



2016

# Intercultural Legal Sensibility as Transformation

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## Recommended Citation

Raquel Aldana, Intercultural Legal Sensibility As Transformation, 25 S. Cal. Interdisc. L.J. 1, 5 (2016)

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## Intercultural Legal Sensibility as Transformation

Raquel Aldana\*

### *Abstract*

In recent years the transformation of legal practice through globalization and shifting demographics in the United States have made the inherent cross-cultural nature of lawyering more apparent. As a result, law schools are being more intentional about the teaching of intercultural legal sensibility as part of the law school curriculum. This increased interest by U.S. law schools to train lawyers in intercultural legal sensibility calls for careful engagement by legal educators to define what intercultural legal sensibility should mean, to develop methodologies in response to the desired outcomes, and to measure their effectiveness. This article offers a reflection on what it might mean to infuse the teaching of intercultural legal sensibility with the necessary lessons to avoid perpetuating cultural dominance and global power imbalances through law. This process necessarily requires transformation on the part of all who engage globally and cross-culturally. This article explains why there may be a need for transformation and defines the type of transformation that law schools might encourage in future lawyers as part of legal education. The article also provides lessons on the methodology this type of transformational learning requires. The focus is principally on summer abroad programs as well as service learning opportunities that include student immersion in rich cross-cultural exchanges. Finally the article identifies ways to measure the effectiveness of law school programs aiming to teach intercultural legal sensibility by drawing lessons from what other disciplines have done in similar programs for at least half a century.

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\* Professor of Law and Director of the Inter-American Program at Pacific McGeorge. I thank the support of Pacific McGeorge for my research and for allowing me to teach soulfully. I am especially indebted to Elizabeth Parker and Julie Davies for their support. Special thanks to my wonderful spouse Luis Mogollón and to Leticia M. Saucedo, José R. Juárez and Blake Nordahl who have been co-conspirators in our shared vision for educating law students. I also thank my excellent research assistant María Cristina Andrade. I wrote this article inspired by a symposium at Drexel University School of Law on Building Global Professionalism: Emerging Trends in International and Transnational Legal Education. I especially thank Prof. Anil Kalhan for his vision and dedication to this topic.

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The two teaching articles I have written share the word “transformation” in the title.<sup>1</sup> The articles also have in common that the teaching that inspired deep reflection took place across borders and across cultures in Nicaragua and Guatemala respectively. It struck me only recently that I never once addressed explicitly the cross-cultural educational dimensions in either article. My focus then was on social justice lawyering. I knew from the literature that transformative learning requires the learners to look deeply into themselves to question their assumptions, which hardly ever happened absent experiences that would be moving and meaningful.<sup>2</sup> Thus, I was seeking to provide a transformative learning experience to law students predisposed to social justice; one that would help them grow into even better advocates through contextualized learning driven by human connectedness and deep self-reflection.

1. Raquel Aldana, *Transforming Students, Transforming Self: The Power of Teaching Social Justice Struggles in Context*, 24 PACIFIC MCGEORGE GLOBAL BUS. AND DEVELOPMENT L. J. 53 (2012); Raquel Aldana & Leticia Saucedo, *Learning in Mulukukú: A Journey of Transformation*, in VULNERABLE POPULATIONS AND TRANSFORMATIVE LAW TEACHING: A CRITICAL READER (Carolina Press, 2011).

2. See, e.g., JACK MEZIROW AND ASSOCIATES, *FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING* 85 (1990). See also E.W. TAYLOR, *TEACHING FOR CHANGE: FOSTERING TRANSFORMATIVE LEARNING IN THE CLASSROOM* (2006); Catherine McGregor, *Care(full) Deliberation: A pedagogy of Citizenship*, 2 J. Transformative Educ. 90 (2004); Kathleen M. Brown, *Leadership for Social Change and Equity: Weaving a Transformative Framework and Pedagogy*, 40 EDUC. ADMIN. Q. 77 (2004); NAMULUNDAH FLORENCE, *BELL HOOK'S ENGAGED PEDAGOGY: A TRANSGRESSIVE EDUCATION FOR CRITICAL CONSCIOUSNESS* (1998); and E.W. TAYLOR, *THE THEORY AND PRACTICE OF TRANSFORMATIVE LEARNING: A CRITICAL REVIEW* (1998).

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The global nature of my teaching would, of course, bring to bear the obvious cross-cultural aspects of my teaching. While all lawyering is cross-cultural,<sup>3</sup> the students who joined me were exposed to blatant differences: ideological, economic, linguistic, cultural, and legal. Of course, through these educational experiences, my students were learning traditional intercultural skills; e.g., legal Spanish, comparative law and comparative legal systems, and lawyering across borders. Yet, when one of my colleagues asked me to provide some of my writings on intercultural teaching in preparation for a workshop on intercultural sensibility<sup>4</sup> I hesitantly provided my writings on transformation: I had not, after all, used the term intercultural or cross-cultural sensibility even once in my writings. Upon reflection, I recognize now that this was largely due to my failure to recognize then that the type of transformative pedagogy I advocated in my earlier pieces should be integral to the meaning of intercultural legal sensibility for lawyers who engage across borders and across cultures.

I credit Professor Laura Nader's<sup>5</sup> insolent voice at the workshop on intercultural sensibility as a transformative moment for me as a teacher. I use the word insolent only to describe and applaud Nader's brazen boldness as she scolded us, the law professors in the room, for engaging in the conversation about intercultural sensibility devoid of extreme caution or acknowledgment about law's potential for cultural dominance and with a seemingly lack of awareness of power imbalances in the entire enterprise. Nader's work on the ethnography of law and conflict, which had deeply influenced my own thinking and writings on the introduction of mediation in Nicaragua to resolve domestic violence cases,<sup>6</sup> explain Nader's misgivings about any pretense of neutrality in any enterprise to educate lawyers on global engagement. Her works, *HARMONY IDEOLOGY: JUSTICE AND CONTROL IN A ZAPOTEC MOUNTAIN VILLAGE* and *LAW IN CULTURE AND SOCIETY*, connected law to the colonization project and recognized law's potential for cultural dominance and hierarchical hegemony, even when introduced under pretenses of taming conflict.<sup>7</sup> One memorable moment in her intervention was when she asked workshop participants to come up with a list

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3. Sue Bryant and Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, 4 RACE AND JUSTICE 48 (1999), available at [http://www.uscrlrefugees.org/2010Website/5\\_Resources/5\\_3\\_For\\_Service\\_Providers/5\\_3\\_3\\_Cultural\\_Competency/Clinical\\_Legal\\_EducationAssociation.pdf](http://www.uscrlrefugees.org/2010Website/5_Resources/5_3_For_Service_Providers/5_3_3_Cultural_Competency/Clinical_Legal_EducationAssociation.pdf), last visited 1/21/14.

4. Pacific McGeorge is leading an initiative to promote intercultural legal competence. For a report of the initiative, see Franklin A. Gevurtz, *Report Regarding the 2011 Pacific McGeorge Workshop on Promoting Intercultural Legal Competence*, available at [http://www.mcgeorge.edu/Documents/Publications/261\\_3TahoeIIReport.pdf](http://www.mcgeorge.edu/Documents/Publications/261_3TahoeIIReport.pdf), last visited 2/18/14.

5. Laura Nader has been a Professor of Anthropology at the University of California, Berkeley since 1960. *Laura Nader*, UNIVERSITY OF CALIFORNIA BERKLEY ANTHROPOLOGY (Feb. 11, 2014), <http://anthropology.berkeley.edu/users/laura-nader>.

6. Raquel Aldana & Leticia Saucedo, *The Illusion of Transformative Conflict Resolution: Mediation Domestic Violence Cases in Nicaragua*, 55 BUFF. L. REV. 1261 (2008).

7. See generally LAURA NADER, *HARMONY IDEOLOGY: JUSTICE AND CONTROL IN A ZAPOTEC MOUNTAIN VILLAGE* (1990); LAURA NADER, *LAW IN CULTURE AND SOCIETY* (1997).

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often rules on what not to do when engaging globally; a sort of, do not harm list, which as she said, might be as simple, as when Western doctors learned to wash their hands so as not to introduce deadly disease into the villages they wanted to “save.”

This article is an attempt to take up Nader’s challenge, not in the form of a list of ten; rather, I wish to reflect on what it would mean to infuse the teaching of intercultural legal sensibility with the necessary lessons to avoid perpetuating cultural dominance and global power imbalances through law. This process necessarily requires transformation on the part of all who engage globally and cross-culturally. By transformation, I am suggesting a process leading to cognitive and attitudinal changes through critical self-reflection provoked by intense experiential learning opportunities infused with meaningful human connectedness with groups and individuals whose lives are quite different from their own. In Part I of this article, I try to answer the question of why I perceive a need for transformation in students engaged in cross-cultural lawyering and define the types of changes that I seek to promote in students (i.e., the outcomes). In Part II, I define the methodology this type of transformational learning requires as informed by the lessons offered by experienced educators in several disciplines and as adapted through my own trials and errors. My focus here is principally on summer abroad programs as well as service learning opportunities that include student immersion in rich cross-cultural exchanges. Finally in Part III, I identify ways to measure the effectiveness of law school programs aiming to teach cross-cultural sensibility by drawing lessons from what other disciplines have done in similar programs for at least half a century.

I have chosen to write this article in the first person for two reasons. The first is because the teaching of intercultural legal sensibility is a very personal and relational experience. As teachers, we are given the privilege and responsibility to engage with others not only about ideas but also about values, sometimes through emotive experiences. I am acutely aware that each of us – the teacher and the students – are experiencing the classroom or the spaces beyond the classroom as cultural beings, with our own set of assumptions, values, and lived experiences. I try, then, to approach these teaching spaces with tremendous respect and awareness of our cultural differences, and with a commitment to mutual growth. This vision of teaching, then, requires on my part awareness, reflection, adaptability, and transparency. My second reason to write this article in the first person is to attempt to model the type of self-awareness, reflection, and critical assessment about my own teaching through this article, and through it, discover, reveal, and even transform, my approach to teaching intercultural legal sensibility.

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## I. THE OUTCOME: INTERCULTURAL LEGAL SENSIBILITY AS TRANSFORMATION

### A. *Linking Intercultural Sensibility to Transformative Learning*

Transformative learning, which can lead to cognitive and attitudinal change, is not about forcing or manipulating students to adopt a set of values or beliefs; rather, the entire goal is to encourage in adult learners reflective thinking through meaningful experiences so that the student can choose, if they want, to reformulate their assumptions, understand the world from a different perspective, and be open to difference. In this sense, it is not so different from critical thinking skills taught in the law school classroom, except the experience is more personal, intense, and, therefore, likely more impactful.

For example, when writing about our experiences teaching in rural Nicaragua and introducing our students to collectivists, Sandinista-inspired thinking, Leticia Saucedo, my co-author, and I wrote:

“We did not aim to turn [our students] into Sandinistas, nor were we attaching a normative superiority to the Cooperative’s vision and method for social change [...] But as academics, our role was to make students aware of these different perspectives and help them reflect upon them, while introducing them both to academic literature attempting to locate answers to [the causes of domestic violence in Nicaragua] and to a social reality that might call for different explanations and solutions.”<sup>8</sup>

The adult education should be to encourage reflective thinking, recognizing that all learners make epistemic assumptions that radically affect the way they understand and subsequently solve problems.<sup>9</sup> Jack Mizerow, who is credited with initiating the theoretical field of transformative learning, suggests that adulthood is the time for reassessing assumptions of the formative years that has often resulted in distorted views of reality. Thus, he described transformative learning as a process of becoming critically aware of how and why our presuppo-

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8. Aldana & Saucedo, *Learning in Mulukukú*, *supra* note 1, at 259. In Nicaragua, students worked for a women’s cooperative in a rural town of Nicaragua where the Cooperative was implementing, through USAID funding, a mediation center to resolve disputes in the absence of formal justice. The Cooperative worked a great deal with men who were violent, and members hoped that mediation could bring about change in men. The cooperative mostly blamed what they labeled “structural violence” – poverty, unemployment, deep inequality, etc. – for men’s violence, and thus, welcomed the opportunity for a more restorative justice approach to traditional punishment. The students, many of them feminists and liberal in their conception of rights, had greater difficulty displacing agency away from the individual. We explore some of these dynamics in the piece we wrote on the introduction of mediation in this town. Aldana & Saucedo, *The Illusion of Transformative Conflict Resolution*, *supra* note 6.

9. Aldana & Saucedo, *Learning in Mulukukú*, *supra* note 1, at 259 (citing John Dewey, *How we Think* (Dover Publications Ind. 1997) and KAREN S. KITCHENER & PATRICIA M. KING, *THE REFLECTIVE JUDGMENT MODEL: TRANSFORMING ASSUMPTIONS ABOUT KNOWING, IN FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING* (1990)).

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sitions constrain the way we perceive, understand, and feel about our world; or reformulating these assumptions to permit a more inclusive, discriminating, permeable, and integrative perspective.”<sup>10</sup>

The fact that transformative learning does not seek to convert students to think in a particular way does not mean that transformative teaching does not seek cognitive and attitudinal change. As we described when we wrote about *Mulukukú*:

We were very purposefully trying to take students out of their comfort zone. We sought to place them in a very different social reality, one of extreme poverty, in a country that had undergone a social revolution that changed the rhetoric of oppression. We hoped that this experience would encourage students to reflect and question their own assumptions and biases, to confront fears that could limit their ability to think critically about the causes of oppression, and to consider alternative approaches to social change. We were asking students to question their liberalism; we were asking them to reconsider the value of economic and social rights; we wanted them to reconsider the role of the state or corporations in causing and solving injustice; we were introducing them to a collective model of social activism. We hoped this experience would change their vision of public interest lawyering and the role they could play, as agents of social change.<sup>11</sup>

As I reflect on the *Mulukukú* article and read the literature on intercultural competency, I am struck by how much of it resonates with the type of learning objectives we were trying to achieve in Nicaragua. Intercultural competency is much more than the mere acquisition of knowledge about another’s culture or of skills, such as language. Definitions of intercultural competency across disciplines emphasize principally the learner’s developmental growth and personal change. C. Pepin, for example, explained that cross-cultural education must focus on personal growth because intercultural competency works only when it touches on mental, physical, and emotional variables and offers the learner an opportunity not only to increase knowledge and skills but to mature in an environment capable of stimulating growth and development in a different way than the learner’s own culture.<sup>12</sup> William Gudykunst and Young Yun Kim describe the intercultural person as one “who has achieved an advanced level in the process of becoming intercultural and whose cognitive, affective, and behavioral characteristics are

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10. JACK MIZEROW, HOW CRITICAL REFLECTION TRIGGERS TRANSFORMATIVE LEARNING IN FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING 14 (1990).

11. Aldana & Saucedo, *Learning in Mulukukú*, *supra* note 1, at 260.

12. C. Pepin Quoted in W. Frank Hull IV, *Cross-Cultural Experiential Programming*, 27 INTERNATIONAL REVIEW OF EDUCATION 64, 66 (1981).

