

Engaging Students Through Culture

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Inspiration for Cross-Cultural Teaching Examples

The Hmong Hunting Cases (Criminal Law, Torts, and Property). In his Property class at Drake University Law School, Professor Jerry Anderson juxtaposes communal Hmong hunting rights with Wisconsin property law. In that case, a Hmong immigrant, Mr. Chai Vang, was hunting for food in Wisconsin and stumbled onto private property. Six landowner-hunters confronted him for his trespass. Mr. Vang testified that they fired first and used racial epithets, but the other hunters testified that they fired only in self defense.

Although many aspects of the case concern race and violence, subtler questions arise as to why Mr. Vang was hunting on private land, and whether the landowners were reasonable to confront him as they did. As Professor Anderson put it, “If hunting is seen as a necessity rather than a sport, depriving a Hmong [person] of access to hunting land might be somewhat equivalent to depriving Americans of access to breathable air.” The differences between these communal and private ownership systems help students understand the “bundle of sticks” model for private property and how cultural approaches to property can affect certain “sticks,” such as the right to exclude.



See Jerry L. Anderson, *Comparative Perspectives on Property Rights: The Right to Exclude*, 56 J. LEGAL EDUC. 539, 544-45 (2006), citing Associated Press, *Vang Guilty of Murdering Wis. Hunters*, available at <<http://www.kstp.com/article/stories/s10476.html>> (last visited May 26, 2006).

In a another case, an ostensibly Anglo-American hunter in Wisconsin killed a Hmong man who was hunting on public lands, and testimony suggested that the murder might have been motivated by racial and cultural hatred, as well as a misunderstanding of Hmong cultural values in regard to land and animals. See *State v. Nichols*, 768 N.W.2d 62, 2009 WL 818983 at *4-5 (Wis. App. 2009) (unpublished slip op.; reporter citation is to table only).



The Quinceañera Contract. In a Chicano/a example, Prof. Charles Calleros developed a contract damages problem based upon a tailor’s ruination of several special dresses for a young woman’s coming-of-age ceremony and celebration, the Quinceañera. By providing the students with witness testimony about the importance of this once-in-a-lifetime event to the young Chicana plaintiff within the context of its greater importance to her community, including religious,

social, and ethnic relevance, he provided the raw materials for a powerful contextual narrative. See Charles Calleros, *In the Spirit of Regina Austin's Contextual Analysis: Exploring Racial Context in Legal Method, Writing Assignments and Scholarship*, 34 J. MARSHALL L. REV. 281, 284 (2000).

Roma Private Law (all traditional subjects). Roma people inhabit many areas in Europe and the United States, and have their own internal, customary rules for interpersonal conduct and for resolving disputes. Professor Otto Weyrauch of the University of Florida School of Law uses these examples in his comparative law courses to illustrate concepts such as the differences between public and private law. They also provide fruitful material for teaching Remedies, Evidence, ADR, and innumerable other areas. He has found that his comparative law students are “persistently more interested in tribal law than in the laws of western Europe.” Walter Otto Weyrauch & Maureen Anne Bell, *Autonomous Lawmaking: The Case of the “Gypsies”*, 103 YALE L.J. 323, 332 n.20 (1993)

Commercial Cases in Tribal Courts (Remedies, Commercial Law, Bankruptcy, Tribal Court Practice, ADR). Professor Jack Williams noted that when he teaches commercial law, he points to the harmonizing orientation in Tribal court opinions: “[T]ribal courts seek to repair relationships even in the commercial context. Thus it is not unusual to witness a tribal court order a party to apologize, to ask for [forgiveness], and to make restitution. Common to most Indian tribes is the heartfelt belief that no individual, and by extension no commercial activity, is more important than the harmony of life.” Jack F. Williams, *Integrating American Indian Law into the Commercial Law and Bankruptcy Curriculum*, 37 TULSA L. REV. 557, 565 (2001).



Photo credits: Hmong men by kafranb10; Quinceañera by wonderlane; Romani family by giorgio1972

Additional Resources

Books

- *Asian Indigenous Law in Interaction with Received Law* (Masaji Chiba, ed., KPI Ltd. 1986)
- Anne Fadiman, *The Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures* (Farrar, Strous & Giroux 1997)
- *Cultural Issues in Criminal Defense* (3d ed., Linda Friedman Ramirez, ed., Juris Pub. 2010)
- Jeanmarie Fenrich, Paolo Galizzi & Tracy Higgins, *The Future of African Customary Law* (Cambridge U. Press, forthcoming July 2011)
- Matthew L. M. Fletcher, *American Indian Tribal Law* (Wolters Kluwer 2011)
- Rebecca Redwood French, *The Golden Yoke: The Legal Cosmology of Buddhist Tibet* (2d ed., Snow Lion Pubs. 2002)
- Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge U. Press 2009)
- Werner F. Menski, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (2d ed., Cambridge U. Press 2006)
- Werner F. Menski, *Hindu Law Beyond Tradition and Modernity* (Oxford U. Press 2009)
- Angel R. Oquendo, *Latin American Law* (Foundation Press 2006)

