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Reply Paper to 'Multicultural Law-Related Education in the Humanities' by Dr. Carlos E. Cortes

Stephen Conn

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Summary

Multi-ethnic (or bicultural) legal education is a superior way to teach law as a social process within an everchanging American legal culture. By stepping out of one's own legal tradition or culture and into another's, it is possible to see how law really operates without blinders of ethnocentricity. Ethnic minority students can use their own legal tradition as a basis for contrast and comparison with American legal culture. Elementary school is the best place to explore the values which underlie legal traditions. Teachers must discover differences and refrain from indoctrination. Curriculum that is bicultural should focus upon common problems, borne out of relationships, and common approaches to problem solving. A team approach in curriculum development has produced instructional material which treats common problems comparatively where more than one legal tradition operates.

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REPLY PAPER TO MULTICULTURAL LAW-RELATED EDUCATION IN THE
HUMANITIES BY DR. CARLOS E. CORTES

BY: STEPHEN CONN, ASSOCIATE
PROFESSOR, UNIVERSITY OF ALASKA,
CO-AUTHOR, ALASKA NATIVES AND THE
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Abstract

Multi-ethnic (or bicultural) legal education is a superior way to teach law as a social process within an everchanging American legal culture. By stepping out of one's own legal tradition or culture and into another's, it is possible to see how law really operates without blinders of ethnocentricity. Ethnic minority students can use their own legal tradition as a basis for contrast and comparison with American legal culture. Elementary school is the best place to explore the values which underlie legal traditions. Teachers must discover differences and refrain from indoctrination. Curriculum that is bicultural should focus upon common problems, borne out of relationships, and common approaches to problem solving. A team approach in curriculum development has produced instructional material which treats common problems comparatively where more than one legal tradition operates.

Dr. Cortés, in his excellent paper,¹ suggests that, as a practical matter, one cannot be legally literate without appreciating the historical impact of American legal behavior upon diverse ethnic groups in our society.

If we focus upon the relationship between American law and ethnic groups, we receive more than a recitation of injustice committed in the name of state authority to racial, religious and cultural minorities:

1. We view our own law system and American legal culture through new eyes, eyes less likely to view the values and intent of the law as inherently correct because they were the law in a particular American time and place.

2. We come to see that one aspect of ethnic diversity is a diversity of legal traditions, traditions which suggest both problems and opportunities for the consumer or supplier of American justice.

What multicultural legal education offers students who are not ethnic minorities is a new and important way of looking at American law, not as rules and procedures fixed in time and place, but as an instrument of society, reflective of social values, capable of manipulation and capable of change.

If there is confusion or even anger over demands that minorities make upon the legal system, one source of that confusion and anger is our failure to understand that legal process is shaped by demands generated within American legal culture.

What is a legal culture? It is that network of values and attitudes about the appropriate use of state power which

determines -

- A. demands a particular group make on the system
- B. which part of the system those demands are made upon
- C. whether or not that part of the system responds through changed activity.

At the root of all conflicts over the definitions of crime, appropriate punishment, concepts of liability in tort or concepts of contract in courts, legislatures, administrative bureaucracies or the station house are conflicts in social values. Some of these social conflicts that become legal conflicts emerge from ethnic difference. The response of the legal system to these demands varies over time.

Consider that less than twenty-five years ago many state legal systems arrested and prosecuted blacks who drank from "white" water fountains or sat in the wrong place in restaurants or trains. Did the legal system change or did its response to demands made upon it change?

Even the very meaning of law is subject to social definition. Japan and America have police. But what police do in each place, their self-image and society's image of a policeman differs in each place.

The role of a legal system varies from society to society. Again, a comparative view of legal cultures enables us to view different ways that law might act or has already acted in our own society.

The role of law varies in time and place because different ethnic groups have different legal traditions. These traditions are reflected in:

1. The rights and duties of group members and strangers regarding personal rights and property rights.
2. The appropriate way to avoid disputes and define disputes when they arise.
3. The appropriate sequence for dispute adjustment.
4. The social implications of employing formal law systems.

Legal traditions shape a person's attitude toward law even when that law is formed out of a second legal tradition.