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not limited but are open to growth beyond the psychological parameters of only one culture... The intercultural person possesses an intellectual and emotional commitment to the fundamental unity of all humans and, at the same time, accepts and appreciates the differences that lie between people of different cultures.”<sup>13</sup> Claire Kramsch has termed an intercultural stance as a “third place” from where learners look critically at their own culture as well as the culture that is the focus of study.<sup>14</sup> When writing about the opportunity of higher education to educate students in a shrinking world, Theodore L. McEvoy defines cosmopolitanism as more than “simple worldliness”; instead, suggesting a more profound inner development; i.e., the capacity for unlimited horizons, a mystical oceanic attitude toward existence, and an abiding concern with the nature of reality and meaning.”<sup>15</sup>

Legal scholars writing on the development of intercultural legal sensibility similarly focus on the development of the law student as a multicultural being, emphasizing the importance of critical self-awareness and/or empathy toward client and communities. The five-habits of cross-cultural lawyering described in the work of Susan Bryant and Jean Koh Peters, for example, encourage cognitive awareness of cultural difference to take into account not only the cultural differences between the client and lawyer but also the cultural differences among client, lawyer, decision-maker, and law.<sup>16</sup> In turn, this awareness challenges the lawyer to question his or her own assumptions and biases so as to practice law (and mediate the application of law by others to client) based on facts.<sup>17</sup> Carwina Weng critiques the literature of multicultural lawyering that emphasizes developing awareness of the client’s culture without delving into developing cultural self-awareness. Prof. Weng, instead, proposes the learning of cultural self-awareness and the teaching of cognitive and social psychology to permit the learner to understand and modify his or her own unconscious biases.<sup>18</sup> Multicultural lawyering, of course, often involves relating across racial and ethnic differences. Prof. Marjorie Silver makes very similar observations with regard to multicultural lawyering and race, and prescribes a deep exploration of the learner’s own racism as a necessary precursor to competent multicultural lawyering.<sup>19</sup> Prof. Zuni Cruz, in her piece on lawyering for indigenous peoples, writes that

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13. William Gudykunst & Young Yun Kim, “*Communicating With Strangers: An Approach to Intercultural Communication*,” in BRIDGES NOT WALLS 230 (John Stewart ed. al eds., 6th ed., 1995).

14. CLAIRE KRAMSCH, *CONTEXT AND CULTURE IN LANGUAGE TEACHING* 231 (Oxford U.P. 1993).

15. Theodore L. McEvoy, *An Opportunity for Higher Education in a Shrinking World*, 39 THE J. OF HIGHER EDUCATION 84, 84 (1968).

16. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 48-70 (2001).

17. *Id.* at 70-78.

18. Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 383-402 (2005).

19. Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L. J. 219.



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cultural literacy “requires an analytical framework that engenders respect...those who interact with a community as lawyers do so in such a manner as to impart cultural re/production, and cultural literacy helps lawyers to move indigenous communities from cultural reproduction to cultural production.”<sup>20</sup> Prof. Zuni Cruz goes on to explain in her joint work with Prof. Margaret Montoya on the related concept of racial literacy, which they describe as a “transformative process...based on two ideas; first that ‘race’ involves several ways of coding and decoding information and second, that these racial codes can be reinscribed with new meaning...”<sup>21</sup> Thus, cultural or racial literacy includes also the ability to “critically analyze the social and political structures that inform... [our] realities.”<sup>22</sup>

### B. *The Premises for Transformation*

Having linked intercultural sensibility to transformative learning, this article takes up more concretely the types of transformation necessary in order to gain intercultural legal sensibility. I will depart from several premises in framing these objectives, which are necessary to explain first.

First, globalization has transformed law, legal problems, and, thereby lawyering. Globalization challenges traditional notions of state sovereignty through the trans-nationalization of legal, political, and economic systems. Globalization also gives rise to new actors, such as global institutions and non-governmental organizations, but also the multinational corporations and rebel armed groups, all of which challenge traditional notions of state legal and moral accountability. Globalization brings with it also new clients and creates new legal challenges: through such forces as transnational migration; trafficking in persons, drugs or weapons; the transfer of goods and money across borders; and increased and sophisticated technology. Moreover, the drive for expanded markets with the call for cheaper labor and materials and more flexible regulation of the environment and other social safeguards gives rise to new challenges calling for transnational legal responses and strategies.<sup>23</sup> This all means that all law students who practice law will likely encounter global clients and issues that will require them to engage in multicultural lawyering in ways that call for transnational engagement with foreign, international or global actors, laws, or legal systems.

Second, law itself and lawyering are linked in complex and varied ways to culture. The meaning of culture has been reexamined over the last few decades.

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20. Christine Zuni Cruz, *Toward a Pedagogy and Ethic of Law/Lawyering for Indigenous Peoples*, 82 N.D. L. REV. 863, 891 (2006).

21. *Id.*

22. *Id.*

23. For a thoughtful description of how globalization has transformed lawyering, see Deena R. Hurwitz, *Lawyering for Justice and the Inevitable of International Human Rights Clinic*, 28 YALE J. INT'L L. 505, 506-13 (2003).

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Anthropologists used to define culture as a fixed and stable set of beliefs, values, and institutions.<sup>24</sup> Now, culture is better understood as a flexible repertoire of practices and discourses created through historical processes of contestations over signs and meaning.<sup>25</sup> As anthropologist Sally Engle Merry explains, cultural forms and practices are locally expressed but connected to global systems and economic exchange, power relations, and systems of meaning.<sup>26</sup> Moreover, culture is constructed and transformed over historical time through the activities of individuals as well as through events, rather than through gradual social evolution; thus, culture is continuously produced and reproduced at particular historical times in specific places, situated within global movements of people and capital.<sup>27</sup> As well, culture is integral to systems of power and the maintenance of these relations of power depend on retaining particular cultural meanings, while moments of resistance include redefinitions of cultural meanings.<sup>28</sup>

This richer understanding of culture has significant implications for explaining the varied linkages between law and culture.<sup>29</sup> Law itself is a type cultural expression: it is a normative system comprised of a series of rules and legal institutions that attempt to define or impose a social order and which is also subject to change in response to different circumstances.<sup>30</sup> In some societies, law is a fundamental part of the normative system which serves to maintain social order. Anthropologists Clifford Geertz and Lawrence Rosen theorized in the 1970s the concept of cultural embeddedness of law, a system where law itself constitutes a system of cultural meaning within that society.<sup>31</sup> In contrast, law in other societies is itself a cultural system imposed on another cultural system. In essence, law's systems of meanings are not necessarily identical to those of the culture within which they operate.<sup>32</sup> This understanding of the linkages of law and culture moves us away from a simple vision of legal cultures as homogenous entities. We must re-imagine legal systems, instead, as arenas of contested cultural meanings in which various actors compete to impose their cultural values on the normative systems.<sup>33</sup> As well, lawyering itself becomes contextualized and informed

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24. Sally Engle Merry, *Law, Culture, and Cultural Appropriation*, 10 YALE J. L. & HUMAN. 575, 577 (1998).

25. *Id.* at 577.

26. *Id.*

27. *Id.* at 577-78.

28. *Id.* at 578.

29. *Id.*

30. For articles that explore law as culture, see, e.g., Menachem Mautner, *Three Approaches to Law and Culture*, 96 CORNELL L. REV. 839 (2011) and Naomi Mezey, *Law as Culture*, 13 YALE J. OF LAW & THE HUMANITIES 35, 45-58 (2001).

31. Cited in Merry, *supra* note 24, at 576. See also, Paul Schiff Berman, Book Review, LAWRENCE ROSEN, *LAW AS CULTURE: AN INVITATION* (Princeton Univ. Press, 2006) and Oscar G. Chase, *LAW, CULTURE, AND RITUAL: DISPUTING SYSTEMS IN CROSS-CULTURAL CONTEXT* (New York Univ. Press, 2005).

32. Merry, *supra* note 24, at 578.

33. *Id.* at 584.

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by the relationship between law and culture in that society,<sup>34</sup> or between law and culture by the client.<sup>35</sup>

Third, I espouse the view that lawyers have professional ethical obligations to provide access to justice and to pursue justice as a goal. The duty to provide access to justice entails an obligation to provide legal services to those who cannot afford to pay for them. The duty to pursue justice entails the lawyers' concern with the "justice" of the client's cause; i.e., a preoccupation with the legality and the morality of the client's interest in a case. Each of these statements is highly controversial and has sparked a great deal of scholarly debate among legal ethics' scholars.<sup>36</sup> Much of the controversy around a professional duty to provide access to justice by serving the poor or unpopular clients has centered on concerns over the lawyers' own autonomy; that is, lawyers should have a right to choose and reject the causes they wish to pursue.<sup>37</sup> The debate over the extent to which a lawyer should concern him or herself over the legality or morality of the client's cause has centered around the ethical obligation of lawyer's to protect the client's own autonomy in the legal system (the "non-accountability" view).<sup>38</sup> Further, there is a vision of the separateness of law and morality that allows a lawyer to press for the client's lawful claims ethically so long as it does not amount to aid-

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34. Several legal scholars have insightfully reflected on the implications of culture to lawyering and have focused on how the linkages between law and culture as it relates to society or client should inform the ethics and strategies for lawyering. See, e.g., Zuni, *supra* note 20, at 876-885 (focusing on lawyering for indigenous peoples); Mary Helen Mcneal, *Slow Down, People Breathing: Lawyering, Culture and Place*, 18 CLINICAL L. REV. 183 (2011) (discussing Montana's rural community's culture on lawyering); Duane Champagne, *Justice, Culture, and Law in Indian Country: Teaching Law Students*, 82 N.D. L. REV. 912 (2006) (discussing the importance of teaching law students about tribal legal viewpoints and interests outside of federal Indian law conceptualizations); Anna-Maria Marshall, *Communities and Culture: Enriching Legal Consciousness and Legal Culture*, 31 LAW & SOC. INQUIRY 229 (2006) (critiquing Palestinian feminists efforts to advocate on behalf of women including by their failure to understand the limited role that law plays in the everyday lives of women and the disconnect between law's liberalism and communitarian values); and Okechukwu Oko, *The Problems and Challenges of Lawyering in Developing Societies*, 35 RUTGERS L. J. 569 (2004) (discussing the culture of lawyering in democracies in transition with Nigeria as a case study).

35. See, e.g., Bryant, *supra* note 16 (discussing the importance for intercultural legal competence of understanding legal cultural and the relationship of client and the lawyer to that culture).

36. See, e.g., DEBORAH L. RHODE, IN THE INTEREST OF JUSTICE: REFORMING THE LEGAL PROFESSION (2000); Susan D. Carle, *Lawyer's Duty to do Justice: A New Look at the History of the 1908 Canons*, 24 LAW & SOC. INQUIRY 1 (1999); David Fagelson, *Rights and Duties: The Ethical Obligations to Serve the Poor*, 17 LAW & INEQ. 171 (1999);

37. See, e.g., Fagelson, *supra* note 36, at 177-179; Deborah L. Rhode, *Cultures of Commitment: Pro Bono Lawyers and Law Students*, 67 FORDHAM L. REV. 2415, 2421-22 (1999).

38. This "non-accountability" view, embraced by Charles Fried and several other scholars with some variations, maintains that lawyers should not inquire into the justice or morality of their client's causes because, particularly in the adversarial system, the ethical obligation of the lawyer is to the client; i.e., the lawyer must abandon his or her own morality to promote the due process of the client of having his or her cause adjudicated and resolved through the legal system. Charles Fried, *The Lawyers as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L. J. 1060, 1079 (1976). See also Stephen L. Pepper, 40 S. TEX. L. REV. 181 (1999) and Stephen Pepper, *Integrating Morality and Law in Legal Practice: A Reply to Professor Simon*, 23 GEO. J. LEGAL ETHICS 1011 (2010).

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ing the client in any illegitimate imposition of anybody else's freedom.<sup>39</sup> In contrast, others propose a relationship with the client in which the lawyer would calibrate the client's interests against the interests of other affected clients or assess the morality of the client's interest and encourage the client to take the morally correct path through persuasion (the "moral activists" view).<sup>40</sup> This view rejects the interpretation of law as separate from economics, morality and politics and charges lawyers with a pursuit of the integrity of law (Fleming)<sup>41</sup> or to adopt a "contextual view" of legal ethics (Simon)<sup>42</sup> or to lawyer with agency as a moral being with a sense of ordinary moral obligations (Luban).<sup>43</sup>

My own view on the ethics of lawyering rejects the elevation of libertarianism – here concerns over lawyer or client autonomy– over all other moral goods, including collective societal ones to increase access and improve justice.<sup>44</sup> Even as I recognize the legitimacy of the lawyer's personal autonomy, I am persuaded to prefer a mandated professional obligation to represent the underserved by the justice gap crisis that plagues our profession<sup>45</sup> and the resulting failure, thereby, of guaranteeing minimum equality before the law for most people.<sup>46</sup> There are aspects of the non-accountability view that are persuasive, namely concerns that the infusion of the lawyer's own morality to the practice of law could lead to the alienation of "unpopular" clients perceived as "immoral." This concern is particularly acute in the context of criminal defense. As well, the recognition of "moral pluralism"– the existence of a diversity of reasonable yet irreconcilable moral viewpoints and the irreconcilable diversity of values within a single person's moral outlook –poses an objection to the idea that lawyers should infuse legal practice with their own moral principles.<sup>47</sup> Yet, the implications of moral pluralism can be exaggerated and ignore that there are universal core values that can

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39. See Heidi Li Feldman, *Book Review, The Practice of Justice: A Theory of Lawyers' Ethics*. By William H. Simon (1998), 97 MICH. L. REV. 1472, 1475 (1999).

40. See generally William H. Simon, *The Practice of Justice: A Theory of Lawyer's Ethics* (1998).

41. See, e.g., James E. Fleming, *The Lawyer as Citizen*, 70 FORDHAM L. REV. 1699 (2002).

42. Mark L. DeGennaro, *Book Review, The Practice of Justice: A Theory of Lawyers' Ethics*, by William H. Simon, 25 Just. Sys. J. 250, 250 (describing Simon's proposal of a "Contextual View" of legal ethics as the view that lawyers should take action to promote justice that consider the relevant circumstances of the particular case) or Feldman, *supra* note 39, at 1477-1483 (describing Simon's theory of ethics as a "substantive, purposivist theory," according to which the legal meaning of legal rules and standards is not evident simply from textual examination but must be ascertained in light of the basic values and goals of the legal system).

43. David Luban, *The Inevitability of Conscience: A Response to My Critics*, 93 CORNELL L. REV. 1437, 1440 (2008).

44. Simon, *supra* note 40, at 43.

45. See Debrah L. Rhode, *The Profession and the Public Interest*, 54 STAN. L. REV. 1501, 1504-05 (2002).

46. For similar views, see, e.g., Fagelson, *supra* note 36, at 8-17.

47. See Luban, *supra* note 43, at 1446-1447 (describing the critiques of the "moral activism" view of lawyering in the work of Professors Kate Kruse, Normal Spaulding and W. Bradley Wendel). See also William H. Simon, *Authoritarian Legal Ethics: Bradley Wendel and the Positivist turn*, 90 TEX. L. REV. 709, 709 (describing Welden's critique of the moral activist lawyer as a fear of authoritarianism where the lawyer's own private values disregard the rules, conventions, and expectations of society).

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guide ethical lawyering.<sup>48</sup> There is also the concern that “fidelity to the law,”<sup>49</sup> as an alternative to moralistic lawyering, places too much faith on legal institutions and laws. That is, lawyers are called to the legal system by treating it as flawless, ignoring that law itself cannot and does not regulate all human conduct.<sup>50</sup> Additionally, the non-accountability view’s limits are particularly pronounced as applied to the representation of powerful actors such as transnational corporations, nation states, or other institutions whose influence over the lives of others is so pronounced. This point is important because much lawyering occurs in spaces of great imbalance of power. As Professor Rhode has argued, “unqualified loyalty is difficult to justify.... [particularly] when the client is not a ‘free citizen,’ but a profit-driven corporation, and the victims are individuals whose health, safety, and autonomy are not adequately represented.”<sup>51</sup>

#### C. The Types of Transformation

With these premises, I now turn to discuss the types of transformation that accompanies my vision of intercultural legal sensibility. The desired transformative outcomes I seek in law students who engage cross-culturally are based on my own observations of law students I have taught principally in the United States. These observations are necessarily generalizations and do not apply to every student. There are, however, commonalities among many U.S. law students that deserve mention. These attitudes are shared irrespective of differences in class, ideology, ethnicity, gender, and sometimes even age among students. It appears that the commonality of having been raised in the United States, a dominant culture, and being trained as U.S. lawyers may explain, in part, some of the attitudes I have observed.

