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WHAT I THINK I HAVE LEARNED FROM 50 YEARS OF TEACHING AMERICAN LAW TO FOREIGNERS AND FOREIGN LAW TO AMERICANS

1. INTRODUCTION

Why should American students learn Foreign Law? Why should foreign students learn American law? I suggest that there are many reasons. Permit me to list and discuss briefly those which I consider the most important. Needless to say, they are complementary and not exclusive.

1. Learning for learning's sake

It is very popular these days to evaluate education in terms of its dollar value. The American press seems obsessed with producing articles discussing whether or not higher education or specific parts thereof are “worth” the cost of high tuitions and the need for student loans. Students are barraged with advice to choose areas of interest and study on the basis of the future income they can expect. While economic realities should never be ignored, the importance of knowledge and the societal need for an educated citizenry seems to be constantly left out of the discussion.

Can you really consider yourself an educated lawyer if you know nothing about other legal systems and laws? In our global world can a professional merit respect and trust if she knows nothing about how her profession is practiced in other countries? Educational “worth” must be more than earning power compared to educational costs. Of course, knowledge of foreign legal systems has considerable economic value but, even if it did not, should not it be considered an important goal for anyone wishing to present himself as an educated citizen and educated professional?

2. To understand your own legal system and laws better

In the process of learning about other legal systems one generally looks deeper into one's own system. I would submit that there is no better way to understand what is unique and commendable or substandard and in need of improvement about your own laws and legal system than to understand the differences from other approaches to laws and legal systems found in other countries. To evaluate

one's own values and approaches nearly always requires being able to step out and view with a perspective and the study of other legal systems gives an opportunity to experience this perspective.

3. To improve your laws and legal systems

Are the rules and approaches of your legal system the best possible? Perhaps in other countries or legal traditions there are "better" approaches. What other approaches are there around the world?

In many countries, courts look to foreign law to aid them in reaching a just resolution of issues before them. The controversy over the "relevance" of foreign law to judicial decision making in the United States is a well-known controversy¹. The landmark case on point is the 2005 decision of the Supreme Court of the United States in *Roper v. Simmons*² which concerned the juvenile death penalty. The comments of the Justices in that decision give an illuminating overview of the controversy at the Supreme Court level:

Justice Stevens: "The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions"³.

Justice O'Connor: "[T]his Nation's evolving understanding of human dignity certainly is neither wholly isolated from, nor inherently at odds with, the values prevailing in other countries. On the contrary, we should not be surprised to find congruence between domestic and international values, especially where the international community has reached clear agreement – expressed in international law or in the domestic laws of individual countries – that a particular form of punishment is inconsistent with fundamental human rights. At least, the existence of an international consensus of this nature can serve to confirm the reasonableness of a consonant and genuine American consensus"⁴.

Justice Scalia: "[T]he basic premise of the Court's argument – that American law should conform to the laws of the rest of the world – ought to be rejected out of hand [...] I do not believe that approval by 'other nations and peoples' should buttress our commitment to American principles any more than (what should logically follow) disapproval by 'other nations and peoples' should weaken that commitment"⁵.

4. To be able to advise clients about the relevant laws and regulations of two or more countries

¹ S. Calabresi, S. Dotson Zimdahl, *The Supreme Court and Foreign Sources of Law: Two hundred Years of Practice and the Juvenile Death Penalty Decision*, "47 Wm. & Mary L. Rev." 743, 2005–2006. See also J. Waldron, *Foreign Law and the Modern Ius Gentium*, 119 "Harv. L. Rev." 129, 2005–2006; J. O. McGinnis, *Foreign to our Constitution*, 100 "Nw. U. L. Rev." 3030, 2006.

² 125 S. Ct. 1183, 2005.

³ Justice Kennedy writing for the majority, 125 S. Ct. 1183, 1200, 2005.

⁴ Justice O'Connor in her dissenting opinion, 125 S. Ct. 1183, 1215-16, 2005.

⁵ Justice Scalia in his dissenting opinion, 125 S. Ct. 1183, 1229, 2005.

