politicians, and my Latin American clients. This experience taught me that there is no question that bilingual and inter-cultural legal competence is important to the practice of law and that it can make lawyers more effective. And if the goal of law schools is to graduate effective lawyers, it cannot be questioned that these types of skills belong in law school. Of course, they are legal enough, if one understands these skills to include a very nuanced appreciation for comparative law and law in context, as well as lawyering skills that account for cultural differences. Moreover, they are essential to improving the profession so we can move past the imposition of a set of laws, norms, and values to other legal systems, as opposed to the sharing of ideas with mutual respect for our differences.

The question remains, however, not whether these skills are important and should be learned but can they be taught and learned in law school? One legitimate critique is that few law professors are trained in teaching inter-cultural skills (although of course none of us are really trained in teaching at all). Indeed, I have never received “formal” training, though my entire professional legal experiences have been multi-cultural and bilingual. I do think that law schools and professors who decide to start these programs must take seriously the commitment that those who teach or direct such programs must be properly trained. I have only just begun to tap into literature about inter-cultural legal competence and I look forward to engaging this topic more seriously. At the law school, we have initiatives to start a dialogue on this very topic, and we have begun to do outreach to colleagues in pertinent disciplines to start to collaborate and conduct trainings on these issues. I should also say that it is not at all that case that law schools have not already been thinking about these issues. Clinical faculty especially but also others have discussed this in the context of client representation and in literature about unconscious biases. Still, there is a lot more work that needs to be done in the law field to help us understand these issues and how and best to teach them. Relatedly, beyond formal training, law schools need to be committed to creating inter-cultural experiences for the faculty and to creating inter-cultural experiences in their law schools. Here, I should say that I came to Pacific McGeorge when the law school is already a place quite rich in diversity and quite rich in deep global experiences. Still, like a lot of US law schools, we struggle with U.S. Latino diversity in the law school, principally in our student body. I have been struck that we have very few students from Latin America and few who are Latino

and US residents or citizens. Most of the participants in the program, in fact, have been non-Latino. At a point, the program has been even perceived as a way to attract Latino and Latin American students into our program. This may be true, but it has not been the case yet. Essentially, the law school has to foster an environment that both encourages and rewards faculty engaging in this type of learning, teaching, and scholarship.

I also take seriously the critique of whether law students can gain bilingual and inter-cultural competence in law schools. Isn't too late? Or isn't law school the wrong place – i.e., too much emphasis on US law; too narrow a focus; too U.S. centric; too short a time? Admittedly, not all law students can be taught to become proficient in a language or proficient in a culture. This will depend a lot on that person's stage of development. There are law students whom we are lucky to admit who are already at quite advanced levels of human development: They are beautifully self-aware and empathetic and critical, and sensitive, while at the same time, confident and satisfied with him/herself as a person. They also happen to be already fairly proficient in a language or bilingual. In addition, they have had rich multi-cultural experiences. I mention these qualities because these skills (and here I need to do even more research) are generally associated with people who are prone to gain inter-cultural proficiency, as well as bilingual legal proficiency. Many of my students have been this way, not all. I have even had a few who, despite rich multicultural experiences and bilingual proficiency, feel superior to other cultures and make terrible inter-cultural lawyers. But perhaps here we should be realistic and also honest about how much we think we can achieve. My first thought is that the answers will vary with each student. Some, who are already significantly on their way to inter-cultural and bilingual competency, will simply hone their skills. Others will simply begin a journey. I suppose, however, that I feel strongly that their journey as lawyers begins, and does not end in law school. At a minimum, law schools should foster and encourage learning and skills that put lawyers on a path to self-awareness, comparative sensitivity, bilingual proficiency, etc.

