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Reflections on Teaching in Chile

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Maestro.
Sé fervoroso.
Para encender lámparas has de llevar fuego en tu corazón.[1]

This journal has featured other articles by law teachers describing their experiences in teaching abroad.[2] I too have had the opportunity to teach in another country this year. But I did not have the luxury of teaching in my native English: I was told when I was hired that I would be expected to teach in Spanish. This was probably not an unreasonable request by the administration of the University of Chile, but it was a tremendous challenge for me. This article provides some reflections and recommendations for others who may find themselves teaching law not only in a foreign country but also in a foreign language.

Some Background

I arrived in Chile in June 1996, barely able to order a meal in Spanish. My prior experience in Spanish consisted of a year of college study and ten days in Nicaragua in 1990 as an election observer. Since my opportunity to move to Chile came about quite suddenly, I did not have the benefit of additional language study in the United States.

From June 1996 to April 1997 I studied Spanish (generally three to five hours per week) at the Instituto Chileno Norteamericano—focusing for the first six months on general vocabulary, grammar, and pronunciation. The last three months were with a teacher who had experience in legal translating. We

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This article focuses on the course I taught during the first semester of the 1997 academic year. During the second semester I embarked on a second course, Comparative Property Law. On request, I will be happy to provide information about that course, or send a copy of either syllabus.

1. "Teacher. Be Fervent. To light lamps you must have fire in your heart." Gabriela Mistral, Decálogo de la Maestra.

2. E.g., Katalin Kolláth & Robert Laurence, Teaching Abroad: Or, "What Would That Be in Hungarian?" 43 J. Legal Educ. 85 (1993); George A. Critchlow, Teaching Law in Transylvania: Notes on Romanian Legal Education, 44 J. Legal Educ. 157 (1994).

reviewed my course outlines and practiced the technical vocabulary I would need to actually teach the course. And of course I also had the benefit of living in the country and having the language all around me.

In Chile, law is a five-year undergraduate program. The University of Chile, the oldest law school in the country, is one of two state-supported law schools. The student body includes 1,710 undergraduate students, almost all of whom needed high scores on a state-administered aptitude test for admission. In spite of an increasing number of private law schools, the better students and faculty are generally associated with the more established public institutions.

I taught in the *Magister en Derecho*—the postgraduate or LL.M. program. This includes more than 120 students, both Chileans and foreigners who come to the University of Chile because it has one of the best general LL.M. programs in South America. To receive the master's degree, students must complete two or three semesters of course work and write a thesis; they may choose to accept a certificate for their course work rather than complete the thesis.

My class started with eight students but grew to fifteen as the semester progressed. The first day of class I gave the students a *cuestionario* to learn more about their backgrounds and interests. Fortunately, all the students could read a little English. Only one student had never visited the United States; the rest had studied or traveled to varying extents. The class was evenly divided between men and women. The men, in general, were currently working as lawyers, on average ten years out of school; as a group the women were younger, most coming directly from undergraduate law study. The class also included students from Germany, Finland, Guatemala, and Peru. The work experiences included private practice and government service; one student was from the Peruvian Embassy, and one from the Chilean office of Deloitte & Touche. One student had already been accepted to the LL.M. program at Yale Law School for the following year.

The Substance of My Course

Titled Introduction to American Law, my course was intended as a general introduction to the American legal system. It met twice a week, over sixteen weeks, for an hour and twenty minutes. Originally I designed the first half of the course to focus on common law, constitutional law, and litigation-related topics, and the second half to focus on contracts, commercial law, property and environmental law, taxation, and other transaction-related themes. But the students' interest in the early topics quickly expanded that portion of the course, and I was forced to reduce many of the topics I had planned for the second half. When the course was over, many students recommended that in the future I should focus on the first half of my original syllabus and leave the second half for another semester.

