Team Teaching – The Hanse Law School Teaching Methodology

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Team Teaching (syn. co-teaching, tandem teaching) is a successful method employed at the Hanse Law School (Hanse Law School Methodology) in order to teach several legal systems comparatively at the same time, to communicate culturally engraved differences in legal reasoning, and to put the scholarly discourse across to students. The authors of this article, all teachers at the Hanse Law School practicing the methodology, describe the advantages and various formats of team teaching.

The Idea

Team Teaching is a didactic method promulgated in the 1970s. It was developed for regular schools' project teaching (one topic, several disciplines), and for intercultural teaching.[1] Its constructivist core[2] was first adopted for comparative legal teaching at the McGill University's Faculty of Law, which has a long history in comparative teaching of US American and European Law.[3] Damiaan Meuwissen, law professor at the University of Groningen and one of the founding fathers of the Hanse Law School, was introduced to the methodology during a sabbatical at McGill at the end of the 1980s, and installed team teaching as one pillar of comparative legal teaching at the Hanse Law School. An early overly ambitious version of the method (alternate teaching, one week in Bremen/Oldenburg, the other in Groningen), however, was soon abandoned. Two alterations of team teaching have been applied successfully. One version is block teaching, in which both teachers are continuously present and take turns in presenting national legal responses to one specific topic (twice for two days each, plus two local sessions). The alternative is a continuous weekly teaching course led by one teacher, who is joined by his colleague for a number of sessions during the course.

Evidently, the method helps to transform a nationally confined teaching environment. Legal education has for a long time been nationally oriented, and still, law professors are mainly trained (and socialised) in one national jurisdiction. Team teaching is a way out of national confines. It helps to study two jurisdictions authentically (and will not only stop short with sterile comparative remarks). Different traditions in legal reasoning become unearthed,

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[1] Dechert, Hans-Wilhelm (ed.), *Team Teaching in der Schule*, (Piper Verlag, München, 1972); Winkel, Rainer *Theorie und Praxis des Team-Teaching – eine historisch-systematische Untersuchung als Beitrag zur Reform der Schule*, (Braunschweig, Westermann, 1974).

[2] For a more theoretic reflection about the didactic dimension of team teaching reflection see http://methodenpool.uni-koeln.de/teamteaching/frameset_team.html.

[3] Dedek, Helge and de Mestral, Armand, 'Born to be Wild: The 'Trans-systemic' Programme at McGill and the De-Nationalization of Legal Education', 10 *German Law Journal* (2009), 359.

different priorities in legal values become transparent. These insights cannot be conveyed by ex-cathedra teaching. Coupled with a reflection of European influences[4], the method makes divergences and convergences in European legal cultures tangible. Thus, team teaching is a highly attractive form of transnational legal education which optimally prepares students for an internationalized business environment or a service in the cooperative network of administrations. Beyond those material advantages, students profit from a diversified teaching methodology for didactic reasons.[5] Last but not least, teachers profit scientifically from the stimulating teaching atmosphere.

Experience Case 1

"Comparative Property Law" has now been co-taught for two winters. For a long time, property law has been held to be a truly nationally engraved *sedes materiae*, resulting in jurisdictions which are too different to be compared (no tangible *tertium comparationes*, "comparing apples and pears"). However, whereas the various European cultures witnessed very different historical developments (e.g., in the UK it is still the crown which holds ownership to all land), all European countries as part of the European Union operate on the base of a market economy built on property and contract. At the end of the day, the concrete process of how to transfer property must be quite similar. However, the way of reasoning is different. Answers to specific problems are sometimes identical, sometimes very different, and most often "somehow similar". The truly interesting observations are made in this grey zone.

In the winter semester 2009/2010 Christine Godt taught the course together with Sjef van Erp. Abiding to the Hanse Law School architecture, special emphasis was given to the German-Dutch legal comparison. From a comparatist's standpoint, the analysis of Dutch law is especially fruitful. Its roots are French, but it is strongly influenced by German *and* Common Law. In addition, the Dutch legislator has been devoted to legal modernisation, and has adopted several recent codices - most prominent the Nieuw Burgerlijk Wetboek of 1992 which became a point of reference in the process of legal transformation of the Eastern European countries.

The course is split in two block seminars. The first part is devoted to laying the ground; the second part gives room for contemporary legal discussions. The first block focuses on basic legal constructs which are taught from a comparative perspective, while highlighting differences. German specificities which isolate German property law from its neighboring jurisdictions like the "Abstraktionsprinzip" (the split of the obligatory contract and the property delivering contract), multi-level possession ("gestufter Besitz"), and the "property right in an expectation" ("Anwartschaftsrecht") are explained, but put into perspective. The theoretic functionality and the practical consequences of these constructs are explained in depth. The transnational lawyer thus builds up an understanding of why jurisdictions adhere to their constructs and how similar results can be achieved by other means.

