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The Role of Foreign Languages in Educating Lawyers for Transnational Challenges

Vivian Grosswald Curran*

I. Advantages of Foreign Language Fluency

In a world in which every other country seems intent on teaching English to their youth, and in which the United States educational system does not place a high priority on teaching foreign languages, the American law student, dean and professor may doubt if foreign language knowledge is anything more than marginally helpful to law graduates. Similarly, educators at the primary school level may not be likely to assess foreign language education as warranting a greater allocation of scarce public resources.

The usefulness of foreign languages to the United States lawyer gradually has been gaining increased recognition in the profession, however: "The consensus among lawyers, CEO's, NGO activists, and others is that the people whom they would most like to hire are those who understand how to navigate between cultures. In a dream world, such competence would include knowledge of at least one foreign language."¹

Tellingly, in the quote, Dean Slaughter refers to "at least one foreign language." Implicit is that United States dream-world lawyers might speak *any* foreign language and thereby become more effective in their legal practices, even if they were not able to communicate in the language of a particular foreign client or particular colleague from another country and legal culture.

While the advantages to a lawyer of being able to communicate in

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1. Anne Marie Slaughter, *The International Dimension of Law School Curriculum*, 22 PENN STATE INT'L. L. REV. 417, 417-18 (2004).

the language of a client or colleague are many, the main need for our students to become fluent in foreign languages is not that they otherwise will be barred from communicating in transnational legal situations. Rather, it is the disadvantage of monolingualism, a problem that can be summarized as a limitation on the imagination.²

II. Foreign Language Instruction in Law Schools

The nature of language acquisition is such that fluency is unattainable without many years of sustained study. What can our law schools do in the space of a maximum of three years, and more realistically, of only two (upper-class) years?

First, we should recognize that we cannot teach fluency within the limitations of the law school curriculum and the short time that law schools have their students. For that, much more lengthy and continuous study of a single foreign language would be necessary. Nonetheless, law schools can contribute to foreign language instruction, and can offer a great deal of useful knowledge and broadening to law students, including to those who previously have not acquired even rudimentary foreign language skills.

A. *Substantive Law Courses in Foreign Languages*

Where students *are* able to follow law courses taught in a foreign language, the advantages of doing so are inestimable from a comparative law perspective. Foreign legal texts can be read in the original, rather than in inevitably imperfect translations; a legal culture can be conveyed in a multiplicity of ways that are not the specific object of the course, but that are transmitted by references, often indirect in nature. The result is a hyper-efficient method of learning about a foreign legal system, in contrast to the cumbersome detour that teaching foreign law in translation involves. Translated law gives rise to innumerable problems, including the virtual impossibility of avoiding inaccuracy.³

Foreign law courses taught in foreign languages tend to be in two categories: (1) at the most highly ranked law schools, such as Columbia and Michigan,⁴ or, alternatively, at the few law schools located in populations with a nationally atypical incidence of bilingualism

2. See Vivian Grosswald Curran, *On the Shoulders of Schlesinger: The Trento Common Core of European Private Law Project*, 11 EUR. REV. PRIVATE L. 66 (2003) (discussing the problem of monolingualism).

3. I addressed some of the problems of translation, in Vivian Grosswald Curran, *Cultural Immersion, Difference and Categories in U.S. Comparative Law*, 46 AM. J. COMP. L. 43 (1998).

4. Columbia Law School offers a course on Spanish contract law taught in Spanish; and Michigan a course in German law taught in German.

(generally in Spanish). Most United States law schools do not have enough law students even for a single substantive law course to be taught in the relevant foreign language, however.⁵

B. *Foreign Languages in a Legal Context*

Fortunately, a more modest blend of law and language is possible, although its function is not the same as the one described above in courses on foreign law taught in the relevant foreign language. Law schools increasingly are creating courses that primarily are language classes, but taught in a legal context. I started such a course at my law school, and have described the curriculum, written materials and pedagogical methods in detail elsewhere.⁶

Such courses are elementary language courses, differing from a typical elementary language course in that they are set in a legal context, rather than in the tourist context generally offered in foreign language departments. Elementary language courses cannot teach fluency, but can succeed in opening a door to another legal culture. The materials that are drafted to create a Language for Lawyers course should be written with this in mind.⁷ They can start with extremely simple legal vocabulary, and yet manage to convey something of a legal culture. For example, a very short dialogue involving a client and a lawyer concerning a need for representation can begin to convey a different law world just by the way in which the client addresses the lawyer. The French address of "maître," for instance, will evoke for the student the English cognate "master," wholly unrelated in United States legal culture to the role of attorneys. This in turn will create a mental jolt in the student who, even if only at a subliminal level, will be confronted by an unexpected place in the social hierarchy which the French *avocat* occupies.