The Constitution and Federalism

As a teacher, I have always felt that I need to select a logical beginning for my courses, and then generally take several giant steps backward to be sure that the students have a proper context in which to begin. This was even more

true in Chile. For example, I learned as I embarked on a discussion of the Constitution that the students had little understanding of colonial history, or even the knowledge that the U.S. now includes fifty states. My discussion of federalism would have been lost on them had I not taken the time to review not only some basic history, but also a map of the U.S. color-coded to show major periods in the country's expansion.

I dedicated one class to an overview of the common law. To lawyers trained in the code-based system of the civil law, the common law is very strange indeed. Although they had a broad conceptual image of common law, my students had a hard time understanding the actual application of these principles—for example, that the U.S. Supreme Court can actually block the enforcement of federal and state statutes, so that when we say common law, we really mean that judge-made law is equal to statute. I finally gave them the example of *Roe v. Wade*[3]—a decision that made state laws criminalizing abortion invalid. This was truly shocking to them—not only that abortion is legal, because it is not in Chile, but that the Supreme Court has the power to overturn criminal laws.

For the next two classes we focused on the U.S. Constitution. We discussed first the division of federal and state power—the enumerated powers, the Commerce Clause, the Supremacy Clause. Federal preemption of state laws was particularly confusing to the students. In the next session we talked about the three branches of government. The students were better than American students in reviewing the text of the Constitution (probably because of their training in code interpretation). But they were quite puzzled about the Electoral College, and we probably spent too much time on it given its actual importance in American politics.

Then we spent two classes on the Bill of Rights and other constitutional amendments. The First Amendment is particularly provocative in Chile. While the Chilean constitution recognizes the right to freedom of conscience and the free exercise of all religions,[4] the government here as elsewhere in South America is clearly dominated by the Catholic religion. In fact, the University of Chile Law School, though publicly funded, has a chapel on the premises. Freedom of speech also is controversial. I provided the students with a true-false quiz prepared by the American Bar Association for the 1997 Law Day celebrations. The students were absolutely amazed that flag burning is constitutionally protected[5] and astounded by the result in the Pentagon Papers case.[6]

The Common Law System: Judges, Juries, and Class Actions

I had originally intended to cover civil procedure and conflict of laws in some detail. But I learned some important lessons from my students. First, they felt we were moving too quickly over certain basic concepts. Next, they

3. 410 U.S. 113 (1973).

4. Constitución Política de la República de Chile, Capítulo III, Artículo 19, Sección 6.

5. United States v. Eichman, 496 U.S. 310 (1990).

6. New York Times Co. v. United States, 403 U.S. 713 (1971).

believed that some of the essential parts of civil litigation were fairly similar in the two countries, and not of much interest to them. Finally, they were completely confused by and curious about two topics: juries and class action litigation.

So, in lieu of a detailed discussion of civil procedure, I spent one class on the judiciary in general. The students had many questions about the election of state judges, since the Chilean judiciary is appointed (much like our federal bench). Perhaps the biggest difference, though, is in the role and the prestige of the judge. I asked my students if any of them aspired to be judges, and not one did. I tried to convey to them that many a U.S. student would dream of becoming a judge. In Chile the judiciary is much more administrative and bureaucratic; the pay is minimal, and the lower levels include increasing numbers of women in part-time positions. Most students believe that the Chilean judiciary is independent and that it has the ability to challenge decisions of the government, but I am skeptical.[7]

Chile does not have a jury system. The students have been trained in the value of *seguridad jurídica*—the legal predictability that a code-based system provides. The idea of citizen juries completely shatters this principle and is mystifying to them. Of course, the students know something of juries from movies and news. But they came to class with numerous questions, making for a lively discussion.