The second seminar in the winter 2009/2010 was devoted to the grey zone between property and contracts – a topic which is most fruitful considered by putting the German-

[4] On the Europeanisation of law, focussing on private law, see Akkermans, Bram, 'Challenges in Legal Education and the Development of a New European Private Law', 10 *German Law Journal* (2009), 803-14.

[5] Respecting various types „types of learning", see only (Reich, Kersten, *Konstruktivistische Didaktik: Lehr- und Studienbuch mit Methodenpool*, 4th ed. (Beltz Verlag, Weinheim und Basel, 2008), 189).

Dutch comparison at center stage. Obvious differences separate the German from the Dutch reasoning about property. The Dutch system provides for no isolated claim for injunction based on the violation of a property right. The Netherlands embed the claim into the tort system. Another fundamental difference occurs with regard to claims. In the Netherlands, claims belong to the area of *goederenrecht* ("Güterrecht"), not to the area of obligations (like in Germany and the UK). These differences refresh our reflection on the relationship between property and contract, and deliver fruitful insights into contemporary legal arrangements. One first example is the recently much debated prohibition to cede an obligation (e.g. in credit contracts secured by mortgages). In the Netherlands, the prohibition has third party effect (*in rem* effects). The idea is that the owner of the claim does not fully dispose of his/her claim any more. He/she is not allowed to cede the claim to a third party. Thus, the very core of property is minimised. Because of this restriction on proprietary capacity, the prohibition is attributed to effect third parties – in contrast to German law. To students this reconception does not only clarify the dogmatic construction between the two norms § 399 Alt. 2 and § 137 in the German BGB. More importantly, this different approach towards contractual prohibitions sheds light on the dissimilar systematic thinking in the Netherlands with regard to unauthorised disposition of a right in general. In the Netherlands, the central idea is that there is nothing to dispose of; the contractual prohibition extracted the *commodum*. The subsequent transfer lacks its object. In contrast, in Germany the central idea revolves around the consequences of the missing authorisation. It circles around the concept of good faith. If the third party was in good faith and the objective circumstances support the misconception, than the interests of trade will enjoy priority over the interests of the owner. The faithful buyer will acquire a good title. However, the good faith rules are not applicable to the cession of claims (§§ 398 ff. BGB) in contrast to the transfer of movables (§§ 932 ff. BGB). German theory does not conceive this friction as a chasm. It is conceptualised as a systematic consequence of the principle that claims cannot be acquired in good faith (only exception: the so-called "forderungsentkleidete Hypothek"). Quite to the opposite, to Dutch lawyers the acquisition of claims in good faith is perfectly possible – yet unthinkable in the German tradition.

Another difference between the Dutch and the German system is instructive for the understanding of the debate about a harmonised European civil law. The Dutch legislator abolished the non-possessory pledge in 1992. The intent was to return to the French principle of registration (in order to protect the original owner against fraudulent sale). The (non-registered) "Sicherungsübereignung", however, is one of the centerpieces of German Property Law, and a common instrument to secure credits in purchased movables, esp. cars. The juxtaposition explains two different things. First, the legislative arguments shed light on why most of the other European jurisdictions refuse the introduction of a non-possessory pledge (protection of the creditor). Second, the discussion distances students from the traditional German systematic thinking.

While the German and the Dutch system differ in substantial parts, the Dutch legislator anticipated legislative changes which were only introduced in Germany years later. While abolishing the non-possessory pledge in 1992, the Dutch legislator introduced a "qualitative duty" (Art. 6:252 Nieuw Burgerlijk Wetboek) which supplements the *in rem* effect of the servitude with an obligatory duty. A similar connection of property and contract was introduced to the German "Grundschuld" in 2009, § 1192 Abs. 1a BGB. While these developments put pressure on the German "Abstraktionsprinzip", the clear cut rule of privity of contracts is equally put in question. The earliest decision was handed down by the

English Court of Appeal in *Adler v Dickson in* 1955. The court granted an *in rem* effect to contractually agreed limits to liability for which a third party effect is wanted by the parties (so called "Himalaya clause" named according to the name of the ship in question). The legal situation in Germany is quite similar. However, the effect is unambiguously embedded in the law of obligations via the construct of the so called "Vertrag mit Schutzwirkung zugunsten Dritter" (first adapted by the German Supreme Court in the so called "Salatblattfall case" in 1976 [BGHZ 66, 57]).