Influenced principally by the work of Dr. Milton J. Bennett, generally the desired cognitive and attitudinal change I seek in my students is a shift away from ethnocentrism toward ethnorelativism. Bennett created the Developmental Model of Intercultural Sensitivity (DMIS) to explain how people construe cultural difference and identified six orientations that people seem to move through in their acquisition of intercultural sensibilities and sensibility.<sup>52</sup> The underlying assumption of this model is that intercultural sensibility is developed progressively

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48. Luban, *supra* note 43, at 1448 and Rhode, *The Profession and the Public Interest*, *supra* note 45, at 1517.

49. “Fidelity to Law” is the title of the book by W. Bradely Wendel in which he argues that lawyers fidelity should be to legality, not morality, to avoid moral imperialism and self-righteousness. See David Luban, *Book Review, Misplaced Fidelity, Lawyers and Fidelity to Law*. By W.W. Bradley Wendel, 2010., 90 TEX. L. REV. 673, 673-74 (2012).

50. Luban, *supra* note 43, at 678-88.

51. Deborah L. Rhode, *Keynote: Law, Lawyers, and the Pursuit of Justice*, 70 FORDHAM L. REV. 1543, 1546 (2002).

52. J.M. Bennett, *Towards Ethnorelativism: A Development Model of Intercultural Sensitivity*, in CROSS-CULTURAL ORIENTATION: NEW CONCEPTUALIZATIONS AND APPLICATIONS 27-70 (R. M. Paige ed., 1986).

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over time as persons experiences of cultural difference becomes more complex and sophisticated.<sup>53</sup>The first three DMIS ethnocentric stages include Denial, Defense Reversal and Minimization. Denial is when one's own culture is experienced as the only real one and other cultures are either not discriminated at all, or are construed in rather vague ways. Persons who deny other cultures are simply disinterested in other cultures, which become the default condition of typical, monocultural primary socialization.<sup>54</sup> Defense against cultural difference means that the person experiences his or culture as the only viable one. Persons at this stage are able to discern cultural difference but their worldview is not sufficiently complex to generate an equitable human experience of the other; quite the opposite, people at the Defense stage feel threatened by cultural difference and view their own culture as superior to that of others.<sup>55</sup> A variation of Defense is Reversal, which like Defense sees the world as "us" and "them," but views the adopted culture instead as superior.<sup>56</sup> Minimization of cultural difference neutralizes the threat of cultural differences by minimizing its significance, opting instead to presuppose and thus to experience culture as a universal expression of the human condition, irrespective of how religious, economic or philosophical differences may transcend universality. Persons at the state of Minimization, particularly those who belong to dominant cultures, tend to mask the dominant view of their own culture and ignore the institutional privilege it affords them.<sup>57</sup>

The second three DMIS stages, labeled as ethno relative, includes Acceptance, Adaptation, and Integration. Acceptance is the stage when persons develop a metalevel consciousness and experience their own culture as just one of a number of equally complex worldviews. Acceptance need not mean agreement with others' cultural differences and may even impose negative judgment towards the differences; however, the judgment does not deny the equal humanity of the other.<sup>58</sup> Adaptation allows the person to adopt behavior appropriate to other cultures based on recognition of difference. Thus, the shift is not merely cognitive but also attitudinal.<sup>59</sup> Finally, Integration refers to the stage when persons construe their identities at the margins of two or more cultures and central to none. Bennett suggests that cultural marginality may take two forms: an encapsulated form where separation of one's culture is experienced as alienation, and a constructive form in which movements in and out of cultures are a necessary and positive part of one's identity.<sup>60</sup> Integration is not necessarily better than adapta-

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53. *Id.* at 24-28.

54. *Id.* at 30-46.

55. *Id.* at 31-39.

56. *Id.* at 39-41.

57. *Id.* at 41-45.

58. *Id.* at 47-51.

59. *Id.* at 51-65.

60. J.M. Bennett, *Cultural Marginality: Identify Issues in Intercultural Training*, in EDUCATION FOR THE INTERCULTURAL EXPERIENCE 109-136 (R.M. Paige ed., 1993).

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tion; rather, it helps to describe the cultural integration process experienced by many members of non-dominant cultures, long-term expatriates, and global nomads.<sup>61</sup> Subsequent confirmatory factor analysis of the Bennett DMSI resulted in a slightly modified model that erased the distinctions between Denial and Defense as well as Acceptance and Adaptation and created a five-dimensional model that describes the different stages of development of intercultural sensibility: Denial/Defense, Reversal, Minimization, Acceptance/Adaptation, and finally Integration.<sup>62</sup>

I have observed different types of ethnocentric expressions among U.S. law students when they are exposed to legal systems different from their own. The Denial/Defense becomes evident when some U.S. students, for example, uncritically believe that the U.S. legal system and its laws are superior to those of other nations. Some U.S. law students espouse the belief that corruption of legal and political institutions is rampant in other nations and that it does not exist as much in the U.S. As well, some students are quick to notice and judge the due process failures of other nation's criminal justice systems without regard to significant and comparable failures in the U.S. criminal justice system. Denial/Defense expression can also come in the form of the "missionary spirit," which, while in many ways well-intended, is principally an attitude of wanting to "rescue" vulnerable sectors of other societies from their poverty, their corruption, or their lawlessness.

On the other side of the spectrum, reversal expression can take the form of uncritically blaming the U.S. or other dominant powers for the ills of other cultures and societies. The "missionary" spirit can also be present in this phase, although the need to rescue is perceived as a function of ridding those nations of the external forces of globalization and of foreign institutional actors who are principally or solely blamed for the ills of that society. Recognizing that these various stages of cross-cultural development are present among some students, the teaching of transformative intercultural legal sensibility would seek to engage the study of comparative legal systems beyond a simple theoretical understanding of the largely disappearing common-civil law divide;<sup>63</sup> rather, it would seek to encourage students to confront the dominant economic and legal culture to which they belong and, through this, to redefine, perhaps, their own notions of fairness, agency, shared responsibility, ethics, and the rule of law. The student would also be asked to experience law in context in order to move them beyond simplistic notions of corruption in law's implementation or practices, or of simplistic explanations for weakened legal systems.

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61. M.R. Hammer, M.J. Bennett, and R. Wiseman, *Measuring Intercultural Sensitivity: The Intercultural Development Inventory*, 27 INT'L J. OF INTERCULTURAL RELATIONS, 421, 428 (2003).

62. *Id.* at 433.

63. See, e.g., Kenneth G. C Reid, *The Idea of Mixed Legal Systems*, 78 Tul. L. Rev. 5 (2003) and Gunther A. Weiss, *The Enchantment of Codification in the Common Law World*, 25 Yale J. Int'l L. 435 (2000).

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Another type of desired cognitive change would involve increased awareness of how mainstream U.S. legal culture differs, sometimes, substantially, with that of other nations or among subgroups of people within the U.S. who are not part of mainstream legal culture. One obvious example of this would be the recognition of how neoliberal values dominate our Western legal culture in contrast to other more collectivist cultures.<sup>64</sup> In the U.S. there is a preference for liberal values that informs our notions of fairness and morality; yet, many U.S. students are insufficiently aware of just how different this normative cultural lens is from other cultures' conceptions. Liberal theory both favors individual notions of rights and duties and individualized explanations of agency. Yet, advocating for vulnerable communities often requires a reframing of who is to blame for the poverty, the violence, the criminality, and the societal ills that plague them. It calls for a more structural explanation of the root causes of poverty and even illegality.<sup>65</sup> As well, the solutions sought among certain vulnerable groups are often collective, as opposed to individual, which implicates solutions that call for social and economic rights, not solely the civil and political. Yet, in the U.S. legal system the preference for civil and political rights over social rights looms large and permeates nearly every law and legal institution.<sup>66</sup> This can lead, in some instances, to a minimization of these legal cultural differences and to an overvaluing of individualized solutions to problems that are experienced more systemically and collectively by the locals.<sup>67</sup>

Another aspect of mainstream U.S. legal culture which is engrained in U.S. law students is the prevalence of law as a solution to legal problems and the accompanying trust in the rule of law (generally U.S. centric) and U.S. legal institutions. Catholic Cardinal Francis George when describing the role Law and Culture in the United States wrote:

[T]he law has peculiar and unique cultural functions in American society. This is the most successful nation-state in the world's history. We've done very well, starting with an 18<sup>th</sup> century social contract society, in developing not only political and economic institutions that work, but al-

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64. See, e.g., Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 *FORDHAM L. REV.* 1383 (2009) (discussing the role of neoliberalism conditioning in mainstream U.S. legal culture and the ensuing challenges to democratic lawyering).

65. See generally *id.*

66. Cass R. Sunstein, *Why does the American Constitution lack Social and Economic Guarantees?*, 56 *SYRACUSE L. REV.* 1 (2005).

67. In our piece on Nicaragua we described this clash of legal cultures between liberal U.S. law students and an impassioned movement of collectivists Sandinista women. Aldana & Saucedo, *Learning in Mulukú*, *supra* note 1. Ironically, our U.S. students experiencing this clash were acting within a rule of law project that was making the same critical mistakes. We were in rural Mulukukú because a USAID funded project had introduced mediation as a means of resolving conflict, including endemic domestic violence, in the community. In a separate article, my co-authored and I explored the fallacy in the illusion of mediation's transformative power to resolve conflict in the community without minimally addressing the structural causes of violence in the first place, including poverty. Aldana & Saucedo, *The Illusion of Transformative Conflict Resolution*, *supra* note 6.



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so in creating a distinctive vision, a distinctive way of looking at the world. The many components of our culture largely are united by law, not by blood, not by race, not by religion, not even by language, but by law. It's the only principal cultural component we all have in common."<sup>68</sup>

I have observed that often U.S. students overvalue traditional mechanisms such as litigation and formal complaints while undervaluing less traditional methods of grass-roots social movements, including the use of the media and social protest as a mechanism for social change. In contrast, in many other nations, and often in vulnerable communities within the U.S., law has proven illusory when addressing the problems of the poor or of other marginalized communities. Intercultural legal sensibility would seek to allow students to bring to consciousness their assumptions about the role of law and legal institutions and to reconsider their perceptions and rules of engagement as lawyers with other nations or other sub-cultural groups in the United States.<sup>69</sup>

## II. THE METHODOLOGY: A PROCESS-ORIENTED MODEL

Having explained why intercultural legal sensibility requires transformation, this section explains a process-oriented method that seeks to transform law students into cross-culturally sensitive lawyers. The lessons I draw are based on my decade-long teaching experiences in what I would describe as engaged multicultural pedagogy: teaching and learning that occurs beyond the classroom with meaningful opportunities of connectedness between law students and other cultural groups or societies as either clients or peers. Much of how I teach is inform-

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68. See, e.g., Francis George, *Law and Culture in the United States*, 48 AM. J. JURIS. 131, 135 (2003).

69. In the piece documenting Guatemalan indigenous communities' use of international and domestic norms and legal systems to address concerns over transnational mining, for example, I describe the eye-opening and frustrating discovery over laws' ineffectual power by many of the students who worked with these communities. Aldana, *supra* note 1. Several other legal scholars have written thoughtfully and critically already about the way in which transformative intercultural legal competence calls for different conceptions of global ethics and different rules of engagement as lawyers in different societies. In the field of law and development, for example, Amy J. Cohen has been critical of how cultural assumptions about law have erroneously shaped the largely failed U.S. law and development movement and attempts at the importation of U.S. law across the globe. Amy J. Cohen, *Thinking with Culture in Law and Development*, 57 BUFF. L. REV. 511 (2009). Similar themes are echoed by human rights scholars who take seriously the concerns over legal and moral imperialism in transnational and global engagement and urge rules of the game that respects the norms, circumstances, and the autonomy (also as to approach to lawyering) of local actors with which we seek to engage as lawyers. See, e.g., Caroline Bettinger-Lopez, et. al., *Redefining Human Rights Lawyering through the Lens of Critical Theory: Lessons from Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. Y POL'Y 337 (2011); Shannon M. Roesler, *The Ethics of Global Justice Lawyering*, 13 YALE HUM. RTS. & DEV. L. J. 185 (2010); Duane Campagne, *Justice, Culture, and Law in Indian Country: Teaching Law Students*, 82 N.D. L. REV. 915 (2006); Anna-Maria Marshall, *Communities and Culture: Enriching Legal Consciousness and Legal Culture*, 31 LAW & SOC. INQUIRY 229 (2006); and Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT'L L. 505 (2003).

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edon what I have learned from my clinical faculty peers, from observation, and through engagement with scholarship across disciplines.

The lessons I offer are informed as well by explanations in social science and psychology about how people change behavior and attitudes about themselves and others as cultural beings. I have already mentioned M.J. Bennett's Developmental Model of Intercultural Sensitivity (DMIS), which has largely influenced educators in developing models for the intercultural teaching of adult learners. Bennett describes the process of gaining intercultural sensitivity in terms of stages of personal growth in a continuum of increasing sophistication in dealing with cultural difference, moving from the ethnocentric through stages of greater recognition and acceptance of difference; i.e., ethnorelativism.<sup>70</sup> Other influential models – Helms, Racial Identity Development,<sup>71</sup> and Banks, The Typology of Ethnicity<sup>72</sup>—are more focused on the teaching of multiculturalism in the context of ethnicity and race, and equally emphasize a developmental approach to help students transcend their racially defined identity. None of these models are specifically addressing the specific goals of legal intercultural sensibility, but they do inform how to construct learning environments for adult U.S. law students conducive to help them gain an understanding of other legal cultures and a professional identity as multicultural lawyers.

#### A. *The Context and the Experiential*

Intercultural learning happens best when connected to experiences in social contexts.<sup>73</sup> Law students gain an awesome opportunity to learn in depth about another legal system or to understand the nature of the conflicts or social struggles in that society or community when connected meaningfully with its actors and participants. There is tremendous transformative power in the affective and the relational, especially when the aim is to help students gain different perspectives, appreciate and embrace difference, alter conduct, and potentially shift val-

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70. Bennett, *Towards Ethnorelativism*, *supra* note 52.

71. Helm's model of White racial identity development consists of two sections of three stages each. The first section consists of stages that describe the process of abandoning racism (contact, disintegration, and reintegration), while the second describes the development of positive White identity (pseudo-independence, immersion/emersion, and autonomy). See Gretchen McAllister and Jacqueline Jordan Irvine, *Cross-Cultural Competency and Multicultural Teacher Education*, 70 REVIEW OF EDUCATIONAL RESEARCH 3, 7-8(2000).

72. Bank's model involves six stages: ethnic psychological captivity, ethnic encapsulation, ethnic identity, clarification, bi-ethnicity, multi-ethnicity and reflective nationalism, and globalism and global competency. Each state is gradual but is not strictly sequential and linear. As well, every ethnic group is highly diverse and dynamic and may not begin at the same stage in the culture learning process, but once a person experiences a certain stage, he or she is likely to experience the stages above sequentially and developmentally. See MacAllister and Irvine, *id.*, at 13-14.

73. Teaching intercultural sensibilities could also occur in the classroom, particularly when the classroom brings together intercultural students and learning opportunities. Some studies have assessed the viability of classroom-based intercultural learning, for example. See, e.g., Dennis O. Durocher, Jr., *Teaching Sensitivity to Cultural Difference in the First-Year Foreign Language Classroom*, 40 Foreign Language Annals 1 (2007).