Articles

- Barbara P. Blumenfeld, *Integrating Indian Law into a First Year Legal Writing Course*, 37 Tulsa L. Rev. 503 (2001)
- Matthew L.M. Fletcher, *Rethinking Customary Law in Tribal Court Jurisprudence*, 13 Mich. J. Race & L. 57 (2007)
- Cynthia Ford, *Integrating Indian Law into a Traditional Civil Procedure Course*, 46 Syracuse L. Rev. 1243 (1996)
- Carole Goldberg, *Critique by Comparison in Federal Indian Law*, 82 N.D. L. Rev. 719, 727-35 (2006)
- Helen Hershkoff, *Integrating Transnational Legal Perspectives into the First Year Civil Procedure Curriculum*, 56 J. Legal Ed. 479 (2006)
- Tonya Kowalski, *The Forgotten Sovereigns*, 36 Fla. State U.L. Rev. 765 (2009)
- Liaquat Ali Khan, *Protection of Languages and Self-Expressions Under Islamic Law*, 19 J. Transnat'l L. & Pol'y 61 (2009)
- Nelson P. Miller and Tracey Brame, *Equality as Talisman: Getting Beyond Bias to Cultural Competence as a Professional Skill*, 25 T.M. Cooley L. Rev. 99 (2008)
- Margaret Montoya and Christine Zuni Cruz, *Narrative Braids: Performing Racial Literacy*, 33 Am. Indian L. Rev. 153 (2009)
- Aliza Organick, *Tribal Law and Best Practices in Legal Education: Creating a New Path for the Study of Tribal Law*, 19 Kan. J.L. & Pub. Pol'y 63 (2009)
- Frank Pommersheim, *"Our Federalism" in the Context of Federal Courts and Tribal Courts: An Open Letter to the Federal Courts' Teaching and Scholarly Community*, 71 U. Colo. L. Rev. 123 (2000)
- Antoinette Sedillo López, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 Wash. U. J.L. & Pol'y 37 (2008)
- Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 Clinical L. Rev. 369 (2005)

Websites and Committees

(last updated April 29, 2011)

- Flickr Creative Commons (Photographs): <http://www.flickr.com/creativecommons/>
- In Time, *Culturally Responsive Teaching*: <http://www.intime.uni.edu/multiculture/curriculum/culture/teaching.htm>
- Legal Writing Institute Diversity Initiatives Committee: http://www.lwionline.org/committees_and_reports.html
- National Center for Cultural Competence: <http://nccc.georgetown.edu/>
- Native American Rights Fund, *Indian Law Reporter: Cumulative Subject Index to Tribal Court Cases*, <http://www.narf.org/narf/triballaw/ilr.htm>
- Tribal Court Clearinghouse, *Tribal Court Decisions*: <http://www.tribal-institute.org/lists/decision.htm>
- United States Peace Corps & Paul D. Coverdell, *Culture Matters Workbook*, <http://www.peacecorps.gov/wws/educators/enrichment/culturematters/index.html>
- Westlaw Tribal Court Opinion Databases: Oklahoma Tribal Court Reports (OKTRIB-CS), West's American Tribal Law Reporter – Headnotes (AMTRIB-HN)

Exercise

Based on the following excerpt from a Navajo Nation Supreme Court case, brainstorm some ways in which Navajo customary and traditional law could help to illuminate the following rules and public policies in state marital dissolution matters:



1. Maintenance laws should be gender neutral; the court weighs the resources, income potential, physical and emotional capacities of each party, and the standard of living enjoyed during the marriage.
2. Maintenance should be awarded only for a reasonable period of time.
3. The former spouse is the beneficiary of maintenance—not the children or other extended family in the home.

Naize v. Naize, No. SC-CV-16-96 ¶¶ 24-25, 32-33 (Navajo 1997)

The Navajo People's segmentary lineage system (clanship system) is the foundation of Navajo Nation domestic relations law. The system itself is law. Traditional Navajo society is matrilineal and matrilocal, which obligates a man upon marriage to move to his wife's residence. The property the couple bring to the marriage mingle and through their joint labors create a stable and permanent home for themselves and their children. The wife's immediate and extended family benefit directly and indirectly, in numerous ways, from the marriage.

If the marriage does not survive, customary law directs the man to leave with his personal possessions (including his horse and riding gear, clothes, and religious items) and the rest of the marital property stays with the wife and children at their residence for their support and maintenance. Whatever gains the marital property generate goes to support the wife and children and to a lesser extent the wife's close relatives. This longstanding customary law is akin to modern spousal maintenance.

Harmony in the community and in the lives of the divorced spouses should be restored quickly following a divorce. *Apache v. Republic National Life Insurance Co.*, 3 Nav. R. 250, 254 (Window Rock D. Ct. 1982). We rely on the teachings of *Apache*:

There was a principle of finality in Navajo customary divorce, and the principle of restoring harmony in the community by quickly and finally breaking ties so the community can soon return to normal is one which is common-sense. To permit a former spouse to keep such ties that she or he may be said to be lurking behind the hogan waiting to take a portion of the corn harvest is unthinkable, since each spouse returns to his or her own family after the divorce. Each former spouse should return home after making the break and disturb others no more. *Id.* at 254.

Photo credit: Navajo weaver by ArizonaHiking