I organized the class around four themes: the constitutional requirement for a jury, the jury selection pool, the process of voir dire and peremptory challenges, and the role of the jury during and after the trial. I started by explaining the process by which potential jurors are identified from voting and motor vehicle registration lists; the students were shocked at the resources expended in calling jurors, not to mention the fact that citizens would take time from work to participate in this process. Voir dire was another topic of some debate: the students were particularly skeptical about peremptory challenges. So I prepared a test for them in a later class: three hypothetical cases in which I asked them to vote as potential members of the jury. Much to their surprise (but not mine) we discovered clear gender differences in the way our small class would resolve these cases. That lent some credibility to my claim that jury selection might in fact have an impact on a trial's outcome.

We then talked about the role of the jury as factfinder in trials. Jury instructions were a new and confusing idea to them, and so I distributed some sample instructions in a subsequent class. I also obtained a copy of a 1997 CBS video, *Enter the Jury Room,* depicting the deliberations of three actual juries. Students found this one of the most fascinating topics of the semester.

Class actions were a topic for another day. Chile does not have class action lawsuits or public interest law, as we know it in the United States; in general, the society and the legal system are more individualistic. The students were most preoccupied with the logistics of handling the large number of plaintiffs in class actions—how they are notified of their rights, how they communicate with their lawyers. In retrospect, I think that Jonathan Harr's *A Civil Action*

7. See, e.g., Edward C. Snyder, The Dirty Legal War: Human Rights and the Rule of Law in Chile 1973–1995, 2 Tulsa J. Comp. & Int'l L. 253 (1995).

might be useful in future years. The students were also intrigued by the interplay of the class action lawsuits against cigarette manufacturers with governmental enforcement actions.[8] Finally, I tried to have them focus on the need to contemplate interjurisdictional issues on an international level. This is a policy problem of great importance to these students, but Chile has not fully developed the legal mechanisms for addressing these concerns in the constraints of the current legal environment.

O. J. Simpson: The Criminal and Civil Cases

Following two classes on criminal law and procedure and a class on torts, I felt compelled to tackle O. J. Simpson. Since the case had been well covered in the local press, the students were familiar with the general facts.

The case does present a good opportunity for reviewing many of the critical differences between the civil and criminal cases: the location of the trial, the jury composition, the role of the lawyers, the Fifth Amendment's effect on the role of the defendant, and the penalties. The students were particularly intrigued by the role of the prosecutor, since Chile does not have a public prosecutor. (A proposal before the legislature would implement such a system; currently the Chilean judge serves a dual role as both investigator of the facts and arbiter of the claims presented.) The second class that we spent on Simpson was probably the best class of the semester. The students were full of questions about civil punitive damages, criminal sentencing, the effectiveness of counsel, and legal ethics. Since the students had recently written papers on *To Kill a Mockingbird,* they engaged in a heated exchange comparing the trial in the movie with the Simpson trials.

The Fast Track and NAFTA

Throughout the semester a major political issue for the government of Chile was its effort to become the fourth member of the North American Free Trade Agreement. The students wanted to discuss the adoption of treaties and similarities and differences between the U.S. and Chilean legal regimes as they related to NAFTA.

La Via Rápida was a topic of concern in the local newspapers, but few understood the constitutional significance of the term, or even the legislative process involved in the approval of fast-track legislation. I spent an entire class reviewing the U.S. Constitution's guidance on treaty-making authority, the historical background of the initial fast-track legislation in 1974, the implications for the balance of power between the branches of government, and other tools such as the legislative veto for controlling the growth of presidential power.[9]

For the class discussion on labor law, I decided to focus on an article that had appeared in the local paper comparing the Chilean and the American

8. The importance of thinking creatively about new forms of conflict resolution for mass torts is a theme addressed by Judith Resnik, From "Cases" to "Litigation," Law & Contemp. Probs., Summer 1991, at 5.