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ues.<sup>74</sup>

In my own teaching, I have adopted models for student engagement across cultures domestically and across borders through service learning opportunities and study-abroad programs. The service learning opportunities have taken place as part of the immigration curriculum. Students are required to organize and participate in immigration events that provide legal services to immigrants as part of the assessment in an immigration course. I have also offered an immigration practicum to provide students a more direct and active role in shaping, organizing, and executing the service learning projects in partnership with community immigration services providers.<sup>75</sup> The study abroad programs have taken place largely in Nicaragua<sup>76</sup> and Guatemala,<sup>77</sup> with field placements in other parts of Latin America. These programs have included a classroom component that offers students comparative, language and cultural perspectives and skills, as well as intensive field experiences with local organizations or firms. Based largely on these experiences and the literature on cross-cultural teaching and learning, I offer the following lessons, many of which were the product of insight gained from trial and error.

### B. The Importance of Preparedness

Preparedness refers both to the level of preparation by the teachers to engage in cross-cultural teaching and the preparedness of students to acquire cross-cultural sensibilities or engage in cross-cultural adaptation or integration. The teachers who engage in the teaching of intercultural sensibility must themselves be prepared and equipped to guide the students in a process of self-reflection and

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74. Thomas W. Heany & Aimee I. Horton, *Reflective Engagement for Social Change* in FOSTERING CRITICAL REFLECTION IN ADULTHOOD: A GUIDE TO TRANSFORMATIVE AND EMANCIPATORY LEARNING (1990).

75. The types of services students have provided have included Citizenship and Deferred Action for Early Childhood Arrivals (DACA) fairs, consultations with detained immigrants, and know-your-rights or immigration workshops on topics such as family-based unification, Temporary Protective Status (TPS), and civil liberties in immigration enforcement.

76. In an essay titled *Learning in Mulukukú: A Journey of Transformation*, Prof. Leticia Saucedo and I reflect on the lessons we learned from co-teaching a course titled Domestic Violence in Post-Conflict Society: The Case of Nicaragua. The course combined a two-week intensive pre-preparation training in the U.S. with a three-week immersion experience of six U.S. law students with a Sandinista feminist cooperative in rural Nicaragua grappling with the implementation of U.S.-style mediations to resolve conflicts in their community. Aldana & Saucedo, *Learning in Mulukukú*, *supra* note 1.

77. In 2009, I co-founded the Inter-American Program at Pacific McGeorge with a bilingual classroom component in Guatemala that has also involved over 100 students in guided service learning and field placement opportunities in Guatemala and other parts of Latin America. For a description of the Inter-American program, visit *Inter-American Program*, UNIVERSITY OF THE PACIFIC, MCGEORGE SCHOOL OF LAW (Feb, 21 2014) [http://www.mcgeorge.edu/Future\\_Students/Global\\_Impact/Inter-American\\_Program.htm](http://www.mcgeorge.edu/Future_Students/Global_Impact/Inter-American_Program.htm). The essay *Transforming Students, Transforming Self: The Power of Teaching Social Justice Struggles in Context* documents the experiences of some of the students who have participated in the program and who have completed placements with organizations in Guatemala working with indigenous communities and their struggles with transnational mining. Aldana, *supra* note 1.

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adaptation that will require flexibility in thought and changes in conduct. Unfortunately, this central point is not always present when exposing students to cross-cultural learning opportunities.<sup>78</sup> The teacher of cross-cultural sensibility should be well-versed in the theory of intercultural sensibility development and empirical studies examining the validity of the theory in order to understand the psychology of adult learning and the implications of this on methods of instruction. The teacher must also possess highly developed cross-cultural sensibilities and sensibility that combines a practice of critical self-awareness with a nuanced understanding of the social context with which the students and teacher seek to engage. Ideally, the teacher who takes students to another country to teach comparative perspectives or to engage them in a local project will speak the language of that country (or of the community) and will have spent time in the country meaningfully learning the culture of that country through engagement with local laws, actors, and institutions prior to immersing students in the country. If the teacher is beginning this journey, he or she should engage with a more experienced teaching partner who can help the new teacher interpret the context, translate across cultures, and to provide insight about the parallel universes operating locally in response to issues.

I have found in my own teaching that being able to help students identify and address when they are making reasonable (from their cultural lens) yet likely wrong inferences about the meaning of particular practices or norms has been a critical part of their learning of cross-cultural sensibilities. This has required that I too constantly practice cross-cultural sensibility through critical self-awareness and adaptation. One memorable example of this has involved helping students reconsider assumptions of fraud on the part of immigration clients based on the client's different cultural relationship with time. Certain Hmong immigrants applying for citizenship, for example, cannot remember dates to complete the Naturalization process, such as their own birth date, the birth dates of their children, or of their wedding. In their journal reflections, several students assumed that the clients must have "lied" in the original green card application about their identity and age and that of their children since they could not remember when any of them were born without consulting their official immigration documents. In my comments to students I suggested that they might consider alternative explanations other than fraud for the clients' inability to recall dates. This was an important step. I also, however, consulted a Hmong organization co-partnering with us on the Citizenship Fair and consulted recommended books that might explain why date recollection of birth dates was difficult for Hmong clients. I learned that Hmong refugees commonly made up dates to satisfy the immigration form's re-

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78. See, e.g., R. Michael Paige and Matthew L. Goode, *Intercultural Competence in International Education Administration, Cultural Mentoring, International Education Professionals and the Development of Intercultural Competence*, in *THE SAGE HANDBOOK OF INTERCULTURAL COMPETENCE* 333, 340-2 (Darla K. Deardorff, ed., 2009) and Kenneth Cushner, *International Socialization of Young People: Obstacles and Opportunities*, 32 *INT'L J. OF INTERCULTURAL RELATIONS* 164, 166-168 (2008).

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quirements of dates that did not translate to their cultural experience. Hmong refugees who were coming from rural areas did not measure time or record dates in the same way that Western culture did.<sup>79</sup> This realization for me, which resulted from my own practice in cultural sensibility and adaptation, created a wonderful teaching opportunity as we discussed in class the difference between fraud and the Hmong cultural adaptation of dates based on cultural difference.

Students must also be prepared to engage in cross-cultural learning. By this, I do not mean that educational programs that engage students in cross-cultural experiences should pre-select only students who already possess high levels of intercultural sensibilities, which can be tested prior to their participation.<sup>80</sup> There may be instances when prescreening students for intercultural sensibilities is desirable because the stakes of ill-prepared or ill-disposed student participation to third parties is high.<sup>81</sup> In general, however, institutions of higher learning, including law schools, should be open to include as many students as possible in their journey towards acquiring intercultural sensibilities. In fact, because the learning of intercultural legal sensibility is developmental, studies that test students' stages of intercultural development prior to and at the completion of certain study abroad programs reveal that students who have the most room to grow make the

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79. A wonderful description of this cultural realization, see Chapter 1 of Fadiman's book:

Foua's own date of birth was recorded on Lia's Delivery Room Record as October 6, 1944. In fact, she has no idea when she was born, and on various other occasions during the next several years she would inform MCMC personnel, through English-speaking relatives such as the nephew's wife who had helped her check into the hospital for Lia's delivery, that her date of birth was October 6, 1942, or, more frequently, October 6, 1926. Not a single admitting clerk ever appears to have questioned the latter date, though it would imply that Foua gave birth to Lia at the age of 55. Foua is quite sure, however, that October is correct, since she was told by her parents that she was born during the season in which the opium fields are weeded for the second time and the harvested rice stalks are stacked. She invented the precise day of the month, like the year, in order to satisfy the many Americans who have evinced an abhorrence of unfilled blanks on the innumerable forms the Lees have encountered since their admission to the United States in 1980. Most Hmong refugees are familiar with this American trait and have accommodated it in the same way. Nao Kao Lee has a first cousin who told the immigration officials that all nine of his children were born on July 15, in nine consecutive years, and this information was duly recorded on their resident alien documents.

ANNE FADIMAN, *THE SPIRIT CATCHES YOU AND YOU FALL DOWN: A HMONG CHILD, HER AMERICAN DOCTORS, AND THE COLLISION OF TWO CULTURES* (Ann Fadiman ed. 2003).

80. Many study abroad programs at universities and colleges have used the Intercultural Development Index [IDI], a tested and reliable instrument for measuring intercultural legal competence, at the beginning and at the completion of the program in order to trace the effectiveness of their program in advancing a student's intercultural competence, for example. This instrument and others that could be used to measure a student's level of intercultural legal competence is described in Part III *infra*.

81. If prescreening is desirable, one question becomes how to conduct such prescreening. A best practice would be to use reliable assessment tools (see Part III of the article *infra* for a discussion of reliable assessment tools, such as Intercultural Development Inventory, IDI) over student's self-perceptions or self-assessment. In fact, studies have found that in general people's self-perception of their degree of ethnocentrism does not match the actual results in more accurate measurements, which tend to place them at greater levels of ethnocentrism. See Paula J. Pedersen, *Teaching Toward an Ethnorelative Worldview through Psychology Study Abroad*, 20 *INTERCULTURAL EDUCATION* 73, 77 (2009).

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greatest progress.<sup>82</sup>

Students, however, must be predisposed to grow in cross-cultural sensibility which means they must be open to exploring their own culture, questioning their own assumptions, being exposed and even being vulnerable to difference, and at times, be willing to adapt or integrate. In general, this predisposition is not difficult to find. Certain factors such as curiosity about other countries or cultures, a predisposition to public interest law and working with vulnerable communities, prior exposure to a another culture or country, or even being members of minority cultural groups in the United States are good indicators of this predisposition. Moreover, many law students are intentional in their choice to participate in certain types of cross-cultural learning experiences offered in law school precisely because of their predisposition to become more inter-culturally competent.

Preparedness must also mean paving the way for students to be self-aware and even critical of their culture, to be prepared to recognize and be open to cultural differences, and to be willing to adapt their own conduct or behavior, if necessary, in order to adapt or integrate to the new environment. How exactly is this achieved? I have learned through trial and error that there are several steps that should be undertaken pre-experience and during the experience to create the appropriate learning environment and to maximize cross-cultural learning. One critical component is the need to approach students themselves during the pre-program orientation and during the duration of the program as cultural beings, which entails getting to know the students and through that helping them to recognize themselves and their peers as cultural beings. One mistake I have made in the past is a sole focus on helping students understand the culture and context to which they would be exposed as part of the pre-program orientation without requiring critical self-awareness of their own cultural lens. In both the Nicaragua and Guatemala programs, for example, I have taught or co-taught very rich, interdisciplinary courses prior to the field experience designed to educate students on the complex history of the country or the current socio-political climate that should inform the student's understanding of the issues they are likely to confront. This is a vital step in the process and should still be a part of any orientation, especially if students are expected to function at a high level of engagement as law students in the country.<sup>83</sup>

While pre-training on the history and culture the student will experience is

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82. See, e.g., Michael Vande Berg, Jeffrey Connor-Linton and R. Michael Paige, *The Georgetown Consortium Project: Interventions for Student Learning Abroad*, XVIII FRONTIERS: THE INTERDISCIPLINARY J. OF STUDY ABROAD 1, 19 (2009).

<sup>83</sup>For example, the students who accompanied us to Nicaragua could not comprehend the application of U.S. style mediation in rural Nicaragua or Nicaragua's phenomena of domestic violence without understanding Nicaragua's history of revolution and counter-revolution and their ongoing struggles with economic and structural inequality. Similarly, students who would work on indigenous people's struggles with transnational mining or on the war time trials in Guatemala or even on the implementation of trade agreements in Guatemala could not possibly engage thoughtfully in this work without first learning about Guatemala's civil conflict, ongoing racial tensions, and struggles with democratic transition and economic reforms.

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crucial, it fails to consider the student's personal journey to becoming an aware cultural being in response to these more complicated understandings of the issues they would experience. Thus, I have since modified my approach to student preparedness to include a lot more of the personal, which means creating safe learning spaces to explore likely biases and cultural differences and student attitudes to those differences that are particularly relevant to lawyering across cultures – i.e., attitudes toward socialism, communism, collectivism; attitudes toward claims of racial or other types of injustice; attitudes toward allocation of agency for social ills and poverty – individuals; nation-states; multinational corporations; etc. One way I have done this in my Immigration and Nationality class is through the use of a class survey that probe students' personal positions or responses to issues we will discuss in class and encounter as part of service learning in order to connect students to the broader conversations taking place around the issues. Intentionally, I conduct the survey anonymously ahead of the discussion and present the group results to the students. This prepares students to be aware of their own views and to consider how their views fit into those of other students in the class. It also allows me to present the group results to frame class discussion in a way that is personal yet not individualized. To do this even more effectively, I also employ short videos of personal narratives by persons outside the class presenting more than one side of the issues covered in the survey.<sup>84</sup> By way of example, this method allows me to frame conversations as follows: X has argued in favor of closed borders. What are the arguments that X employs? In the survey results of the class, at least N% of you seems to agree with X on Y and Z arguments? What makes X arguments appealing? What assumptions are X and those of you who agree with X making for their position? Do the studies that we have read in class support those assumptions? What do you make of the studies? Do you agree with their methodology? What other studies would you like to see done and why?

This more personalized approach to the engagement of the hard debates around immigration has proven very effective to help prepare students for the service learning projects that come later in the course. By the time students are asked to engage directly with immigrant clients, they are more aware of their own views on immigration and immigrants, have already been asked to critically examine and question their assumptions, and, at times, have already begun to adapt to embrace or respect different perspectives. During the training for the service learning projects, I have learned how critically important it is to train students not only on the substantive law of the service they will provide, but also on lawyering skills, including on practicing cross-cultural sensibilities. This part of

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84. In Immigration and Nationality Law, I have used short clips from several sources that employ personal narratives to share very different views on immigration, on issues such as the morality and utility of borders, the deportation of persons based on crime, and family unity. One great source of shot clips that add a very personal and varied dimension to the hard conversations on the immigration debate include border stories, <http://borderstories.org/>, last visited 1/20/2014.

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the training relies on the Five Habits of Cross-Cultural Lawyering developed by Sue Bryant and Jean Koh Peters.<sup>85</sup> As part of the training, students are asked to explore their pre-conceived notions of the type of client they are likely to meet; they are asked to anticipate the attitudes and feelings they are likely to have toward those clients, both positive and negative; and they are asked to consider how they will adapt to these attitudes, reactions, and feelings in order to do an effective job as advocates for the clients. I have also incorporated the use of specific examples of lawyering moments that provide rich lessons on cross-cultural lawyering based on insights I have gained from student reflections of past service learning projects.<sup>86</sup> I use these examples to help students practice the habit of parallel universes, which asks them to consider different explanations for the client's behavior that may be less negative than the explanation they imagined. At a minimum, I prepare students to anticipate their biases and to grapple with how these biases may alter their conduct in subtle but quite harmful ways to clients.<sup>87</sup>

Another effective approach, when available, has been to encourage cross-cultural exchanges in the classroom that are both personal and conversational, and whose purpose are to help students from different cultures become more aware of differences, as well as to uncover assumptions about each other and to discover areas of convergence. Ideally, these types of exchanges can occur among peers in shared spaces of co-participation, such as in the classroom or in joint projects. In the Inter-American Program, for example, we have always co-

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85. Bryant and Koh Peters, *supra* note 3.

86. In general, these examples create profiles of the types of clients and issues that will usually provoke negative feelings or lead students to make assumptions of fraud. These include the client with several DUIs or a domestic violence conviction; the client who is receiving public benefits and is applying for a fee waiver; the client who is dominated by the spouse in the interactions; the client who cannot remember dates or addresses; the client who does not speak English after living in the U.S. for many years; or the client who struggles with the oath of allegiance.