The globalization of the world's economies and inhabitants means that an ever increasing percentage of the questions asked of lawyers in all countries involves issues of "foreign" law. Multinational issues are almost the norm in commercial matters and the relevance of foreign law in family law, property law, criminal law, inheritance law, and tort law is dramatically increasing⁶. Knowledge of foreign law and legal systems is essential for a lawyer to recognize and understand the significance of foreign laws to the issues raised by her clients⁷. Traditionally this means that the lawyer is better able to identify the need for a foreign lawyer to participate in the case or at least advise him. Such a need exists for judges as well as lawyers⁸. Many people believe that it is not enough for one's lawyer to be able to recognize the relevance of foreign law and seek advice in regard to it. There is a recent increase in the legal education world in programs which seek to prepare students to practice law – be a regular member of the Bar – in more than one jurisdiction⁹. Two quick examples. The University of Houston College of Law has recently started a four-year program in connection with the University of Calgary that prepares the graduates of that Program to be members of both an American Bar and a Canadian Bar¹⁰. A second example, the Georgia State Law School's new LL.M. for Foreign Lawyers Program has a curriculum that will allow successful graduates to sit for the Georgia Bar¹¹. Of course, California and New York are already known in the comparative law world for allowing foreign lawyers – who meet specific requirements– to take their respective bar exams¹².

⁶ See F. A. Gevurtz, *Report Regarding the 2011 Pacific McGeorge Workshop on Promoting Intercultural Competence (The "Tahoe II" Conference)*, 26 "Pac. McGeorge Global Bus. & Dev. L.J." 63, 2013; W. M. Reisman, *Designing Law Curricula for a Transnational Industrial and Science – Based Civilization*, 46 "J. Legal Educ." 322, 1996.

⁷ See S. L. DeJarnatt, M. C. Rahdert, *Preparing for Globalized Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum*, 17 "Legal Writing J.", *Legal Writing Institute* 3, 2011; A. Blackett, *Globalization and Its Ambiguities: Implications for Law School Curricular Reform*, 37 *Colum. "J. Transnat'l L."* 57, 1998–1999.

⁸ Dr. Ewa Gmurzyńska, Director of the Center for American Law Studies, will explain an innovative program currently in operation in Poland in this regard in her discussion of the PAJRAP program recently established by the Center for American Law Studies at the University of Warsaw. See the article by Professor Maria Kenig-Witkowska, in regard to the role that various domestic laws plays in the creation of norms for international law and international environmental law.

⁹ K. Hall, *Educating Global Lawyers*, 5 "Drexel L. Rev." 391, 2012–2013. See also G. M Sanchez, *A Paradigm Shift in Legal Education: Preparing Law Students for the Twenty-First Century: Teaching Foreign Law, Culture, and Legal Language of the Major U.S. American Trading Partners*, 34 "San Diego L. Rev." 635, 1997.

¹⁰ See <http://www.law.uh.edu/academic/UHLC-Calgary-Dual-Program-Full-1.asp> [University of Houston Law Center and University of Calgary Faculty of Law International Energy Lawyers Program (IELP) Dual Degree JD Program].

¹¹ See <http://law.gsu.edu/llm/>.

¹² For a discussion, including statistics, of foreign lawyers with an American LL.M. taking the New York Bar, see D. S. Clark, *American Law Schools in the Age of Globalization: A Comparative Perspective*, 61 "Rutgers L. Rev." 1037, 1062, 2008–2009.

2. HOW SHOULD WE TEACH FOREIGN LAW TO AMERICAN LAW STUDENTS

If one accepts one or more of the reasons discussed above for teaching foreign law, the key issue becomes: how should it be taught? One scholar¹³ has classified the major methods into three groups: (1) additive, i.e. primarily through electives which are of course optional courses that students may take if they wish, (2) integrative, i.e. students from day one of law school study domestic, foreign and international law together, and (3) immersive, i.e. students learn foreign law by attending foreign law schools. While that classification is basically sound, I prefer a slightly different division.