The very fact that the client uses a special form of address at all

5. That is the case in my own law school, where, since starting a Languages for Lawyers program, I have been exploring the possibility of teaching a course on the French legal system in French. The French for Lawyers I and II that we offer are not sufficient to prepare students for such a course, even if it were designed with language concerns, such as, for example, preparing readings with glossaries that provided translations of vocabulary or sentence structures and grammar. An avenue to expand the number of potential students beyond the law school would be to teach an interdisciplinary course, allowing for advanced undergraduate and graduate students in other departments, such as political science, and French departments, to join. Such a course would have to be so introductory and general substantively, however, as to require no legal education on the part of students.

6. See Vivian Curran, *Developing and Teaching a Foreign-Language Course for Law Students*, 43 J. LEGAL EDUCATION 598 (1993).

7. See *id.* The book I wrote for two semesters of "French for Lawyers" is VIVIAN GROSSWALD CURRAN, *LEARNING FRENCH THROUGH THE LAW: A FRENCH/ENGLISH COMPARATIVE TREATMENT OF TERMS IN A LEGAL CONTEXT* (1996).

reflects a world with a different code from its United States counterpart. Much information can be transmitted by connotation through the study of foreign languages in a legal context. Equally simple vocabulary might figure in a subsequent dialogue, in which, instead of going to the pastry shop to buy some pastry, as one would find in a typical dialogue in a typical French language textbook, the same client would be going to the court for a hearing. The very way that the court will be constituted in the foreign country is likely to be different from its United States counterpart. Learning will occur precisely in the lack of equivalents, and the automatic mental work that this lack of equivalence triggers in the student.

Consequently, even elementary language courses are able to introduce students to another law world and another law culture. When offered in law schools, they also have highly practical advantages, such as being organized around the schedule of the law student, rather than around foreign language department schedules that may require more meetings per week, and at times that interfere with the law school curriculum. Similarly, courses designed for law students can focus on developing pedagogical methods to speed the rate of language acquisition in ways that language departments do not seek or even welcome,⁸ since their curriculum is not designed to end after a maximum of two years.⁹

The ideal is to have instructors who are both native speakers of the target language and also lawyers trained in both that country and the United States. If such an instructor cannot be found, then an educated native speaker will be preferable to an instructor trained in another legal system, but not a native speaker. So long as there are good written materials for the course, any well educated native speaker will have more than enough knowledge of the target society and legal institutions and vocabulary to teach the course effectively.

III. Challenges

The difficulty today is in expanding the interest throughout our law schools to offer language education that is part and parcel of our legal education, and in finding textbooks to assist instructors. A next step would be for those who have started to draft materials to share their work and sources in a collaborative effort.

8. See Curran, *supra* note 7.

9. Two years is the generous maximum for language courses in law schools wedded to the idea of a first year of required courses. Moreover, at my law school, the faculty decided to limit law school credits to two semesters of language study, on the reasoning that the Languages for Lawyers classes are not substantive law courses, and should not provide a means for students to evade law studies.

The fastest growing area in the United States law school curriculum is in the international and comparative area. Those of us who offer foreign language courses in a legal context are observing growing student interest in foreign languages as well.¹⁰ We can encourage student interest by offering law school credit to those who take Language for Lawyers classes, and we can explore both innovations in collaborative efforts and interdisciplinary cross-listed courses as a way to enhance enrollment where deans and colleagues still may be leery as to whether language education can be justified in law schools.

The greatest challenge of all, and the most important one, is to change the national attitude towards foreign language study, starting in primary schools. It is a subject beyond the scope of this article, but if the United States educational system were to become serious about teaching fluency in foreign languages to children, law schools at every rank would be able to offer substantive law courses on foreign law in foreign languages. Dean Slaughter's "dream world" of polyglot United States lawyers might then become a reality, greatly enhancing the quality of education and the effectiveness of all of our students, but especially of those who embark on a transnational practice of law.

10. The University of Pittsburgh has seen a very significant increase in student enrollment in our Language for Lawyers classes. Similar growing student interest was reported at the AALS session on Transnational Law, January 8, 2005, by a faculty member at another law school which offers foreign language classes.