87. One common example of this is when student mistake their role as advocate and the accompanying ethical responsibility not to assist clients in the commission of fraud with the rule of a government lawyer to detect fraud. This issue is very difficult to navigate because in immigration law, unlike criminal law, immigrant clients do not have a right against self-incrimination and are asked to affirmatively disclose information that will hurt them as part of any immigration process. Immigration lawyers are asked to be zealous advocates while at the same time they cannot assist the client knowingly or with reckless disregard in the commission of fraud. Margaret Mikyung Lee, *Legal Ethics in Immigration Matters: Legal Representation and Unauthorized Practice of Law*, CRS Report to Congress at 4-6, available at <http://trac.syr.edu/immigration/library/P4026.pdf>, last visited 2/21/14. The problem arises when students act like government lawyers and ask probing questions when they suspect the client is lying in response to negative feelings they harbor about the client. I caution students that this conduct can really hurt the attorney-client relationships including in cases where the fraud is not real and could even result in a violation of their ethical duty to be a zealous advocate for the client if the probing results in the disclosure of information that will complicate or harm the representation of the client unnecessarily. Sometimes, asking probing questions of the client when the lawyer thinks the matter over which they suspect fraud may be discoverable is the right thing to do. In such cases, the lawyer wants to ensure the client is not hiding something that, if undisclosed, will be will hurt the client even more when it is discovered through the process. Admittedly, this judgment is hard to make. The problem resides, however, when the student is motivated to discover the fraud because the student does not want to have anything to do with the client he or she thinks is lying to the government.



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enrolled law students and/or lawyers from Latin American in the program. I did not always, however, involve these local students in the orientation until more recently. Not involving them early was a huge mistake. Not surprisingly, the deep learning that happened organically and unplanned through the cross-cultural exchanges and friendships formed between U.S. and the Latin American students in the program taught me volumes about the importance of the affective and inter-personal in the development of cross-cultural sensibilities. The involvement of Latin American students in the orientation program more formally has allowed me to capitalize on the richness that results from cross-cultural exchanges among peers and to dictate a process of relating that encourages awareness, reflection, and even adaptation.

So far, the one-day orientation that precedes the Guatemala program has been executed in two parts. The first part has involved a small-group exercise in which U.S. and Latin American students must share with each other responses to a series of questions that probe their knowledge about each other's history, culture, and current events; asks them to share impressions of aspects of each other's countries relevant to the themes program (i.e., perceptions about U.S. foreign policy in Guatemala; perceptions about trade, perceptions about legal systems and laws; etc.); and encourages them to share what they most liked and disliked about their respective cultures.<sup>88</sup> The rule is that students must listen to each other without interruption and with an open-mind. After each question, the whole class comes together and each group is asked to share what they heard and what they learned from each other. As well, students from the group are given the opportunity to clarify or expand based on what they hear or learn during the reporting. After the exercise, the whole group is asked to reflect on what insights they gained from the exercise. The exercise, which is both light and intense, has proven to be very fruitful. In general, students start to build relations based on a deeper awareness of difference and similarities that is also positive, respectful, and constructive. They start to discover how much or how little they know about each other's culture, history, or issues that face each other's nations. They start to build greater curiosity for learning more. Students also start to appreciate how connected their worlds and issues are to each other.

Having gained this ground, the second part of the orientation in the Guatemala program has involved a lecture that is primarily oriented to expose U.S. students to the most salient historical moments in Guatemala and to explain the

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88. Examples of the types of questions include: What do you know about my President and what are your impressions of him/her? My impressions of my President are False; What do you consider was a defining moment in the history of your country and why?; How would you characterize the relationship between your country and mine?; What, if any, aspect of U.S./Latin American relations would you change and why? What is one of the most important issues facing your country today?; What are your impressions of my country's laws and legal system? If I were to leave my country to live in your country, I would miss X the most/least; What is a popular phrase in your country and what does it mean?; While I am in your country or when you visit my country, you must do or visit X.

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most pressing social issues facing the country, with a focus on topics that will be addressed during the remainder of the program. Guatemalan and Latin American students are encouraged and invited to weigh in and even to disagree with the perspective of the country that is being presented. The lecture is undoubtedly heavy and critical and does not thread lightly on hard topics including racism, violence, impunity, corruption, and extreme poverty, nor does it spare the role of Guatemala, the U.S., multinational corporations, or the community in the challenges confronting the country. Then, throughout the courses that follow and then in the field placements, students are given the opportunity to engage directly with these issues. In the classroom students work jointly in academic projects that ask them to explore, *inter alia*, the resolution of legal issues, whether in trade, environment, labor, immigration, or human rights, that involve actors, laws, and legal institutions from their respective nations in modern issues affecting both nations. In the field, students are placed with organizations in several countries of the Americas that are working on issues of fair trade, economic development, environmental justice, rule of law, transitional justice, and human rights.<sup>89</sup> Overall, this approach of encouraging meaningful and personal cross-cultural exchanges as part of the program has been very effective beyond the professional lessons that students have gained such as improving their linguistic legal sensibility or understanding of each other's legal systems. As well, students have gained self-awareness about themselves as cultural beings and have started to critically examine their own assumptions, including how they view problems and the solutions to problems.

### *C. Involving Local Communities and Creating Pluralistic Spaces*

The section above on preparedness already makes clear the critical importance of meaningful and personal cross-cultural exchanges to the acquisition of cross-cultural sensibilities or sensibility. In this section of the article, I focus on the how to involve local communities and how to create pluralistic spaces so as to encourage the creation of shared meaning and/or shared understanding across cultures.

I ran across the term “pluralistic classrooms” in the readings documenting the challenges to teaching in desegregated classroom spaces in the U.S. post *Brown v. Board of Education*.<sup>90</sup> That literature made the point that the effectiveness of desegregated classroom would fail (was failing) when the only thing that changed was composition of the students and everything else remained the

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89. For an article discussing the types of projects conducted by students participating in the field placements, see *Aldana, supra* note 1.

90. See, e.g., Geneva Gay, *Multicultural Preparation and Teacher Effectiveness in Desegregated Schools*, 17 *THEORY INTO PRACTICE, DESEGREGATION: PROBLEMS AND PRACTICES* 149 (1978).

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same.<sup>91</sup> This new reality of pluralistic classrooms demanded a shift away from homogeneous content, methods of instruction, and perspectives in order to embrace multiculturalism. This obvious point made me reflect on how to achieve these aims in legal education, especially in the context programs that intentionally immersed students in cross-cultural settings, such as study abroad programs and service learning, in order to promote their intercultural legal sensibility.

In my own teaching, I resolved that the teaching of intercultural legal sensibility could not happen effectively unless the means for doing so reflected values and created spaces that welcomed and promoted awareness and respect for cultural differences. Indeed, learning to embrace difference requires the al.<sup>92</sup>In addition, when the cross-cultural exchanges involved the entry of dominant (or simply other) cultures into local spaces, it would also require mindfulness about power dynamics and a respect for the local as guests. The involvement of local actors early on as leaders, partners, and/or as peers in the shaping of the pluralistic spaces is critical to achieve these aims.

My use of the words leaders, partners, and peers to describe local involvement is very intentional. It suggests an engagement based on mutual respect and equality, and often on deference. This is especially true when the type of engagement may involve the student beyond the classroom directly in the resolution of local struggles and with community groups or clients. The teacher of intercultural legal sensibility has to model for students that locals know their reality best and that they also own the solutions and define the terms of our participation. Our job is to help students become aware of their own understanding of issues and problems and how these might differ (or not) from the way in which local actors view the issues. It is also to help students manage conflict with locals thoughtfully and to help them adapt and/or integrate their conduct to the local cultural reality in ways that also respects the students' own culture and autonomy.

In the classroom learning environment in study abroad programs it is also critically important to include local actors as leaders, partners, and peers. Research in social psychology supports the view that cross-cultural exchanges have the most likelihood of improving cross-cultural sensibilities when the two groups possess equal status, seek common goals, are cooperatively dependent upon each other, and interact with the positive support of authority, laws, or custom.<sup>93</sup> Most U.S. law schools understand this and include local faculty as

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<sup>91</sup> *Id.*

<sup>92</sup> Psychologist Jonathan Haidt's work teaches us that the way to build new forms of civil politics to transcend the ideological cultural wars in the United States is not through making winning arguments but through building relationships with those with whom we disagree. *See generally*, Jonathan Haidt, *The Righteous Mind; Why Good People are Divided by Politics and Religion* (Pantheon Books 2012).

<sup>93</sup> *See* Theodore L. McEvoy, *An Opportunity for Higher Education in a Shrinking World*, 39 THE J. OF

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teachers in their sponsored summer abroad programs, for example, while many study abroad programs also co-enroll local students in the programs. A different model of summer abroad programs, which is generally referred to as island programs, immerses students in host universities of other nations. Studies measuring the effectiveness of cross-cultural gains in students suggest that students gain more in hybrid programs that involve a mixture of U.S. and host or other international students in contrast to immersion in courses made up almost entirely of host country students.<sup>94</sup> The explanation for this, however, cannot be disengaged from other factors important to cross-cultural development, especially the critical importance of cultural intervention (discussed below), which can be implemented better in educational programs designed by the sending school.

In the Inter-American Program, I have learned that co-teaching models that involve U.S. and local law professors can be ideal. When the co-teaching is done well, students benefit tremendously not only substantively but through the modeling of cross-cultural sensibilities. This is achieved as professors share spaces collaboratively as co-equals and discover and explore culturally-informed differences about their views on issues discussed in class in a respectful manner. The introduction of accomplished lawyers and other professionals as guest speakers or as supervisors of field placements into the program allows students to see positive role models of local persons within government, the private sector, or with non-profit groups who are defining, owning, and attempting to find their solutions to the challenging problems affecting their countries and communities.

In social service learning projects managed by law schools in which students are expected to provide direct legal services to clients, it can be more challenging to infuse the cross-cultural experience as one that involves local actors as leaders, partners, and/or peers. Part of the challenge resides in the focus of social service learning projects on limited and contained individual representation of clients. Partnerships are forged with grass-roots organizations but primarily to execute the goals of the legal services fairs. In such settings, it is unrealistic to consider a meaningful implementation of alternative models to the attorney-client relationships such as community lawyering<sup>95</sup> or rebellious lawyering<sup>96</sup> where the attorney-client relationship becomes a broader tool to return power and empower clients and/or communities. Many important steps can be taken, however, to ameliorate the inherent power inequality and cultural distance that arises when lawyers view their role solely as fixing that client's legal problem. In the section on preparedness, I discussed strategies for humanizing the immigrant client, for

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HIGHER EDUCATION 84, 89 (1968) (citing to a study conducted by Gordon W. Allport and reported in a chapter of a 1958 book titled THE NATURE OF PREJUDICE).

94. Vande Berg, Connor-Linton & Paige, *supra* note 82, at 21.

95. See, e.g., Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 Colum. Hum. Rts. L. Rev. 67-131 (2000)

96. See generally GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

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example, through a deep, personal, and expansive exploration of the tough issues around the legitimacy of that client's presence in the U.S. and his or her belonging as a member of the community. As well, moreover, class discussion often portrays immigrants as activists and catalysts for social change through political advocacy and litigation, and not solely as victims.<sup>97</sup> Then, the service learning project attempts to present a richer vision of the clients rather than simply as persons who need free legal services.<sup>98</sup>

There can be numerous challenges with the involvement of local actors and the creation of pluralistic spaces for learning. One challenge pertains to the very complex meaning of culture, which as explained earlier, can be highly contested and fluid in response to power dynamics and social changes. What this means is that local actors cannot be presented to students as essentialized ambassadors of a local culture that is homogenous and fixed. Humanists and social scientists agree that culture cannot be taught from an ethnographic or objectivists perspective; cultural identity is inherently subjective and all students must be treated as cultural subjects rather than as cultural objects.<sup>99</sup> Thus, depending on the type of cross-cultural exchange, it may be beneficial to introduce students to a diverse range of local actors with different perspectives, experiences, and visions about their own local reality, in part to teach students to recognize the importance of inter-cultural differences based on very different life realities and experiences within the same country.

By way of example, as part of the Inter-American Program in Guatemala, Pacific McGeorge has generously supported the inclusion of up to 10 local law students and lawyers as an essential part of the program without charging them tuition but only a nominal fee to cover basic expenses. The justification for the tuition waiver has been the goal to achieve a diverse range of participants in the program, and not just the privileged and wealthy. In a country like Guatemala,

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97. I use the *Immigration Stories* book as a supplement in the course when I teach the constitutional cases. When discussing each case, I intentionally discuss the lawyers and the lawyering lessons behind each case and highlight not only the individual lawyer or organization but the social movement backing the lawyer and/or organization in each case. DAVID A. MARTIN AND PETER H. SCHUCK, *IMMIGRATIONS STORIES* (2005).

98. By way of example, the beauty of a DACA immigration service learning project was the ability to connect dreamers as individual applicants into a modern, visible, and compelling social movement that is largely credited with President Obama's adoption of DACA. See generally WALTER J. NICHOLLS, *THE DREAMERS, HOW THE UNDOCUMENTED YOUTH TRANSFORMED THE IMMIGRANT RIGHTS DEBATE* (2013). Many students who participated in the DACA projects related very intimately with the plight of the DACA applicants but also learned to view many of them as leaders in their community and in their families. I do not dismiss the concern that DACA divided the undocumented youth as the deserving vs. the non-deserving client. We did spend time in class discussing and critically analyzing this bifurcation. Still, the profile of most DACA applicants as high achievers against all odds spoke to my students and allowed many to shift their views on undocumented immigration, not only as to the DACA applicants but also as to the parents who often accompanied their children to the DACA events.

99. Jean-François Brière, *Cultural Understanding Through Cultural Analysis*, 60 *THE FRENCH REVIEW* 203, 204-5 (1986).

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where class exclusion and racial oppression has been historically (and remains) fierce<sup>100</sup> the task of inclusion is all that much more critical. Even with the tuition waiver, however, achieving class and ethnic diversity in the program has been a tough challenge. In the first few years, the program mostly enrolled law students from private law schools in Guatemala for several reasons, including the barriers of bilingualism;<sup>101</sup> limited access to knowledge about the program; and the costs associated with time away from employment and travel to Antigua.

The lack of ethnic and class diversity in a program that attempts to deal with the profound social and legal problems facing Guatemala presented serious challenges when local students, who were not themselves sufficiently self-aware of their own culture of privilege in Guatemala, would minimize, deny, or become quite defensive about a critical race and/or critical class approach to the history and modern reality of Guatemala or Latin America. One unfortunate incident occurred in the classroom in the beginning years of the program when two Guatemalan students reacted very defensively to a presentation by our guest speakers, a group of environmental justice lawyers who defended indigenous people's right to self-determination in the use of natural resources found in their land. The two students made remarks about the backwardness of indigenous people in Guatemala and blamed the environmental group, Madre Selva, for Guatemala's lack of progress as a nation. To my dismay, one of the students declared that had it not been for the forced completion of the Hydroelectric Chixoy, none of the students in the class would be able to use their I-phones and computers. Unfortunately, the building of this dam in the late 1970's had cost the lives of nearly 500 indigenous peoples, mostly women and children, in the hands of paramilitaries when the community refused to leave their lands.<sup>102</sup> At the time of the incident, I assumed the student who made the remark was aware of this history, and I reacted angrily and with tremendous pain and withdrew from the Guatemalan student who made the comment for the remainder of the program. This was a mistake.

The incident helped me grow tremendously as a teacher; I grew to realize that in the program attempting to teach intercultural legal sensibility, I had to think as well about the cross-cultural sensibilities of the Guatemalan students and their own journey. I recognized that the focus of the Inter-American Program remained largely about the intercultural training of the U.S. students, but it could not be at the exclusion of the educational goals of locals who enrolled as students. This incident taught me to include Latin American students in all aspects of the program as learners of cross-cultural sensibilities and not solely as poten-

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100. See generally ECLA MARTÍNEZ SALAZAR, *GLOBAL COLONIALITY OF POWER IN GUATEMALA: RACISM, GENOCIDE, AND CITIZENSHIP* (2012).

101. Initially, for pedagogical reasons having to do with language as part of intercultural training, we wanted local students to have at least a basic proficiency in English. We have begun to make exceptions to this rule in order to increase class and ethnic diversity.