9. On the political and historical importance of the fast track, I assigned my students Harold Hongju Koh, The Fast Track and United States Trade Policy, 18 Brook. J. Int'l L. 143 (1992).

regime. The point of the article was to highlight the many ways in which Chilean law is more protective of workers' rights than American law. The article misstated American labor law in many respects, and thus served as a good check for the students on their reading in the assigned textbook. The students were quite outspoken about those aspects of their legal system that they considered superior—particularly workers' rights to severance pay and paid maternity leave, and the right to unionize and strike. The article significantly understated the civil rights protections that American workers enjoy, and this was a big topic of conversation in the class; Chilean employers regularly discriminate quite openly on the basis of gender, race, age, and marital status. Finally, the article failed to mention what is, in my view, the most significant difference between the two countries—the dramatic difference in the wage structure. The American minimum wage is at least four times the Chilean. I don't think that my students fully comprehended the role that this issue plays in the American debate over NAFTA.

Environmental law was another subject that invited consideration of NAFTA. Our textbook provided a good overview, describing briefly a broad array of statutes, but also giving a context for the role of public interest advocacy and law in creating and defending environmental rights. In class we reviewed some of these themes, and particularly the impact of interstate competition and the resulting preeminence of federal legislation in the environmental area.

The discussion prompted some strong reaction from the students. Some argued heatedly that the United States was extremely hypocritical in its criticism of Chilean environmental law, particularly in light of the considerable environmental problems that persist in the U.S. and the role that the U.S. has played in weakening international environmental accords. Others argued that although Chile has a long history of neglecting natural resources, a growing structure of environmental protection has developed in the last decade for which the country deserves more credit. We discussed some of the similarities and differences between the structures in the two countries. As in our discussion of labor law, I believe the students did not fully understand or appreciate the concerns raised by Americans in opposition to NAFTA. But I also recognized that those opponents of NAFTA had significantly oversimplified the shortcomings of the Chilean legal system.

Teaching Methods

Many of the teaching methods to which I was accustomed in the United States had to be adapted for use in Chile. In addition to confronting differences in the culture and the legal system, I had to overcome the barrier of teaching in a foreign language.

Text and Materials

I based my course on a new text, *Fundamentals of American Law*,[10] written from a comparative law perspective by faculty of New York University. The

10. Ed. Alan Morrison (New York, 1996). The book is still available only in English. Despite repeated requests to the publisher, I was unable to get permission to have it translated into Spanish.

book is really an essential resource for anyone attempting to teach an introductory course in a foreign country. It surveys American law in twenty-three chapters; each chapter attempts in roughly thirty pages to provide an overview to an outsider of essential themes and concepts. The book contains far more material than I could possibly cover in my one-semester course.[11]

FAL is not a casebook. My students were eager to see cases, both to understand legal concepts and also to see the common law in action. Fortunately, I had access to Westlaw in Chile and could find cases as needed for our class discussion.

I further supplemented the text with law journal articles on some key topics, in particular fast-track authority, class action lawsuits, and tort reform.[12] Some of these materials were in English, but other materials have already been translated into Spanish and could be readily located. For example, I distributed an article by Owen Fiss that had been translated into Spanish and published in the *University of Palermo Law Review.*[13] And Charles Fried's *Contract as Promise,* recently translated into Spanish, provided a key source of our discussion on contract law.[14] For me the advantage of translated materials was that I could use the English version for my preparation. But I did have some success with articles in Chilean law journals. For example, in discussing the judiciary, I was fortunate to have as a resource an excellent article comparing the two judicial systems, written in Spanish by a professor who had studied in the United States.[15] In general I was reluctant to assign entire books in English, though I do think that Anthony Lewis's *Gideon's Trumpet* and Jonathan Harr's *A Civil Action* would make excellent reading for the foreign student.

In addition to legal materials, I found that the daily newspaper was a wonderful source for articles on U.S. Supreme Court decisions, U.S. trade policy and constitutional debates, and other comparative law perspectives.