The reflection about the grey zone between contracts and property brings new light to various modern constellations. Without this understanding, modern financial instruments like swaps and their technique of bundling claims in a way that not property is transferred but only the attribution contractually agreed upon, would not be conceivable. One would neither recognize the internal dogmatic frictions which occur by transposing European directives, nor the differences between member states when transposing them, e.g. the European Emission Trading Directive (Dir. 2003/87/EC). The Netherlands introduced the "Abstraktionsprinzip" for transferring emission certificates, Germany introduced transferability (and trade) of (administrative) obligations. These new hybrids occur in various fields of "new property", such as trust constellations in patent applications by research contracts or *in rem* effects of user rights in software treaties.

In the current winter semester 2010/2011, Christine Godt teaches the course together with Prof. Alison Clarke, University of Surrey (United Kingdom), and they follow again the double block seminar structure. The first block again focussed on the essentials institutions of property law, although with a much stronger emphasis on the differences between Common Law and Continental, esp. German law. The second block seminar will look into collective titles, the governance of public goods, the regulatory use of property and its consequences on societal behaviour.

While the list of interesting comparisons could be easily supplemented by further cases, the explanans has already become clear: It is the lively discussion between scholars which uncovers legal evolution. Team teaching provides a frame in which such a type of academic progress can happen.

Experience Case 2

The course in fundamental rights given by Götz Frank and Gerhard Hoogers in Oldenburg is an introductory course, which familiarizes the HLS students with the German fundamental rights system. One of the most interesting features of this topic lies in the fact that although it is still a relatively young field of law in the German legal system (compared to *e.g.* civil or penal law), it has nevertheless grown to be of great importance, not least for other fields of law. Technically, the course is taught on a weekly basis (by G. Frank). The team teacher (G. Hoogers) comes in every other week, and then, the course is taught together.

The course starts with a description of the development of fundamental rights in the German constitutional system and their ever growing importance since the coming into force of the Basic Law in 1949 and the introduction of the Federal Constitutional Court shortly after. This history is juxtaposed with the comparison to the Dutch legal system. Partly due to a rather different constitutional history, the Dutch constitutional system is less 'fundamental rights oriented' than the German one. The Dutch constitution originates from 1814 and although it has been amended many times since then, it is still more or less an

example of a 19th century 'limited monarchy type' constitution. Up to the constitutional revision of 1983, fundamental rights were rather few and far between in the text of the Dutch constitution: it was only in that year that a new chapter one was introduced, bringing together the existing fundamental rights, creating a number of new ones, and introducing a general system of limitations and safeguards. Up to this day, it is still not possible for the courts to review the constitutionality of acts of the legislator, however. The contrast between the constitutional history of Germany and the Netherlands in this regard illustrates the new way that Germany took after 1949 and the inspiration that the American system of constitutional review was to the *Verfassungsväter* at Herrenchiemsee when they were drafting the Basic Law.

The second topic chosen focuses on the way the Federal Constitutional Court interprets the fundamental rights in the Basic Law and their role and function in the constitutional system of the Federal Republic. One of the focal points here is the relationship between the Federal Constitutional Court and the Court of Justice of the European Union as well as the European Court of Human Rights. In its decisions, the Federal Constitutional Court has always maintained its own supremacy *vis-à-vis* these two international courts. In its human rights jurisprudence, the Federal Constitutional Court maintains that it has a constitutional duty to review and possibly nullify decisions by both courts if these courts make decisions which infringe upon the fundamental rights upheld by the Federal Constitutional Court itself, the so-called 'Solange' doctrine. In the Netherlands, the situation is markedly different. In the Dutch constitutional system, international norms that are 'generally binding' and take precedence over national norms, possibly up to and including the constitution itself. Since most international human rights treaties contain such generally binding norms, the Dutch courts are under a constitutional obligation to review national norms on their conformity to international human rights norms, as included in the ECHR or the ICCPR. This leads to a situation where the decisions of international courts, especially the European Court of Human Rights in Strasbourg, are of enormous importance for the Dutch Courts when interpreting international human rights, specifically those contained in the ECHR. The jurisprudence of the Luxemburg Court is also mostly accepted by Dutch Courts, based upon the theory that since the *Van Gend en Loos* and *Costa/ENEL* decisions of the early 1960s the legal order of the EU has developed an autonomous character and is therefore no longer limited by the constitutional and legal norms of its member states.

In other words: whereas in Germany the fundamental rights of the Basic Law play an extremely important role in the legal system and are even used by the Federal Constitutional Court to (at least possibly) 'shield' the German legal order from infringements by international norms and international courts, the fundamental rights in the Dutch constitution play only a limited role in the constitutional system of the Netherlands. On the other hand, international human rights playing a very important role in the domestic legal system, are interpreted widely by national courts, and are in the last instance colored by the jurisprudence of international courts, even in their domestic application.