So when an immigrant from Mexico sits down to discuss a family problem with a poverty lawyer from Ohio, client and attorney are influenced by two legal traditions. A clash in conceptualization of the problem and the role of the lawyer in its resolution is inevitable.

This clash between legal traditions can become an important vehicle to learning about law.

But Dr. Cortés describes the way that both media and classroom educators either underplay or treat stereotypically ethnic difference. This same rigidity in defining the legal process, denies the student of law an appreciation of his own legal culture and its influence upon law.

Multi-ethnic approach will then provide insight into an ethnic legal tradition. But, more importantly, by describing at least two traditions at work when minorities confront the American legal system, students will discover their own missing legal culture and its significance to the way law works for them.

How many persons who read Bury My Heart at Wounded Knee considered that most of the conflicts described between white

American and Native Americans could be described as conflicts between legal cultures?

I do not suggest that placing one's students in the position of outsiders to the American legal system will merely convey a sense of the law as oppressor.

My direct experience with squatters, Indians and Eskimos suggests to me that these minorities are especially cognizant of the existence of multiple legal systems, and the influence of more than one legal tradition on problem solving.

They seek the most favorable forum from their own perspective and not from the system's perspective. Sometimes they choose or are forced to opt out of the dominant society's legal system entirely.

Brazilian squatters with real property disputes are denied access to state courts because they lack title to land. They do not seek out informal assistance of police or establish favela courts out of legal illiteracy or a desire to be separate. They react to official options to legal help, offered or denied, as options among options to be employed or rejected according to a single criteria - which will offer me the remedy I desire?

Rabbinical courts, Eskimo village councils, Chinese Benevolent Associations and other extralegal forums represent something other than ethnic insularity. They are employed by persons who have realistically assessed and rejected options afforded by the official legal system. They have improved upon the options available by creating new options.

There is little to be gained by understating the clash between legal traditions in education programs. The clash

will not be resolved by printing the United States Constitution in Spanish or by training police to read the Miranda warnings in an Eskimo dialect.

But there is everything to gain for the non-ethnic minority student who steps outside of his own legal culture and into another.

As Cortés suggests, the key to postconventional legal thinking is a pragmatic assessment of a legal process as a prelude to demands for change in that process.

To demand change in the value orientation of law is perhaps the most predictable element of the relationship between any society and its laws. Ethnic minorities are not alone in seeking to bring about change.

Consider the shift in the American law of contracts from its affirmation of "buyer beware" as a legal standard to greater concern for unknown consumers who might be injured in the marketplace. Consider the change in tort law from its protection of fledgling industries against claims of injured workers to its shift of social cost through workman's compensation legislation in another century.

If you seek the logic of these legal changes or the dynamics of these changes within the legal system only, you will not find it.

And what of ethnic minorities? Should their legal education be indoctrination into American law as an ideal system? Or should we continue the process of comparison between legal traditions as a vehicle for legal education?

In development of legal education for Alaska Natives² (Eskimos and Indians) and for Navajos³ I have found that teaching American law, comparatively, is superior. It involves:

1. A consistent focus on problems and problem solving as they occur within the student's and his family's community. Recourse to American law becomes then only a part of the picture.
2. A constant evaluation of the practical options for grievance processing afforded by both legal traditions, whether or not these options are institutionalized.
3. Opportunities or problems which flow from the existence of more than one legal tradition in operation at the same time.

Does this mean that Navajo or Eskimo students are aware of their own legal culture in a way that middle American students are not? No, these students must learn to recognize the practical significance of mechanisms and approaches to resolving social conflict that they may have assumed to be sublegal or "old fashioned."

Students should consider the significance of learned experience in one legal tradition upon participation in another. For example, an Eskimo who is confronted with a charge against him in his village council knows that it is appropriate to confess immediately and set in motion a process of conciliation. But if that same Eskimo appears in an Alaska court, his admission of legal guilt will not be similarly rewarded.

Suppose, again, an Eskimo educated to his constitutional rights challenges the authority of the council and requests a trial

in court. What impact will this have on the council's continuing significance as a kind of Neighborhood Justice Center to resolve problems between persons with ongoing relationships? What impact will it have on his village relationships?

Students should be aware of the options available in both systems and weigh their acts accordingly - this is the message of what I term, bicultural legal education.