Finally, for those teaching abroad, another means of giving students a context for legal principles is through movies. Many of the legal classics were available at the local Blockbuster, subtitled for easy understanding by the students. I assigned my students both *To Kill a Mockingbird* and *A Time to Kill.* The contrast between the films made for interesting papers, as well as heated class debates about race, juries, and attorney-client privilege. American films can provide an additional dimension to the study of law, particularly since the students are not able to visit courtrooms and see actual judges and juries. I

11. But some topics were not sufficiently covered and required supplemental materials. In particular, my students wanted more discussion of juries and class actions than the text provided.

12. Koh, *supra* note 9; Resnik, *supra* note 8; Guido Calabresi & Jeffrey O. Cooper, New Directions in Tort Law, 30 Val. U. L. Rev. 859 (1996).

13. La Teoría Política de las Acciones de Clase, trans. Roberto Gargarella, 1 Revista Jurídica de la Universidad de Palermo 5 (1996).

14. La Obligación Contractual: El Contrato Como Promesa, trans. Pablo Ruiz-Tagle & Rodrigo Correa Gonzalez (Santiago, 1996).

15. Pablo Ruiz-Tagle, Análisis Comparado de la Función Judicial, 39 Estudios Públicos 131 (1990).

would actually consider using even more films in future classes; I think movies give students a better grasp of the legal system at work than books or cases.

Classroom Methods

Some special classroom approaches may be in order to keep the focus away from the teacher's command (or lack thereof) of the language. Diagrams and charts on the board help students to conceptualize a topic and make it easier for them to understand the vocabulary than might be the case if they were just hearing the teacher's voice. I used charts in outlining many themes, such as the Constitution's treatment of the three branches of government. I also tried to identify key words and concepts in writing; my own command of written Spanish was better than spoken Spanish, and I felt that the students were better able to grasp the concepts I was discussing when they had visual cues.

I also learned to appreciate the importance of the students' engaging each other in learning. Occasionally, in a heated debate, the students were so involved and spoke so rapidly that I could understand only the bare highlights. For example, the students had very strong views on Atticus Finch, and whether he had adequately represented Tom in *To Kill a Mockingbird.* At such times, I often decided to let the debate continue, without asking the students to slow down on my account.

The use of "experts" was also well received. For example, when we were reviewing criminal law, I assigned one student to read *Gideon v. Wainright.*[16] He provided an excellent summary of the case, together with his observations on the way the U.S. Supreme Court handled the controversy, and the distinctions from a Chilean Supreme Court case. Of course, his translation of the case was far clearer for the students than mine would have been. In another class, discussing *Contract as Promise,* I designated two experts—one to explain Fried's analysis, and the other to critique it. Both students did an outstanding job, and the class found the dialog informative.

Journals, Papers, and Exams

I set three requirements for the course. I assigned a weekly journal—a practice which met with good compliance for the first half of the course, and only fair compliance by the end.[17] I found the journals invaluable: they allowed me to get feedback from the students, focus on particular issues that interested them, and understand better their questions and concerns. Although journals may be a good device in any course, they had particular value for me: since my ability to read Spanish was significantly better than my ability to understand spoken Spanish, the journals gave me better feedback from students than I could have gained in conversation.

16. 372 U.S. 335 (1963).

17. See J. P. Ogilvy, The Use of Journals in Legal Education: A Tool for Reflection, 3 Clinical L. Rev. 55 (1996). I also appreciate the inspiration of Deborah Maranville and Michele Jones-Garling, of the University of Washington, who first brought to my attention the benefits of student and faculty journals.

Midway through the course the students wrote a paper focusing on the two movies. I gave them a choice of topics: due process of law, lawyer-client relationships, the role of the juries. I spent some time with the students in advance of the assignment explaining the concept of the paper. I emphasized that I wanted an analytic work, rather than mere description. This explanation was critical, because in my experience much of the written work in Chile is excessively descriptive.