102. Matt Pacenza, *A People Damned: The Chixoy Dam, Guatemalan Massacres and the World Bank*, MULTINATIONAL MONITORY (July 1, 1996).

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tial teachers. This incident solidified for me the critical importance of remaining intentional about the selection of students in the program both from the U.S. and from Latin America. Ideally, a representative number of students participating in the program from both the sending and the host country should already possess healthy levels of cross-cultural awareness to recognize themselves and others as cultural beings; be sufficiently sensitive and respectful to difference; and be open to an honest examination of their own social reality and culture. Another useful lesson from the incident is the need to create spaces for dialogue among peers about the issues and their feelings among themselves and not solely with the professors in the program. This can only happen when a critical mass of the students in the program possess sufficient self-awareness and maturity to engage each other in hard exploratory conversations that challenge each other in constructive ways.

Another important lesson from the incident relates to the need for balance in the creation of safe pluralistic spaces in which to explore cultural differences. By balance, I mean achieving equilibrium of emotions as part of the goals of program. I speak of emotions because the road to intercultural growth is very personal and emotive, and disequilibrium in emotions can be counter-productive to the development of cross-cultural sensibilities. Psychological studies suggest that humans have a tendency to block out experiences that are too strange or threatening to the way they think or learn, or to resort to psychological defense mechanisms of providing a more compatible interpretation.<sup>103</sup> Equilibrium should not mean, however, sparing students of intense or hard emotions, or sanitizing the reality of the human experience of social injustice in the host country. This would only minimize the experiences of the host country, which is not modeling cross-cultural sensibility at all. Instead, however, equilibrium can be infused in intercultural training in several ways. For instance, Guatemala is a beautiful country with intense problems, which can and do overwhelm students. I have had some students in the program who have experienced despair and deep sadness. This is not in itself bad. The situations that students learn about and/or engage in are sometimes dark. I have learned, however, the critical importance of balance. One way to introduce balance is to “lighten” the experience for students with grace while maintaining depth. Guatemala is not all dark. The country is also rich in culture, tradition, spirituality, food, music, and topography. The program, thus, strives to create “light” by satisfying the needs our students have for comfort and safety, as well as fun spaces, especially ones shared with other members of the community. Another strategy to bring “light” to the experience is to introduce a counter-narrative to despair to the social-justice issues in the country. In Guatemala, this is easy to do because there are a number of everyday heroes, many who are lawyers, who still believe in Guatemala and are committed to improving

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103. See Charles Lawrence III, *Unconscious Racism Revisited: Reflections on the Impact and Origins of “The Id, The Ego, and Equal Protection,”* 40 CONN. L. REV. 931 (2008).

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it through innovation, dedication, and social justice lawyering. Thus, we have included as part of the Inter-American Program a speaker-series and field visits that are intended to introduce students to constructive models for social change and institutions that are seeking to transform Guatemala.

Another factor related to equilibrium relates interestingly to the amount of time that students spend with host nationals in the learning environment. At least some studies indicate that it is extremely helpful to spend between a third to fifty percent of the time abroad with host nationals while in the process of cross-cultural learning.<sup>104</sup> A critique of some study abroad programs is that students end up primarily spending time with each other abroad.<sup>105</sup> However, at least for some students, spending over fifty percent or all of their time with host nationals on the ground can be overwhelming and counter-productive to their intercultural development, risking becoming even more ethnocentric.<sup>106</sup> A related point on introducing equilibrium into any intercultural program relates to the intensity of difference. Sometimes the local will be extremely different from the cultural and life experiences of the students – such as when dealing with a local organization as client or host which has a very strong political and ideological vision of social change in their country. This was the model we adopted in the Nicaragua program in which we chose intentionally to work with a Sandinista-feminist Cooperative in rural Nicaragua.<sup>107</sup> The choice to work with an organization with such a strong leftist vision of social justice intentionally sought to expose our students to a different vision of justice and advocacy in order to challenge their own views about law, agency, rights, and lawyering. This choice, however, did provoke disequilibrium in students who retreated defensively to hold on to their liberal vision of justice.<sup>108</sup> I raise this issue here to clarify that I do not mean to suggest that learning of intercultural legal sensibility must necessarily happen or can happen in contexts that are ideologically neutral or diverse. The reality is that social justice activism does not work this way. Lawyering happens in a context of conflicting visions about agency, the root causes of poverty and violence, and the role of the state or other actors, including international institutions, corporations, or governments, in providing solutions to problems. Students cannot and should not be shielded from these experiences. However, any program that will introduce students to norms, beliefs, and visions of justice likely conflict with their own, has to be prepared to deal with the clashes likely to arise from the engagement. One way to address this is in the pre-orientation or orientation phases of the program. In the Nicaragua program, all students who enrolled in the program knew about

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104. Vande Berg, Connor-Linton, & Paige, *supra* note 82, at 24.

105. Michael Vande Berg, *Intervention in Student Learning Abroad: A Research-Based Inquiry*, 20 INTERCULTURAL EDUCATION 15, 16 (2009).

106. Vande Berg, Connor-Linton, & Paige, *supra* note 82, at 24.

107. Aldana & Saucedo, *Learning in Mulukukú*, *supra* note 1, at 258.

<sup>108</sup>We describe these incidents in the essay we wrote about the Nicaragua experience. *Id.*



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the Cooperative's vision and approach to social activism since it was introduced to them well during the pre-orientation sessions of the program. Still, it was not enough, and the teacher as well as the student has to be prepared to deal with it in the field. Professors Bryant and Koh Peters in their seminal article on the Five Habits for Cross-cultural Lawyering include this scenario as Habit 5: the straw that broke the camel's back.<sup>109</sup> Normally, as Bryant and Koh Peters explain about Habit 4, there are Red Flags that precede a lawyer's or law student's inability to adapt or integrate cross-culturally and to act defensively or ly.<sup>110</sup> The next section discusses, therefore, the critical importance of reflection and self-awareness, as well as constant cultural intervention and guidance, to try to prevent or ameliorate these types of clashes in the journey towards intercultural sensibility.

#### *D. Guided Engagement and Guided Reflections*

By now it should be evident that acquiring intercultural legal sensibility demands self-awareness and awareness of others as prerequisites toward achieving mutual understanding and acceptance, and either adaptation or integration. This process does not happen through osmosis or simply through immersion in another culture. In 1963, the U.S. psychologist and educator George Kelly wrote:

A person can be witness to a tremendous parade of episodes and yet, if he fails to keep making something out of them..., he gains little in the way of experience from having been around when they happened. It is not what happens around him that wakes a man experienced; it is the successive construing and reconstruing of what happens, as it happens, that enriches the experience of his life.<sup>111</sup>

Over and over, the literature on teaching intercultural legal sensibility emphasizes the importance of cultural mentors and cultural intervention as key to the process of gaining intercultural sensibility.<sup>112</sup> In fact, psychologists and results of studies of intercultural education indicate that immersion without intervention

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109. Bryant and Koh Peters, *supra* note 3, at 13.

110. *Id.* at 12.

111. Cited in Bennett, *Toward Ethnorelativism*, *supra* note 52, at 24.

112. See, e.g., Paula J. Pedersen, *Assessing Intercultural Effectiveness Outcomes in a Year-Long Study Abroad Program*, 34 INT'L J. OF INTERCULTURAL RELATIONS 70, 73 (2010); R. Michael Paige and Matthew L. Goode, *Intercultural Competence in International Education Administration: Cultural Mentoring, International Education Professionals and the Development of Intercultural Competence*, in THE SAGE HANDBOOK OF INTERCULTURAL COMPETENCE, at 333 (Darla K. Deardoff, ed. 2009); Vande Berg, *supra* note 105, at 21-23; KRIS HEMMING LOU, MICHAEL VANDE BERG AND R. MICHAEL PAIGE, INTERVENING IN STUDENT LEARNING ABROAD: CLOSING INSIGHTS IN STUDENT LEARNING ABROAD: WHAT OUR STUDENTS ARE LEARNING, WHAT THEY'RE NOT, AND WHAT WE CAN DO ABOUT IT 411 (2012); Vande Berg, Connor-Linton, and Paige, *supra* note 82, at 22 and 25-6.

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can even lead to regression rather than progression in the development toward intercultural sensibilities, particularly among male students.<sup>113</sup> For this reason, cultural mentoring/intervention has been recognized as the single most important component of intercultural education.<sup>114</sup>

The teaching of intercultural sensibility has to recognize the subjective experiences of the student, as well as recognize that his or her learning will occur in developmental stages.<sup>115</sup> Therefore, the cultural intervention has to be both individualized and frequent, ideally at various points prior and throughout the duration of the education experience, and even at re-entry. Students will come to the experience at different stages of intercultural sensibilities (i.e., ethnocentrism – ethnorelativism) and may even shift back and forth within the spectrum of development in response to the educational experience.<sup>116</sup> The cultural mentor may need to help the adult learner take notice and interpret what he or she has experienced. Indeed it is quite possible that some students may completely miss cultural differences that may be more apparent to the mentor or to others with greater sensibility and awareness to difference.<sup>117</sup> At other times, the role of the cultural mentor is also to improve cultural literacy. Sometimes law students working in a host nation are simply unaware of how the host legal system is different from their own or may not understand the historical or socio-political context in which an issue arises in that nation. Clarifying those issues can go a long way toward improving awareness and common understanding. The cultural mentor also has to question the learner's interpretation by questioning the assumptions and suggesting the exploration of alternative perspectives or interpretations based on differences in culture, class, values, etc. that the adult learner may not have considered. Sometimes, the adult learner is simply unaware that his or her worldview is deeply influenced by his or her culture and life experiences.<sup>118</sup>

The process of increasing awareness can and is often emotive and could provoke conflict or defensiveness and resistance on the part of the adult learner. Sometimes the conflict is external and relational and involves the clash of culture between and among host and guests or even between mentor and learner. At other times, the adult learner resists the process of learning because he or she feels exposed or does not trust the cultural mentor. When this happens, the cultural mentor has to acknowledge the need to build trust with the learner and also to respond with compassion. Bennett suggests, for example, that this may be a time to work with the student on increasing cultural self-esteem, such as through discus-

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113. Vande Berg, *supra* note 104, at 20-22. *See also* Patricia R. Paulsell, *A Cultural Rationale for International Business Interships*, 83 *MONATSHEFTE* 243, 245 (1991).

114. Vande Berg, *supra* note 104, at 20-22.

115. Milton J. Bennett, *A Developmental Approach to Training for Intercultural Sensitivity*, 10 *INT'L J. OF INTERCULTURAL RELATIONS* 179(2009).

116. Bennett, *id.* at 114.

117. Bennett, *Towards Ethnorelativism*, *supra* note 52, at 25.

118. *Id.*

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sions of what is “good” about one’s own culture, accompanied by what is “good” about another’s culture. Bennett cautions further that it would be premature at this stage of the learner’s development to emphasize values associated with ethno-relativism – that cultures are simply different and not bad or good – because the learner simply has not reached this stage of intercultural sensibility.<sup>119</sup> Other times, the cultural mentor has to be able to recognize and identify to the adult learner when he or she has begun to reconstruct their own experiences based on greater cultural sensibilities and awareness. In addition, the cultural mentor can help facilitate integration or even at times mediate difference in ways that are respectful to the adult learner and the host, particularly in experiential learning where the law student must learn to relate and adapt or integrate to the host.

In order to allow for a more developmental approach to intercultural learning, it may also be wise to ease students to increasingly intense intercultural experiences, which suggests sequencing the types of intercultural learning in ways that slowly increases stakes (i.e., client interaction or other types of involvement in the field) or the intensity of difference. For example, in the project in Nicaragua, we sequenced the experience by first doing a pre-orientation program in the U.S. during which students interacted with Nicaraguans displaced by the war residing in the U.S.; then we spent two weeks in Managua where students met and interacted as a group with several women’s groups and government officials working on issues of domestic violence, and then finally traveled the last week to rural Mulukukú where students stayed in the Cooperative’s housing and interacted daily in the Cooperative’s health and legal clinics. As well, in the Inter-American Program, students who complete externships in Latin America must first enroll in a 3-week classroom experience in Antigua, Guatemala where they interact with Latin American law students and lawyers as peers and then are placed in 8-week externships in Guatemala City or other parts of Latin America. The sequencing in each of these programs ensured that students were introduced progressively to increasing intensity of cultural difference both in terms of environment (e.g., city vs. rural or classroom vs. field placement); the people they were meeting (e.g., other law students vs. grass roots activists or clients); and the amount of time spent fully immersed and alone with the other culture.

Cultural intervention can be both formal and informal, and it is best when it is frequent and, as much as possible, models a fluid and intimate dialogue of trust between the teacher and student to explore how the student is experiencing and processing cultural difference. The most common approach to formalize a process of reflection and feedback is, of course, through journal writing. Over the years of teaching, I have experimented on how to make journal writing as effective as possible for the student learner.<sup>120</sup> The model that has worked the best is

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119. Bennett, *A Developmental Approach to Training for Intercultural Sensibility*, 10 INT’L J. OF INTERCULTURAL RELATIONS 179, 189.

120. For another useful source on effective journal writing and feedback as part of intercultural training,

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the one I have implemented as part of the field placements in the Inter-American Program. After the three-week classroom program in Antigua, between six and eight students enroll in externship placements in Latin America (Guatemala, Costa Rica, Chile and Uruguay). I provide direct supervisions of the substantive legal work of the students and cultural guidance on issues that students raise in their journal entries. I combine weekly phone calls with e-mail communication and substantial feedback in the six journal entries students submit about or during weeks 2-7 of the externship placements. The journal entries can be on a range of topics completely open to the students' choice based on what is most present or pressing in the way they are experiencing the field placement. Although students are provided with a list of potential topics that encourage them to think comparatively about law, legal systems, and lawyering,<sup>121</sup> I also encourage them not to limit themselves to the list but to aim to be as personal as possible and to write about issues that have impacted or affected them on a personal level. Over the years, students have worked on a range of issues from immigration to environmental justice, to trade and development, and corporate law to transitional justice and domestic violence. They have been exposed, *inter alia*, to diverse perspectives and ideologies, a range of advocacy and lawyering strategies, a multitude of norms, an array of clients including corporations and indigenous communities, and a wide variety of office cultures and dynamics from the government or inter-governmental office to the grass-roots non-profit or the private law firm or trade associations. With very few exceptions, students have been very probing, open, and aware. Students have chosen topics that run the gamut from observations about a country's laws, legal procedures or legal institutions, to impressions about the effectiveness of a particular lawyering or advocacy strategy, to discussions about agency and solutions to intractable legal problems that affect their clients, and even to personal challenges dealing with inter-office dynamics.

My job as cultural mentor has been to engage the students where they are and to guide their learning. As to some students, this means asking more probing questions, revealing their assumptions or encouraging them to support their claims with more data or support, or asking them to consider alternative explanations. With other students, my job is to get them to go deeper, beyond the descriptive or general and to let me hear their voice and see their cultural being. This often requires building more trust and also modeling the expectations by sharing my own personal stories or reactions to what the student is describing and asking the student to react to those. Largely, this process is happening

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*see* Paulsell, *supra* note 112, at 253-58.

121. As part of the Pacific McGeorge Global Center for Business & Development initiative, Frank Gevurtz with input from other faculty created an outline of intercultural legal competence topics for students conducting overseas field placements. These topics range from questions about litigation, transactional deals, alternative dispute resolution, ethics, philosophy of law, lawyering and advocacy strategies, and client relations. This outline is available as an Appendix to the Report Regarding the 2011 Pacific McGeorge Workshop on Promoting Intercultural Legal Competence (The "Tahoe II" Conference). Gevurtz, *supra* note 4.