1. Comparative law courses taught by domestic and/or foreign professors

At least in American law schools, the original and still most common approach is through a course – almost always elective – labeled comparative law¹⁴. Such a course should be – and sometimes is – labeled “Comparative Legal Systems” since it normally concentrates on comparing and contrasting legal systems or traditions – or “families” – for example a comparison of common law and civil law systems¹⁵. Little time is usually available to go very deeply into legal subject areas, for example, torts or contracts.

2. Domestic law courses with an element of foreign law added

A more recent trend is to add some subject specific course coverage of foreign law¹⁶. For example, in an American property law course the professor could include some coverage of French property law in order to allow students to compare and contrast Napoleonic code concepts of property with common law property concepts. This assumes that the professor is well enough versed in at least one foreign law system to successfully use this approach. Depending on who is teaching the course, this may or may not be the case. Usually for various reasons, including the need to cover basic material in first year courses, the amount of time devoted to foreign law issues and materials is quite short – perhaps even only the equivalent of a couple of class sessions.

¹³ J. R. Maxeiner, *Learning from Others: Sustaining the Internationalization and Globalization of U.S. Law School Curriculums*, 32 “Fordham Int’l L.J.” 32, 2008–2009. One of the earliest discussions on point and still a classic – is *Roscoe Pound, The Place of Comparative Law in the American Law School Curriculum*, 8 “Tulane. L. Rev.” 161, 1934.

¹⁴ See F. A. Gevurtz et al., *Report on the Pacific McGeorge Workshop on Globalizing the Law School Curriculum*, 19 “Pac. McGeorge Global Bus. & Dev. L.J.” 267, 2006.

¹⁵ The reader will have already realized that this article is written from an American perspective. Compare K. Schadbach, *The Benefits of Comparative Law: A Continental European View*, 16 “B.U. Int’l L.J.” 331, 1998.

¹⁶ Consider M. Reimann, *The End of Comparative Law as an Autonomous Subject*, 11 “Tulane Eur & Civ L.F.” 49, 1996.

I had a rather unique opportunity when I was on the Tulane Law School faculty in the early 1970s to design and teach an introduction to property law first year course as a common law/civil law comparative course. The experiment seemed appropriate since both common law property and civil law property were taught in the Tulane curriculum although normally only students choosing the civil law curriculum took the civil law property course and only students taking the common law curriculum enrolled in the common law property course. I only taught the course twice and therefore, never was able to prepare appropriate and adequate course materials, nor was I able to perfect the approach and determine what topics should be covered and what areas should be left entirely for the basic civil and common law courses. It was not a popular approach with the students but my inadequacies may have been responsible. To this day I am not certain whether the concept was workable and the experiment was abandoned when I left Tulane. Perhaps we were ahead of our times. McGill has adopted a curriculum which “seeks to incorporate transnationalism into the curriculum by freeing the study of law from jurisdictional or systemic boundaries”¹⁷.

At the University of Florida, I had the opportunity to try something in the same vein when I taught in, and directed, the Cuban American Lawyers Program. That Program was one authorized by the Supreme Court of Florida with the goal of preparing Cuban lawyers, who had fled to Florida, to take the Florida Bar exam and therefore become licensed to practice there¹⁸. My concept was to present as many common law legal concepts as possible in a civil law context in order to facilitate the understanding of common law. In other words, to allow the Cuban lawyers to see the differences and similarities between the law they already knew and their new legal system in the hope that this would ease and expedite their studies. Again, I am not certain the effort was successful. The Bar passage rates were quite disappointing but that does not mean that those who did pass were not aided by the “comparative” approach nor that those not successful would have done better without such an approach. One difficulty was that very few teachers in the program were versed in civil law and therefore only a limited number of topics could be taught from a comparative perspective.

3. Foreign enrichment courses

Many American law schools offer courses in specific subject areas taught by one or more foreign or foreign trained law professors. The University of Florida College of Law has been a leader in this regard since I first introduced the con-

¹⁷ R. Jukier, *Transnationalizing the Legal Curriculum: How to Teach What We Live*, 56 “J. Leg. Educ.” 172, 174, 2006 (McGill professors need to have expertise in both civil and common law and develop materials that will allow them to implement this approach). See also discussion of teaching transnational law before national law in J. Husa, *Turning the Curriculum Upside Down: Comparative Law and Educational Tool for Constructing the Pluralistic Legal Mind*, 10 “German L.J.” 913, 2009.