A second legal tradition may offer options for problem solving. It will certainly offer up values that may or may not comport with those of the American common law tradition as interpreted by the law givers, be they judges, lawyers, social workers or police.

The process of legal education as multicultural education becomes one of discovery and self-discovery for student and teacher.

And now the hard part.

There is nothing easy about developing bicultural legal education.

The process of teaching becomes, itself, a process of inquiry.

Recently, a teacher who had received Alaska Natives and the Law in his Eskimo village school told me how impressed he had been to read that in some villages, councils resolved minor problems and headed off more formal confrontations.

I surprised him when I said that it was in that very village that I had discovered councils. A council met not fifty feet from where we sat and had done so for over fifty

years.

Teachers must explore not only the American legal environment in which they teach but the second legal system afloat in that environment.

But what of elementary school teachers?

If we follow the logic of papers we have heard, then it appears that elementary school children may have preconventional attitudes about law, fixed more by age than by culture.

Certainly then we cannot expect to make young Clarence Darrows of these children.

What I have described, a comparative legal education program, will be built on an assessment of values at the elementary school level. These values, so well described by Dr. Lavaroni,⁴ come to form and to be reaffirmed in a legal tradition, be it ethnic or American.

Our legal education materials for Native children in kindergarden to 6th grade, focus on identification and clarification of values through lesson plans and activities:

We focus upon:

The child's role and relationship to family (rights and duties of parents and children).

The child's role and relations within the school community.

The child's role and relations with the larger community.

As jobs and activities are discussed, rights and duties emerge. As rights and duties emerge, a picture of those social values which underly legal values come to the fore.

Problem solving and authority within small and large groups is considered in relationship to activities familiar

to younger children. For example, the child's perception of consumption. Where and how does he get things? Primary school children have social experiences to build upon - experiences which relate to the larger market and to consumption in the family and neighborhood.

Group activities, property use, land use and many other topics can be dealt with.

The word "law" or the role of law is not very relevant as a starting point.

Curriculum development in this arena calls for a team approach. In Alaska and New Mexico we have employed: a) a lay person trained to do social science interviews on traditional or alternative legal approaches, b) an attorney with an ethnic clientele who can provide actual problem cases he has confronted with members of the target population and c) an educator experienced in instruction of the target group who can assist in the development of instructional materials and in teacher training.

The material is then value and problem oriented. Material developed for an Eskimo population to deal comparatively with legal traditions can be used to draw non-Eskimos out of their own ethnocentric perspective. They can view their own system from another place.

Teachers often think that legal education can begin only when constitutional law, or the criminal law system can be defined. But more sophisticated legal education is far more absorbed with civil law than criminal law matters. Extra-

ordinary blind spots to the legal overtones of civil problems exist in even otherwise worldly students.

And civil law, dealing with ongoing personal relationships, is at the heart of most legal traditions of small groups. So, again, small and large traditions lend themselves to comparison.

So, the challenge of legal education for elementary school students is that the teacher must curb any instinct he has to indoctrinate and listen, listen, listen, and observe.

No textual materials on ethnic legal culture can compensate for this. Materials can point the way. But if they must accomplish more than this, then stereotyping and not considered comparison will probably be the negative result.

So is cross-cultural legal education worth the risk and the effort?

I believe so. As Dr. Cortes argues, it more clearly reflects the world we live in. And, further, it offers us an opportunity to view our own legal world without the bias of ethnocentricity - for the first time.

FOOTNOTES

1. Dr. Carlos E. Cortés, "Multicultural Law-Related Education In the Humanities: Preparing Young People For A Future Of Constructive Pluralism."
2. Frank Barthel, Stephen Conn, and Pat McDearmon, Alaska Natives and the Law (7 volumes) (Anchorage, Alaska: Alaska Legal Services Corporation, 1977).
3. Dan Vicenti, Leonard B. Jimson, Stephen Conn and M.J.L. Kellogg, The Law of the People, Dine Bibee Hazaanii, A Bicultural Approach to Legal Education for Navajo Students (4 volumes). (Ramah New Mexico: Ramah Navajo High School Press, 1972).
4. Charles Lavaroni, "The Relationship of Law-Related Education to Values and Moral Education," pp. 16-17.