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through numerous timely comments (within days of receiving the entries) on the student's journal entries, which is followed by e-mails or phone calls to discuss some issues more personally and privately with the student if in my judgment greater and more intimate intervention is required. For example, I will especially reach out to students when their journal entries reveal conflict or struggles with the experience, as well as when the journal entry is too reserved and the student appears withdrawn and reticent to engage. I have found that this extra step of reaching out to students beyond my comments in the journal entries (a lesson I have learned over the years) is key to helping some students grow and deepen their intercultural awareness. This extra step helps to build trust, and at times has also been conducive to helping students grow professionally. My intervention, for example, has guided students to navigate conflict they may be experiencing with local actors by helping to increase understanding and encouraging better communication. With very few exceptions, students are generally very receptive to this level and type of intervention.

In the Inter-American Program, I have chosen for the journal entries and my comments to them to be shared with the group. The smallness of the group and the senses of shared experiences have facilitated an intimacy that has allowed for this type of openness with little to no conflict or resistance from students. There are several reasons for this choice. First, the learning can improve tremendously when students learn from each other. I have used two different strategies to encourage this type of mutual learning. As part of the journal entry assignment, I have either asked students to read each other's journal entries (with my comments) and to choose to respond or comment in a thoughtful way to another student's journal entry or I have assigned a particular journal entry to a student to serve several teaching objectives. Having experimented with both of these approaches, I prefer the latter, although each has yielded positive results. When students choose whose journal entry to read, I am respecting their autonomy and allowing them to choose which journal entry speaks to them the most. Sometimes, however, students may choose to comment to what is most safe for them, rather than what challenges them to grow the most. The latter approach allows me to be intentional about why I am asking a specific student to read another's journal entry. Sometimes, the reason is that the students are experiencing common issues but may have different reactions to those issues. The ability to observe how two people can experience similar issues differently is extremely helpful to the learning process. Other times, I find that students are struggling in similar ways to cultural difference, even if the issues are dissimilar. This pairing can help students not feel isolated in their experience and can also nurture them especially when I am challenging them both to recognize and/or transcend their cultural bias. Other times, my hope is that a student who is engaging too superficially with issues can read another's student journal that is deeper and probing and models great cultural awareness and flexibility in considering alternative explanations or viewpoints. I specifically ask students to consider what they learn

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about their own experience through the lens of another student's journal entry. I also ask students to consider what questions they have for the other student and what observations they might offer to the other student that may help them grow or resolve the situation. Many times, this process can help students gain insight about their own experience and help them see better about how they can alter their perspective or conduct in their own context. I have also found that students take seriously the opportunity to help each other grow, which in some cases can lead to greater openness with each other as peers than with me as a cultural mentor.

Sometimes, depending on program design, journaling cannot be as engaged and over a prolonged time. In the immigration service learning programs, for example, the opportunity for deep reflection based on experience occurs usually only once when students participate in the immigration fairs. As part of their learning, students' work product includes a 10-page reflective article that asks students to reflect on lessons they learned through the experience about legal and on ethical issues, as to how the experience shifted their perspectives about immigrants and immigration, and to share and consider any intercultural lawyering lessons. I offer each individual student significant feedback to the journal entries that attempts to apply the types of cultural intervention practices already described. This time, however, the journal entries and feedback are not public. One reason for this is that the group is too large (between 25-50) and lacks the cohesion of shared experiences to allow for the same level of group trust and intimacy. I opt, therefore, to create a safer space for students to share more openly, including by asking that they present their reflections anonymously. As well, the feedback is only to a single (albeit long) journal entry, with little opportunity for further engagement and development. This is not ideal. I have tried to ameliorate these limitations by including collective thinking about the broad themes and lessons from the journal entries by including a debriefing session after the fair as part of the learning process. As well, the journal entries have informed significantly the ways that I have constructed the training for future student participation in similar service learning opportunities. I have sometimes shared quotes (anonymously) from the journal entries or have designed fact patterns to engage in rich intercultural discussions based on the reactions, experiences, and the collective wisdom that students who have done these fairs with me have imparted to me over the years.

Post-entry reflection opportunities are also important components of intercultural training. Post-entry, as the name suggests, takes place within weeks after the completion of intercultural programming and allows students to come together as a group to discuss their experiences and learning lessons with each other. At Pacific McGeorge, the law school implemented in 2013 for the first time its post-entry program and included all students who had completed overseas field placements. During the workshop, students reflected upon their experiences through discussions that follow a detailed outline of topics for observation and

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reflection provided to the students before they left for their internships. A richness of this experience was that students were able to connect with students who had worked in other parts of the world to compare experiences. As well, the timing of the workshop allowed students to reflect back on their experiences after they had reinserted back into their own culture, which provided an opportunity for reflection away in space and time from the actual experience.

The role of cultural mentor requires teachers to engage very personally with the student learner and to be open to the student's stages of development, even as to beliefs and attitudes that the teacher may find personally offensive. Earlier in the article, I describe some tense moments with students when their attitudes and conduct have challenged my ability to continue to engage with them with openness and patience. Deep intercultural engagement is emotional for the teacher and the student alike; it is also a time-intensive process which means that the educator must have the time and energy to engage intensively with students. This has several implications. To the educational institution, it means taking the role of the cultural mentor seriously and not overburdening the cultural mentor with too many work-demands as part of the educational experience. As well, the cultural mentor needs peers and partners to whom to turn to for moral and emotional support but also to ask for help in intervening with students who may represent a challenge.

#### *E. The Thematic Focus of the Educational Experience*

I began this article by outlining my vision of the types of transformation I sought in U.S. law students through their participation in the intercultural experiential courses or programs. These goals, can generally be described as encouraging students to be more discerning of local (or the client's) legal norms, culture, and institutions (which requires recognizing their own legal culture and noting difference); to learn to respect and value local (or the client's) choices and autonomy including on strategies for social change and attributions of agency (which need not equate to agreement or acceptance); and to infuse their engagement with ethics and a commitment to justice. In my own teaching, I have also chosen for law students to learn these lessons in particular contexts that more likely than not largely depart from their own experiences. Some students engage in public interest lawyering with generally poor and sometimes undocumented immigrant communities in the U.S. who came from numerous countries through service learning projects. Others engage issues affecting developing nations with vulnerable communities as clients as part of study abroad programs that include field placements with local institutions and organizations. In either case, simply by virtue of the students' identity as members of a dominant culture (economically, legally, politically) or based on their own social status (e.g., education and sometimes wealth), students are asked to confront these differences with an awareness of power and/or privilege. This all means, of course, that program or course de-

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sign must include content and/or experiences that enhance the students' opportunities to develop into inter-culturally sensitive lawyers in the context in which they are learning. Thus, for example, students who study abroad cannot be expected to critically examine their own legal culture without a thoughtful introduction to comparative perspectives (which includes their own) into the areas of law they are studying and socio-political reality of the host nation in which these laws apply. If students are expected to consider the ethical dimensions of global engagement in that nation, whether through rule of law projects, trade, or foreign investment, then they must be asked to consider the ethical rules that govern (or should govern) and their implementation in context. If students are asked to consider different visions of agency and different strategies for seeking social change, then they must be exposed explicitly to those differences, ideally through experiential opportunities to engage in social movements. None of this precludes introducing a range of perspectives, including conflicting visions of norms, ethics, agency, and solutions to legal problems. In fact, intercultural exploration demands that these different visions be explored. What is important is that students also explore how the different cultures and life experiences of the guests and hosts shape these different visions and beliefs and that each learn to respect and adapt to those differences.

By way of example, as part of the Inter-American program in Guatemala, we have offered courses that focus on trade and development, environmental justice, transitional justice, comparative land reform, comparative access to information, comparative criminal procedure, and comparative antitrust (or anti-competitive) laws. The professors teaching in these courses, which include both U.S. and Latin American professors, teach the subjects mindful of differences in context and culture, and emphasize how these contextual and cultural differences, *inter alia*, may call for different norms, different advocacy or lawyering strategies, and perhaps different ethical considerations and different visions of agency. In the classroom, the students who are both from the U.S. and Latin America are asked to reflect together in discussions and in-group projects how their own cultural differences and life experience inform the issues they are presented. In the context of field placements, students engage directly with these contextual and cultural differences and are asked to reflect on them in ways that promote cultural understanding, adaptation and, at times, integration.

A developmental model of intercultural legal education, thus, does not suggest the teaching of a particular subject matter;<sup>122</sup> rather, what is critical is that any curriculum or experiences incorporate processes that will encourage the adult learner to become aware of his or her culture and to discern differences with that of others, including his or her peers. It is also about modeling and teaching values of acceptance, respect; and finally offering meaningful opportunities for adaptation or integration through rich field experiences. There are a few studies, for ex-

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122. Bennett, *Towards Ethnorelativism*, *supra* note 52, at 22.



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ample, that assess positively the acquisition of intercultural sensibilities in the context of service learning programs that placed students in situations with people who are economically, socially, ethnically, and/or culturally different from themselves.<sup>123</sup> To be effective, these service-learning programs built the necessary processes for improving intercultural sensibility, such as for reflection and cultural mentoring.<sup>124</sup>

A different question, however, is whether providing specific training on the meaning and process of acquiring intercultural sensibilities should also be part of the program. Some undergraduate study abroad programs, including my own university, do include a specific focus on intercultural training as a central component of the program of study.<sup>125</sup> The intercultural training can employ intercultural exercises or activities that are intended to illustrate in non-threatening ways the various stages of intercultural development, some of which have been developed by educational psychologists, including Bennett.<sup>126</sup> Others suggest at a minimum providing students with intercultural materials designed to prepare them to become better learners of intercultural sensibilities.<sup>127</sup> Some programs even measure a student's intercultural development pre-participation and share those results with students to individualize and guide their learning in the program.<sup>128</sup> There are educators and some studies that support the claim that a reason why students do not always achieve the benefits of study abroad programs may be their lack of prior training for an intercultural experience.<sup>129</sup> Intercultural training, for example, can help students become aware of how culture can affect their perspective and can also assist them in coping with the stresses experienced in

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123. Jan Westrick, *The Influence of Service-Learning on Intercultural Sensitivity: A Quantitative Study*, 3 J. OF RESEARCH IN INT'L EDUCATION 277 (2004) and Ardis L. Nelson and Jessica L. Scott, *Applied Spanish in the University Curriculum: A Successful Model for Community-Based Service-Learning*, 91 HISPANIA 446 (2008).

124. *See id.*

125. Michael Vande Berg and R. Michael Paige, *Applying Theory and Research, The Evolution of Intercultural Competence in U.S. Study Abroad*, in THE SAGE HANDBOOK OF INTERCULTURAL COMPETENCE 419, 421-22 (Darla K. Deardorff 2009).

126. A great discussion of five exercises and their implementation in a French foreign language class, *see* Durocher, *supra* note 73, at 152-55.

127. R. Michael Paige, Andrew D. Cohen and Rachel L. Shively, *Assessing the Impact of Strategies-Based Curriculum on Language and Culture Learning Abroad*, X FRONTIERS: THE INTERDISCIPLINARY J. OF STUDY ABROAD 253, 254 (2004) (testing the effectiveness of the use of a series of Maximizing Study Abroad Guides, including one intended for students).

128. *See, e.g.*, Pedersen, *Assessing Intercultural Effectiveness Outcomes*, *supra* note 111, at 73 (describing the methodology of a year-long undergraduate study abroad program in Central England); and Durocher, *supra* note 73, at 150 (students in a year-long language French class were pre-tested using the Intercultural Development Inventory to evaluate their level of sensitivity to cultural difference in order, inter alia, to incorporate a set of international cultural training activities appropriate to the student's level of sensitivity).

129. *See, e.g.*, Pedersen, *Assessing Intercultural Effectiveness Outcomes*, *supra* note 112, at 76 and Joseph G. Hoff and R. Michael Paige, *A Strategies-Based Approach to Culture and Language Learning*, in EDUCATION ABROAD PROGRAMMING, FRONTIERS, 17 THE INTERDISCIPLINARY J. OF STUDY ABROAD 89, 90 (2008).

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intercultural encounters, as well as prepare them to be aware of difference.<sup>130</sup> It can also perhaps even help in building trust between the teacher and student, if the student understands the purpose of the teacher's cultural interventions.

#### F. *The Role of Language*

The teaching of foreign language should ideally also be a part of intercultural training. The acquisition of a second language alone will not necessarily lead to greater intercultural awareness on the part of students. The prevalent assumption that language study will automatically promote intercultural sensibilities is unsupported by research.<sup>131</sup> Unfortunately, language is sometimes taught as an analytical process that emphasizes memorization without accounting for the cultural context of language.<sup>132</sup> When culture is introduced, it is done so as a body of facts with a focus on foods and festivals that do little to add dimension or to personify the members of those cultures.<sup>133</sup> Some studies measuring language proficiency or language studies and intercultural competency fail to show a relationship between language ability and intercultural sensibility.<sup>134</sup> Other studies of foreign language programs that do not incorporate the cultural into the teaching of language, particularly those offered in dominant cultures, have revealed that the mere acquisition of bilingual functionality either does not alter negative feelings towards the native speakers of the language acquired and sometimes can perpetuate or enhance pre-existing prejudices.<sup>135</sup> Similarly, studies of the linkages between language acquisition and cultural adaptation/integration among certain foreign groups residing in another country, for example, suggest that high levels of instrumental functionality in the host language do not translate necessarily into more positive views about the host culture.<sup>136</sup>

130. *Id.*

131. Gail Robinson-Stuart and Honorine Nocon, *Second Culture Acquisition: Ethnography in the Foreign Language Classroom*, 80 *THE MODERN LANGUAGE JOURNAL* 431, 432 (1996).

132. See e.g., Ming-Chung Yu, *Teaching and Learning Sociolinguistic Skills in University EFL Classes in Taiwan*, 42 *TESOL QUARTERLY* 31, 32 (2008) (describing ineffective methods of language ESL teaching in Taiwan).

133. See Robinson-Stuart and Nocon, *supra* note 132, at 434.

134. Catlin Hanna and Christine Winkowski, *Measures of Progress in Foreign Language and Cross-Cultural Awareness: A Preliminary Report*, 7 *FOREIGN LANGUAGE AND CULTURE* 33, 41 (2005) (reporting on a study conducted in the Department of International Cultural Studies at Marioka Junior College of Japanese students which compared language proficiency scores with intercultural sensibility measures which failed to find that language ability correlated with students' intercultural awareness). See also Paige, Cohen, and Shively, *supra* note 128, at 267.

135. Robinson-Stuart and Nocon, *supra* note 132, at 433 (discussing studies of foreign language programs in Canada and the United States). But see Lilli Engle and John Engle, *Assessing Language Acquisition and Intercultural Sensitivity Development in Relation to Study Abroad Program Design*, X *FRONTIERS: THE INTERDISCIPLINARY J. OF STUDY ABROAD* 219, 230 (2004) (reporting that students with two years of foreign language instruction consistently scored higher than other students when measured for intercultural sensibilities).