¹⁸ In re Proposed Amendment, 324 So.2d 33, 1975.

cept there in the 1980's. I will use a Georgia State Law School example which adopts the Florida model. We offer a course labelled International Perspectives on Urban Law and Policy. We have three foreign professors, each comes for consecutive three week periods during the spring semester to offer classes on urban law issues in their home country. The course is designed to be multidisciplinary and the enrollees normally include not only GSU law students but graduate students from other colleges at GSU and from the College of Architecture, which includes the City and Regional Planning Department, of our sister institution the Georgia Institute of Technology (Georgia Tech). Each visiting professor prepares course materials for his segment of the course and gives a take-home exam at the end of her stay. The "foreign enrichment course" approach to teaching foreign law has, in my opinion, met with considerable success in the law schools which have tried it. Needless to say, language and teaching style of the foreign visitors as well as the quality and relevance of the course materials are keys to the course's effectiveness as is their ability to explain materials so that they relate to the student's knowledge of the American law on point. Such courses are not considered a substitute for a basic comparative legal systems course and in fact, such a course should probably be considered a prerequisite for taking this kind of course. The advantage of this approach is that students are exposed to at least three foreign systems and can thereby compare them as well as make comparison with American urban law.

4. Summer Programs and "short sessions" abroad

The U.S. law schools are well known for sponsoring a large number of summer sessions abroad designed primarily for American law students but often including law students from the host country. While many such programs include "American law" courses they also feature many comparative and foreign law courses and at least include some coverage of foreign law in the standard American law offerings. The summer program faculty is usually a blend of American and foreign law professors. Many have a "clinic" element designed to give the students limited "practice" experience in the host country and an inside look at multinational law firms. A recent modification of the traditional 4–6 weeks long summer programs is a short – week to 10-day – very specialized course held in a foreign country during winter or spring break. They are often referred to as "intersession programs". Normally the stay abroad is "part" of a full semester course. For example, next year the GSU International Perspectives course, mentioned earlier, will offer students the opportunity to obtain extra credit by participating in a week of intensive lectures and field trips in Istanbul, Turkey, during spring break.

The popularity of American summer and intersession law study abroad programs is well known and well-studied¹⁹. They require approval by the American

¹⁹ One of the most exhaustive discussions is L. Harmon, E. Kaufman, *Innocents Abroad: Reflections on Summer Abroad Law Programs*, 30 "T. Jefferson L. Rev." 69, 2007–2008 (over 100 pages). The authors, well experienced in directing summer abroad programs, give the following

Bar Association which also monitors and inspects them. The ABA reported in 2008, for example, that there were then about 237 programs sponsored by 115 different U.S. law schools in 49 countries²⁰.

5. LL. M. Programs

Graduate programs for foreign lawyers designed to allow them to obtain a Master of Laws degree from an American law school is a well-established way of offering American Law as “foreign law” for students and lawyers from other countries²¹. They usually contemplate a full academic year of residence at the host school in the U.S. and, as I mentioned earlier, some contemplate giving adequate training in American law to enable foreign law graduates to sit for a state bar exam. Many non-American law schools of course offer similar programs for American law graduates.

6. Centers of Foreign Law – the University of Warsaw approach

The University of Warsaw has one of the most impressive programs for teaching foreign law found anywhere in the world. The symposium which gave rise to these papers is because of one of them – the Center for American Law Studies. The Center offers approximately one hundred University of Warsaw law students each academic year a full year of American Law courses taught by law professors primarily from the University of Florida. What should also be noted is that the University of Warsaw Faculty Of Law has 5 other such Centers, namely British, French, German, Spanish and Italian Law Centers.

3. HOW SHOULD AMERICAN LAW PROFESSORS TEACH AMERICAN LAW TO FOREIGN LAW STUDENTS

There are many differing circumstances under which one can teach American Law to foreign students and consequently observations in regard to how to do so most effectively can only be given in general terms with a recognition of myriad exceptions. In spite of that, it seems important to attempt some common base issues²².

suggestions for the success of such programs: (1) Provide and test course content on the host country, (2) Tailor courses to the law and conditions of the host country, (3) Find faculty with the ability to do #2, (4) Incorporate local law students, (5) Tell students what they are getting, (6) Create a community, (7) Create an opportunity for students to engage in a public service project, and (8) Encourage and develop tourism.