In light of this, then, how should law schools proceed to teach bilingual and inter-cultural competency? First, let me be explicit that I feel strongly that a bilingual component has to be an essential part of any program that takes inter-cultural training seriously. I am not suggesting that lawyers who are monolingual lack inter-cultural competence; nor am I suggesting that to be an effective lawyer you must speak the language of your client. This is impossible, even if desirable. However, I do insist on the following observations. First, while speaking the same language to that of a client does not guarantee cross-cultural effective lawyering, it does improve it tremendously. Language is not simply about understanding what is being said by the client. It is about comprehending the story the client is telling. Sometimes lawyers are extremely lucky and interpreters do miracles to convey what is really being told, not just what is being said by the client to the lawyer. Indeed, one of the brilliant pieces on the effective use of interpreters by lawyers was written by an admirable lawyer and professor Moneer Amhad, titled INTERPRETING COMMUNITIES: LAWYERING ACROSS LANGUAGE DIFFERENCE, published in the 2007 UCLA Law Review, volume 54. But language transforms thinking and aids cultural understanding. There is a way in which the language you speak changes inter personal dynamics. Of course, at a most basic level, to the extent that lawyers can communicate directly with clients in their own language, this goes beyond simply understanding each other but moves to comprehension. Here too, however, accuracy is important. Thus, for students who are proficient in a language, the importance is to teach them legal proficiency so they know not only how to translate a legal term but know that when they translate it, it may have a different meaning to that client in light of his or her legal experience in their country of origin. For this reason, I insist that learning legal Spanish must happen in context. As well, that context should try to replicate as much as possible, without sacrificing student security and well-being, the reality of Latin American and the places from which many Latinos come who

migrate to the US, or the communities in which they live in the U.S. By this I do not mean solely places of extreme poverty but places that reveal and expose the extremes of wealth that characterize Latin America. And even if students do not become proficient in a language, I still believe that being asked to learn even beginning Spanish and a context that is very Latin American and/or Latino can open up their minds and hearts in ways that will facilitate relating to Latino and/or Latin American clients in the future. Indeed, sometimes a simple heartfelt and knowing greeting said in Spanish during a client intake can go a long way in establishing trust.

Relatedly, thus, to the extent possible, students should do field placements. These field placements should engage the laws, issues, and legal institutions that affect the lives of the clients that future lawyers will represent. These placements must be safeguarded to guarantee a quality experience not solely for the student but for the organization. A word of caution, achieving this is a lot of hard work. I have found that our bilingual placements are few because I treat these more like a hybrid between a clinic and a traditional externship experience. I personally supervise each placement to avoid burdening the organization with a student without substantial experience. This means being available to help students conduct comparative work, answer substantive questions, but also providing technical legal Spanish support. As well, guided reflections are really crucial to encourage a deeper awareness and thinking about the lessons learned. I have bi-weekly journals that students must post on Twen. Each student must read the journal entry of at least two other students and comment on those reflections. In addition, not only do I correct their Spanish, but I offer questions and comments and share my own experiences with them. One issue we have been discussing is whether we can include a 1 week workshop at the completion of the externships to encourage greater group thinking and reflection of the experiences. This suggestion came from having consulted with professors at the University of the Pacific who have taught inter-cultural competence, and we will soon implement it within the program.

I will briefly dismiss the issue of whether these programs are sufficiently legal or are adequately preparing our students for the bar. On the bar issue, I suppose my answer would be that where as our students passing the bar is incredibly important, the bar exam cannot drive all of legal education. The bar only tests a few skills really, legal analysis and legal writing, and some substantive law. It does not capture a lot of other crucial skills, including intercultural legal competence, which are essential for an effective practice. On the sufficiently legal critique, the issue generally comes up in the proposal to teach Legal Spanish, for example. This is more a lack of understanding about what is taught in a Legal Spanish class. Legal Spanish is not teaching someone to learn Spanish; it is also no simply teaching legal vocabulary. When done well, legal Spanish is contextual and is more either an introductory course on Comparative Latin American Law taught in Spanish or is about the US Latino legal experience. I co-authored a book with Steve Bender and others titled *Everyday Law for Latinos*. A chapter on Police Encounters in the book, for example, took into account issues of immigration status as well as the historical relations that Latinos have had with police in the US. Thus, it is legal because the issue is not simply to teach students vocabulary but to prepare them to engage Latino or Latin American clients with a deeper awareness of the context in which they live and operate.

Finally, I want to take up the critique of whether these programs discriminate by excluding students who are not Latino or who are monolingual. The answer is no. The program is not for Latino students. The program is for any student who is interested in Latin America or in Latino issues. Most of my students have been non-Latinos, and that has been a positive. However, these programs do need to be mindful that they not sacrifice opportunities for monolingual students. For example, I also teach a course on Comparative Latin American Law in English because it would be unfair to students if the course were only offered in Spanish. This makes such programs resource intensive, of course, because

courses are duplicated in two languages. However, this goal is important; it would defeat its goals if it precluded monolingual students who are interested in the issues. Another recommendation, however, is that the program seek to encourage students who are monolingual to become bilingual. Thus, for example, our program in Guatemala does require that students who do not already speak Spanish co-enroll in a Legal Spanish class for beginners, which combines intensive Spanish instruction and infuses it with legal substance, vocabulary, exposure, and service learning.