The contrast between these two systems is illustrated and elaborated upon by both teachers in discussion and interaction with the students. This enables the students to gain understanding for both systems and to develop, at an early stage of their legal studies, an understanding for the fact that there is no 'given way' of dealing with important constitutional problems. Through very different approaches, Germany and the Netherlands have both developed a system that grants a very high standard of human rights protection to their citizens. At first, this may seem very demanding of students at this early stage of their

studies: we believe, however, that it enables students to gain a deeper understanding of the whole concept of constitutional law and the role of fundamental rights therein.
In the third phase of the course, the fundamental rights praxis of the Netherlands is elaborated upon. Through a number of important decisions of Dutch Courts concerning national and international human rights, the role and function of fundamental rights in the Dutch constitutional system is highlighted. This is also the first time that the German students are confronted directly with Dutch as a language of law, because they have to close read these decisions. Normally, this part of the team teaching takes place near the end of the semester, to make sure that the students have gained a basic understanding of Dutch. This is also the first time that Dutch is used in class: the first two parts of the course are given in German.
The course finishes with an examination in which both teachers participate. The students' papers (discussed with and approved by both teachers) deal with current themes in fundamental rights doctrine, very often by means of a German-Dutch comparison. They are at first presented in class in a shortened form and discussed with the other students. They are then extended to full-length papers and reviewed by both teachers.
Over the past years this method of team teaching has proven its merits. The main focus of the course is on German constitutional law: the comparison to the Dutch legal system is used to highlight differences and parallels and to deepen the understanding of the students. (When the students follow their planned courses in Groningen, later in their studies, the focus obviously shifts to the Dutch constitutional system.) In this way, the HLS course in fundamental rights can maintain its introductory character, while at the same time deepening the understanding of the German constitutional system and its fundamental rights law.

Evaluation and Outlook

The usual response from traditional teachers with regard to team teaching is that it is "too time-consuming", and the one from financial departments that it is "too expensive". However, these arguments do not always hold. The bottom line is that team teaching is a suitable form for teaching *specific* topics in *specific* institutions. It does not make sense for teaching the strict legal technical analysis. Neither is it apt to teach homogenous fields of law. Nor is it apt for institutions just focusing on a (strictly) nationally oriented audience. However, it is a fruitful form of modern internationalized teaching. In addition, it is apt to break with procrustean teaching attitudes. Teachers cannot master every jurisdiction, and students are to be exposed to different traditions in legal reasoning. The Hanse Law School's ambition is a comparative education with a distinct method of legal analysis which differs from the traditional education directed towards the "Staatsexamen". Team teaching is one instrument for bringing out this difference: It is consequently comparative. As a method, it naturally conveys that there is not only "the one right answer". However, for the "Staatsexamen" which is oriented towards the judges profession, the central hermeneutic *must* be "the one right answer" since judges are expected to decide in a predictable manner. The hermeneutic of the Hanse Law School differs from that by being interested in differences and in reasons for difference. Its focus is on conceptual alternatives. After the traditional dialectic legal reasoning of opposing opinions has become deformed in the German mass legal education into a formalistic technique which is believed to be *the* "practical tool of judges" (instead of a scientific method), the Hanse Law School

method reinvents the dialectic reflection by substituting the German "Gutachtenstil" by a confrontation of opposing policy arguments based on comparing different jurisdictions. The education becomes "re-scientificated" (G. Brüggemeier) by a novel standard of collecting information about the jurisdictions chosen, and identifying the underlying rationales.[6] Students acquire the legal technique "on the way" by reconstructing the legal argumentation of a national judge (and thus understand it as a tool, not as an end in itself). One should not misunderstand the methodology as "educating future scientists". It is modern practice in leading law firms and international organizations to reason in terms of opposing ideas, and conflicting interests. The Hanse Law School Methodology leads the way towards a realignment of legal education towards the international academic standard.

Beyond, the individual scientific gains of team teaching are significant. From an academic standpoint, considering the new insights the time is optimally invested. Financially, costs can be kept within limits. In the end, the gains outrun the costs. Students retain more, understand better the meaning (and functionality) of legal theoretic constructs, and are exposed to a discursive legal conversation in action. Scholars have the opportunity to reflect on their topics differently and anew. With regard to the long term formation of (meaningful) institutional cooperations, team teaching courses can be a nucleus of institutional contacts between universities. In the architecture of the Hanse Law School, team teaching has evolved into "the" Hanse Law School Methodology, and has thus become a building block of the innovative profile of the program.

[6] Close to the US-American understanding of "legal science", see Dedek, Helge, 'Recht an der Universität: 'Wissenschaftlichkeit' der Juristenausbildung in Nordamerika' ("Law at the University: The Paradigm of 'Scholarship' in North American Legal Education"), *Juristenzeitung* 2009, 540.