²⁰ See http://www.americanbar.org/groups/legal_education/resources/foreign_study/foreign_summer_winter_programs.htm.

²¹ See http://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_category.html.

²² For an interesting discussion of teaching methods as they relate to teaching “foreign” law, see C. Valcke, *Global Law Teaching*, 54 “J. Legal Educ.” 160, 2004.

1. Language ability

To start with the obvious, the most challenging and yet most frequently encountered situation is presented when the American law professor is teaching in English to students for whom English is not a first language. Occasionally one has a class whose students are all totally “fluent” in English but the definition of “fluent” is itself fluent. Often students who have excellent English language skills are not accustomed to hearing lectures in American English about legal topics. Remember that even native English speaking students often have difficulty following a lecture which involves extensive use of legal terminology. In addition, most groups of students have a range of English fluency which is often difficult for the lecturer to gauge. In that regard, it is often helpful to ask questions and even give a small “pop” quiz early in the course to evaluate how well most students are understanding one’s lectures.

The approaches to remember are as obvious as the problems²³: speak clearly, enunciate well, speak slower than one would normally do back in the States, avoid slang, and especially avoid abbreviations unless they are well explained²⁴. Summarize frequently.

2. Visual aids

While power points and the like may have had some negative consequences for American professors teaching American students, I believe strongly that they are a blessing when teaching abroad. The picture worth a 1000 words is even more valid when words are difficult for the listener. Of course, power points are not just about pictures. Showing a power point with key words and the topics to be covered can go a long way to help even English challenged students follow lectures.

In many countries, students are accustomed to having the professor’s class notes or at least outline of them made available at the beginning of the course so that, even if they are repeated through the use of power points, the American professor may decide, or even be required, to make them available to the class.

3. Do not go too deep or try to cover too much

Foreign students neither need nor want in depth coverage of most topics. If you are teaching property, should you even expose them to the Rule Against Perpetuities much less the fertile octogenarian example. Of course, how many topics you can cover and how deep you can go depends on how many hours of lecture you can give but unless you are preparing them to take an American Bar exam, the most important thing for you to decide is what overview will result in the foreign stu-

²³ I realize that the reader may be offended by the obviousness of the suggestions in this section. If the reader always remembers the basic approaches suggested then I offer my apologies and congratulations but I am not so lucky, after years of lecturing in many countries I still have to make myself remember things so basic as “speak slowly” and “avoid abbreviations”.

²⁴ I usually hand out a “key” to the abbreviations used frequently in the subject matter which I am teaching.

dents learning, retaining and intellectually profiting from your coverage. Covering a small number of topics well should nearly always be the preferable plan.

4. Try to incorporate legal concepts from the student's own system. Have a local professor attend class

Using your knowledge of the students' legal system to help them grasp the significant similarities and differences between it and American law has already been advanced as a commendable comparative teaching technique. Hopefully, you will be able to do this even without the help of local professors but my experience has convinced me that if there is a key to success, it is having a comparative law astute local professor being present during your classes and helping the students relate what you say to what they already know about their legal system. My best teaching experience in this regard is teaching in Istanbul with a host professor present to give explanations in Turkish when he realizes the students need help. Team teaching has become a bit of a cliché in the States but in a foreign setting, I believe it greatly enhances the possibility of success.

4. CONCLUSIONS

Fifty years of experience teaching foreign law to American students and American law to foreign students have left me with two major conclusions. First, there is an increasing need for students from all nations to learn about the laws and legal systems of other nations. For law schools not to do so would constitute ethnocentric malpractice. In regard to teaching foreign law, it is not a question of IF but HOW. Secondly, no one approach is adequate. Legal academicians must constantly seek more effective and more innovative ways to globalize the outlook, knowledge, and skills of tomorrow's lawyers and judges.