The students also had a final take-home exam with four essay questions: an analysis of the First Amendment implications of *Reno v. American Civil Liberties Union* on electronic communication;[18] an evaluation (as by an adviser to Clinton) of the tobacco agreement; a discussion of the differences in commercial law between the U.S. and Chile; and an identification of three of the major differences between the American ethical code and that of their country. Since the students had a fairly good grasp of written English, I was able to give them some primary materials in English (such as the Supreme Court case) to read and analyze.

Reading the papers and exams was a time-consuming task—even worse than a set of bluebooks in English. I needed to refer frequently to my dictionary to understand all that my students had written. But I found that I was able to make distinctions fairly easily among students and judge their grasp of the material; in the end I had a fairly evenly distributed curve. I do think that one can detect quickly, even without a perfect command of the language, whether a student has grasped the key concepts.

Much more difficult for me was the writing of the essay and exam questions in proper Spanish. I always had my drafts proofread by at least two native speakers to ensure that the text read properly. I would recommend that same practice to anyone with less than full fluency in the language. Major errors in grammar or typing can quickly erode a teacher's credibility.

Handling Language Difficulties

Teaching in a foreign language requires the instructor to move out of her zone of comfort and to accept a certain level of vulnerability—for example, to be willing to ask students for help with vocabulary. I frequently did that during class. I had a few students who were virtually bilingual, and others who were able to assist me just by understanding the context of a particular point.

Vulnerability also means being willing to have a sense of humor when you make terrible mistakes. I made such a mistake early on in the course, discussing the Bill of Rights. I was trying to talk about the protections for criminal defendants when the state "charges" them with a crime. I used the verb *cagar,* which sounded like it might have been right. Unfortunately, *cagar* actually means "to defecate." That day several students came to see me after class to offer help with my vocabulary and pronunciation.

I did my best to minimize such situations by outlining all my classes in advance, in greater detail than I normally do when I am teaching in English. I

18. 117 S. Ct. 2329 (1997).

would then review translations of key words and concepts. I would also spend some time thinking through questions and hypotheticals so that I would have the necessary language available. Of course I would inevitably be asked questions that sent the discussion ranging beyond my prepared notes, and then we did the best we could to communicate. My biggest struggles were in understanding the questions posed to me in class; I frequently had to ask students to speak more slowly.

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As our world becomes smaller and our affairs more intertwined, legal education is increasingly global. Foreign law students study in our academies, and U.S. students and faculties visit schools abroad. Generally, we expect the foreign students to demonstrate a high level of proficiency in English before we admit them to our academies. But—curious to me—Americans frequently try to get by with their English while they are traveling or studying abroad, and make no effort to master the language of their host country.[19] They rely on translators or expect that everyone will speak English to them.

Such an attitude prevents American scholars from being truly global in their approach to law or society. Learning to speak a foreign language has tremendous benefits. Speaking to people in their own language is one way of showing respect. In spite of my occasional bungling of Spanish, I believe that my students and colleagues really appreciated the effort I made to communicate with them in their own language. Something like a dance would often occur between me and my English-speaking colleagues. Should I require them to struggle with their less-than-perfect English, or should I make do with my less-than-perfect Spanish? But the fact that we were *able* to make the choice gave me more credibility, I believe, than I would have had if I had always insisted on English.

Further, the ability to communicate in a foreign language allows one to learn about another country more profoundly than through the screen of translators or the American press. Significantly, my studies and research in Chile have allowed me to work with primary source materials that may never be available in English. I can draw my own conclusions instead of depending on the filtered analyses of translators.

Finally, though I had to work much harder at my teaching, I believe that my class facilitated learning for the students by removing a language barrier. A language requirement would have limited participation significantly. By speaking Spanish I was able to reach, and teach, a group of students about the American legal system who otherwise would not have been exposed to this experience. And that is really why I do what I do.

19. One intriguing exception is the French for Lawyers course offered at the University of Pittsburgh. See Vivian Curran, Developing and Teaching a Foreign-Language Course for Lawyers, 43 J. Legal Educ. 598 (1993).