WHAT I THINK I HAVE LEARNED FROM 50 YEARS OF TEACHING AMERICAN LAW TO FOREIGNERS AND FOREIGN LAW TO AMERICANS

Summary

The author reflects on the lessons he believes he has learned from 50 years of teaching foreign law to Americans and American law to foreigners. He first considers why students of any country should study foreign law and suggests the following reasons:

1. Learning for learning's sake, 2. To understand your own legal system and laws better, 3. To improve your laws and legal systems, and 4. To be able to advise clients about the relevant laws and regulations of two or more countries. The author next considers how we should teach foreign law to American law students and considers several models: 1. Comparative law courses taught by domestic and/or foreign professors, 2. Domestic law courses with an element of foreign law added, 3. Foreign enrichment courses, 4. Summer Programs and "short sessions" abroad, 5. LL. M Programs, 6. Centers of Foreign Law – the University of Warsaw approach. In the final section of the paper the author considers how American law professors should teach American law to foreign law students and offers several basic suggestions: 1. Consider the Language ability of the students and adjust your language accordingly, 2. Use visual aids, 3. Don't go too deep or try to cover too much, 4. Try to incorporate legal concepts from the student's own system, 5. Have a local professor attend class. The author concludes there is an increasing need for students from all nations to learn about the laws and legal systems of other nations. Secondly, no one approach is adequate. Legal academicians must constantly seek more effective and more innovative ways to globalize law teaching.

MOJA LEKCJA Z 50-CIU LAT NAUCZANIA PRAWA AMERYKAŃSKIEGO STUDENTÓW ZAGRANICZNYCH ORAZ PRAWA OBCEGO STUDENTÓW AMERYKAŃSKICH

Streszczenie

Autor rozważa swoje doświadczenia z 50-letniej praktyki akademickiej, kiedy nauczał prawa obcego Amerykanów oraz prawa amerykańskiego studentów zagranicznych. Po pierwsze, autor zastanawia się dlaczego studenci z innych krajów powinni studiować prawo obce i podaje następujące przyczyny: 1. Uczenie się przez wzgląd na sam rozwój naukowy; 2. By lepiej zrozumieć własny system prawny i panujące w nim zasady; 3. By udoskonalić własne prawo i cały system prawny; 4. By móc doradzać klientom w sprawach między dwoma lub więcej krajami odnośnie stosowanych przepisów i regulacji. Następnie autor rozważa jak powinno się uczyć prawa obcego amerykańskich studentów prawa i wyróżnia następujące modele: 1. Kursy prawno-porównawcze prowadzone przez nauczycieli krajowych, jak i zagranicznych; 2. Krajowe zajęcia prawnicze z elementami prawa obcego; 3. Zajęcia z prawa obcego; 4. Letnie kursy i zagraniczne sesje naukowe; 5. Kursy LL.M.; 6. Centra Prawa Obcego – na wzór tych na Uniwersytecie Warszawskim. W końcowej części artykułu, autor przedstawia w jaki sposób amerykańscy nauczyciele akademicy powinni uczyć prawa amerykańskiego studentów zagranicznych i przedstawia kilka prostych sugestii: 1. Branie pod uwagę możliwości komunikacji w języku obcym studentów i dostosowanie własnego sposobu komunikacji do ich potrzeb; 2. Używanie pomocy wizualnych – prezentacji; 3. Nie zagłębianie się zbyt w szczegóły; 4. Próba dodania elementów pochodzących z krajowych systemów

prawnych studentów; 5. Poproszenie lokalnego nauczyciela akademickiego o udział w zajęciach. Autor konkluduje, że istnieje wzrastające zapotrzebowanie wśród studentów ze wszystkich zakątków świata do studiowania obcych systemów prawnych. Co więcej, stosunek kadry akademickiej nie jest adekwatny do tych potrzeb. Nauczyciele akademicy na kierunkach prawniczych powinni stale poszukiwać bardziej efektywnych i innowacyjnych metod „globalizacji” nauczania prawa.

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SŁOWA KLUCZOWE

nauczanie prawa obcego w Stanach Zjednoczonych, nauczanie prawa, zajęcia z prawa państw obcych, programy LL.M