136. See generally, e.g. Diane M. Hoffman, *Language and Culture Acquisition among Iranians in the*

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The methodology of language instruction, thus, is critical to enhancing students' intercultural awareness. Second language scholars have long recognized the linkages between language acquisition and culture and treat sociolinguistic sensibility as a key component of language learning.<sup>137</sup> Sociolinguistic sensibility seeks to situate language learning in context and emphasizes the pragmatic, functional, and authentic use of language over simple memorization and rules.<sup>138</sup> In this way, language learning is inherently a process in increasing cultural difference awareness and eventually adapting to those differences as language sensibility improves. Ideally, this methodology would seek to establish meaningful connections between language learners and native speakers and create positive and multi-dimensional inter-personal and intercultural experiences and spaces of shared meaning.<sup>139</sup> The methodology requires that language learners be taught self-awareness of their own culture and the ability to recognize cultural differences with the native speakers.<sup>140</sup> Moreover, the methodology does not assume benign outcomes from the awareness and experience of difference (quite the contrary, it could potentially exaggerate difference and breed distance) but would incorporate reflection as part of language learning to promote the creation of a space that some language scholars describe as second culture; i.e., a space that encourages acceptance and/or shared meaning.<sup>141</sup> One effective example of this type of methodology has involved the use of ethnographic techniques in which language learners are asked to conduct interviews of native speakers in the community within a positive learning structure and with training on active listening, with an emphasis on critical self-reflection. A study of this methodology as applied in San Diego State University of Spanish learners revealed that students acquired a new meta-awareness of their own culture and their own culturally conditioned perceptions, moreover, they tended to improve their positive perceptions of native Spanish speakers in their community.<sup>142</sup> Other successful models include the incorporation of intercultural training as part of language instruction;<sup>143</sup> the implementation of community-based service learning to teach culture as part of language programs; and the creation of hybrid classrooms where students

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*United States*, 20 ANTHROPOLOGY & EDUCATION QUARTERLY 118 (1989).

137. Carol Herron et al., *The Effectiveness of a Video-Based Curriculum in Teaching Culture*, 83 MODERN LANGUAGE J. 518, 518-519 (1999). See also Marian Mikaylo Ortuño, *Cross-cultural Awareness in the Foreign Language Class: The Kluckohn Model*, 75 THE MODERN LANGUAGE J. 449 (1991).

138. Hanna & Winskowki, *supra* note 172, at 33. See also Celeste Kinginger, *A tele-Collaborative Course on French-American Intercultural Communication*, 72 THE FRENCH REVIEW 853, 854 (1999).

139. See Robinson-Stuart and Nocon, *supra* note 132, at 434-35; Kinginger, *supra* note 177, at 854; and Mark Joel Webber, *The Role of Culture in a Competence-Based Syllabus*, 26 THEORY INTO PRACTICE 251, 252-54 (1987).

140. Claire Kramsch and Thomas Nolden, *Redefining Literacy in a Foreign Language*, 27 TEACHING GERMAN 28, 30 (1994).

141. Robinson-Stuart and Nocon, *supra* note 132, at 435-36.

142. *Id.* at 437-44.

143. See, e.g., Durocher, *supra* note 73, at 150-55.

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learning each other's language share meaningful spaces (including through the use of technology) as part of the learning process.<sup>144</sup>

A few U.S. law schools have begun to introduce the teaching of legal language training as part of the law school curriculum. Many students come to law school already with some language proficiency, and while many of these students are able to use their language skills in clinics or field placements, few are given formal language training that also emphasize the intercultural.<sup>145</sup> At Pacific McGeorge, we have introduced the teaching of legal Spanish as a core focus of the Inter-American Program. The Inter-American Program has a 3-week classroom component in Antigua, Guatemala and an 8-week field placement component in several countries of Latin America where the teaching of language and culture is integrated to promote not only legal Spanish proficiency as a skill but also as a means to improve students' intercultural legal sensibility.<sup>146</sup> The Program attempts to do this in several ways:

1. Offers substantive law courses taught in Spanish or English that emphasize the comparative and the local;
2. Co-enrolls law students or lawyers from Latin America in these courses with U.S. students to enrich the intercultural and interpersonal experiences of students with peers who are also in the process of acquiring English language proficiency;
3. Introduces students to collaborative and intercultural experiential learning opportunities both in the classroom and in the field placements;
4. And incorporates guided reflections and feedback as part of the learning.

The offering of substantive law courses in Spanish in Guatemala adopts an approach of the learning of legal Spanish in a way that meaningfully integrates

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144. See, e.g., Kinginger, *supra* note 177, at 855-62.

145. One exception to this are legal clinics that, while they do not directly teach language, do engage bilingual students in the representation of clients in the foreign language combined with intercultural training. See, e.g., Muneer Ahmad, *is beyond the scope of this essay*. Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. Rev. 999 (2007).

146. Spanish, of course, is not the only language spoken in Guatemala. Indeed, Guatemala recognizes that at least 21 Mayan languages are spoken in the country, in addition to Garifuna. Mayan languages are experiencing a revival as part of revitalization politics and still millions of people still speak at least one of these languages. Nora C. England, *Mayan Language Revival and Revitalization Politics: Linguists and Linguistic Ideologies*, 105 *American Anthropologists*, New Series 733 (2003). The Inter-American Program, however, does not have the resources to incorporate Mayan language instruction, and it is unlikely to be a preferred choice for many U.S. law students who are seeking to learn Spanish. We do, however, teach students about this linguistic richness as part of the program and introduce students to speakers of Mayan language as part of our programming on Mayan customary law.

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culture, with a focus on law. Professors who teach these courses have been U.S. professors who are fully bilingual in Spanish and who bring great intercultural strengths and focus. The courses intentionally deal with salient and current issues affecting U.S.-Latin American relations, especially as they play out in Guatemala. As well, the courses have been taught by Guatemalan law professors or lawyers alone or in partnership with U.S. professors. As an integral part of the courses, the program organizes field trips and guest speakers that are connected to the themes of the course. For example, students have visited Sololá and met with indigenous mayors to learn about indigenous people's struggles with environmental issues and to learn about the implementation of indigenous customary law in Guatemala.

For students at the beginning stages of Spanish language acquisition, the approach also combines cultural training and language. Students enroll in a course, for example, now titled *Lawyering Across Borders*, taught (largely) in Spanish, and are introduced to simulations and problems involving transnational and intercultural issues. As part of the course, the simulated client, who is often a Latin American immigrant in the U.S. who is facing legal issues (family, immigration, tort law, etc.), becomes the center from which to learn about the law and the appropriate solutions. Beyond the substantive law, students are invited to consider how to lawyer for the client with intercultural sensibility. This requires them engage the Five Habits for Cross-Cultural Lawyering<sup>147</sup> and to explore their differences and similarities with the client as well as to anticipate and attempt to advocate for the client in light of the cultural differences between the client and the U.S. legal system. As well, students enroll in a local language school for up to four hours a day of individualized interaction with local Spanish instructors who provide both language and cultural instruction. These teachers' function is more than just language instructors. In many ways, they too become cultural mentors. These teachers include discussions of politics and local issues as part of their daily interactions with students, and also take students in local cultural field trips to introduce students to Antigua through their eyes. Finally, the more advanced students who conduct field placements are asked to lawyer in Spanish, but as has been described in this article, receive significant guidance not only as to technical legal Spanish and comparative law but as to cultural training through journaling and other types of cultural interventions.

#### *G. Other Factors*

Studies attempting to measure the effectiveness of programs aiming to teach intercultural sensibility have identified other factors relevant to program design that could be relevant to the experience not already discussed here.<sup>148</sup> These addi-

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147. Bryant & Peters Koh, *supra* note 3.

148. For example, the Georgetown Consortium study of 61 programs of more than 1300 U.S. undergrad-

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tional factors include where students are housed – whether with other U.S. students, with host country students, with international students, or with a host family – and program duration. Other studies have also isolated factors related to background variables and learner characteristics to measure how and whether they matter to the acquisition of intercultural competencies. These factors include gender (female vs. male); academic major; prior language study (in high school or college); previous experience living in another culture or prior study abroad.<sup>149</sup>

Issues of program duration and student housing have not been explicitly tied to learning outcomes; instead, these have largely been dictated by institutional concerns and student preference, including the academic calendar, the local organization and safety considerations. Thus, for example, the Inter-American program's field placements following the 3-week classroom experience have been between 7-8 weeks, and housing has been in separate facilities with almost always only U.S. students.<sup>150</sup> Studies have found that factors such as program duration and housing choices cannot be isolated from the more critical factor of guided mentorship and cultural intervention.<sup>151</sup> Thus, while it is probably true that longer exposure could be better to the acquisition of intercultural sensibility,<sup>152</sup> this is not always true unless the experience of immersion has been accompanied by quality cultural intervention.<sup>153</sup> In fact, in some cases, unguided long experiences can simply firm up ethnocentric tendencies in students,<sup>154</sup> while shorter programs with significant guidance can be shown to be quite effective.<sup>155</sup> Simi-

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uate students isolated eight factors, including program duration, student pre-departure second language proficiency; the language used in coursework abroad; the context of the academic work abroad; where students are housed; whether they participate in guided/structured experiential activities abroad; and the frequency with which resident faculty provide guided reflection on student experience. Vande Berg, *supra* note 115, at 18. See also R.M. PAIGE AND E.M. STALLMAN, *USING INSTRUMENTS IN EDUCATION ABROAD OUTCOMES ASSESSMENT IN A GUIDE TO OUTCOMES ASSESSMENT IN EDUCATION ABROAD* at 106, 107 (Mell C Bolen, ed. 2007) (listing the same eight factors as endorsed by the Education Abroad Outcomes and Research Committee for research purposes on measuring the teaching of intercultural competence).

149. See, e.g., Vande Berg, Connon-Linton & Paige, *supra* note 82, at 18-20.

150. Some studies suggest that the optimum range of time is 13-18 weeks. Vande Berg, Connon-Linton, and Paige, *supra* note 82, at 20.

151. Vande Berg, *supra* note 104, at 23-29.

152. See, e.g., Pedersen, *Teaching Toward an Ethnorelative Worldview*, *supra* note 81, at 79-82 (finding that a year-long-study-abroad program with intentional pedagogy and guided reflection results in the most change overall as compared to other programs with shorter duration) and Engle & Engle, *Assessing Language Acquisition*, *supra* note 134, at 235 (same). See also Adriana Medina-López-Portillo, *Intercultural Learning Assessment: The Link Between Program Duration and the Development of Intercultural Sensitivity*, X FRONTIERS: THE INTERDISCIPLINARY J. OF STUDY ABROAD 179, 180 (2004) (reporting on study that program duration may be an important predictor of one specific element of intercultural learning, namely the development of intercultural sensitivity).

153. Pedersen, *Teaching Toward an Ethnorelative Worldview*, *supra* note 81, at 82 (finding as well that a short-term-duration program revealed more positive changes in the intercultural learning of students than

154. *See id.* at 77.

155. See, e.g., *id.* at 82 (finding that a short-term study abroad program (a couple of weeks) with intentional intervention did show positive results in the intercultural scores of participants as compared to those who did not have a study abroad). See also Philip H. Anderson et al., *Short-term Study Abroad and Intercultural Sen-*

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larly, housing with host families can provide rich experiences for intercultural learning but not in the absence of intervention and tools for the learner to be able to capitalize on the experience by sharing meaningfully and productively with the host family.<sup>156</sup> In my experience, I have found that law students are generally less open to housing with host families because they like their privacy, time to study, and comfort. I have experimented with both separate and host housing and have found that the challenges associated with housing with host families tend to outweigh other educational goals. Thus, instead, I am mindful that separate housing can lead to isolated spaces of enclaves of U.S. culture and have responded by hosting several cultural events, mandatory weekend trips, and number of academic projects that require U.S. students to socialize and work closely with other Latin American students enrolled in the program.

Student selection in the educational programming discussed in this article has also largely been dictated by student preference through self-selection, rather than in response to correlation to the likely acquisition of intercultural sensibilities. As explained earlier, student access to intercultural training in law school should be available to every student because all lawyering is cross-cultural; moreover, all students, regardless of their stage of intercultural development, have the potential to grow (in different ways and at different paces) and benefit from well-designed programs. On the other hand, at least in the Inter-American program, the bilingual nature of the educational experience has necessitated selection of students with at least basic Spanish language proficiency, which means that many of them also come with previous study abroad or living abroad experiences or learned language at home or while in high school or college. While data on these factors may not drive (and perhaps should not drive) student selection decisions in intercultural programming, these studies do shed insight into whether the results argue for different methodological approaches for certain student types. For example, interestingly, a few studies do suggest that females, in general, show greater gain in intercultural development in similar programming, which suggest a need to be more attentive and specific to the learning needs of males.<sup>157</sup> Other factors that correlate positively with greater aptitude for increasing intercultural development include majoring in humanities/social sciences and foreign languages and prior language study.<sup>158</sup> In contrast, prior experiences studying abroad or living abroad have not been shown statistically significant, and, in fact, those who have never lived in another culture tend to show the greater gains in intercultural sensibility from original exposure.<sup>159</sup>

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*sitivity: A Pilot Study*, 30 INT'L J. OF INTERCULTURAL RELATIONS 457 (2006) (same).

156. Vande Berg, *supra* note , 104 at 19-20 and Vande Berg, Connor-Linton, and Paige, *supra* note 82, at 23.

157. Vande Berg, Connor-Linton, and Paige, *supra* note 82, at 18.

158. *Id.* at 19-20.

159. *Id.* at 19.

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### III. MEASURING INTERCULTURAL LEGAL SENSIBILITY

Undergraduate schools and many professional schools have for decades implemented educational programs that immerse students in other countries or with other cultures believing that such programs offer its students tremendous opportunity for positive personal growth, including the acquisition of greater intercultural competencies.<sup>160</sup> With some exceptions, however, law schools are very far behind, especially in comparison to universities and colleges, to being intentional and concrete about defining what intercultural lawyering should mean for the practice of law and in assessing whether the educational programming adopted actually achieves the identified outcomes.<sup>161</sup> In contrast, colleges and universities and some professional schools have for at least six decades been developing best practices for the teaching of intercultural competencies and related goals and synergistically developing instruments that are more precise in identifying factors – whether the characteristics of the participants or of program design – that contribute to the development of intercultural sensibilities or other related goals in adult learners.<sup>162</sup> In general, these studies are measuring the impact of educational programs such as summer abroad or service learning on student acquisition of intercultural sensibilities, although some studies also focus on the effectiveness of trainings of teachers and professionals who work in intercultural settings.<sup>163</sup>

The lessons from these studies in general show positive outcomes from the educational experiences in terms of gains in intercultural sensibility.<sup>164</sup> In this fi-

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160. See e.g., Lisa Altshuler et al., *Assessing Changes in Intercultural Sensitivity among Physician Trainees using the Intercultural Development Inventory*, 27 INT'L J. OF INTERCULTURAL RELATIONS 387, 388 (2003). See also Durocher, *supra* note 89 at 119 (discussing a partnership between eight faculty members from 4 U.S. universities seeking to teach greater intercultural sensibilities to business students).

161. Andrea A. Curcio, Nisha Dogra, & Teresa Ward, *Using Existing Frameworks to Develop Ways to Teach and Measure Law Students' Cultural Competence in THE LEGAL PROFESSION: EDUCATION AND ETHICS IN PRACTICE* (DAVID A. FRENKEL ED., 2013).

162. Colleges and universities have been measuring intercultural results of educational programs since at least the 1950s. DAVID COMP ET AL., *LITERATURE AND RESOURCES FOR EDUCATION ABROAD: OUTCOMES ASSESSMENT IN A GUIDE TO OUTCOMES ASSESSMENT IN EDUCATION ABROAD* 97, 117 (Mell C. Bollen, ed. 2007). See also Dennison Nash, *The Personal Consequences of a Year of Study Abroad*, 47 THE JOURNAL OF HIGHER EDUCATION 191, 193 (1976) and W. Frank Hull IV, *Cross-cultural Experiential Programming*, 27 INTERNATIONAL REVIEW OF EDUCATION 64, 68-71 (1981) (discussing the few early studies of international programming in the 1970s).

163. See, e.g., Anaida Colón-Muñiz et al., *Language, Culture and Dissonance: A study Course for Globally Minded Teachers with Possibilities for Catalytic Transformation*, 21 TEACHING EDUCATION 61 (2010).

164. See, e.g., Jerry S. Carlson and Keith F. Widaman, *The Effects of Study Abroad During College on Attitudes Toward other Cultures*, 12 INTERNATIONAL J. OF INTECULTURAL RELATIONS 1, 13-16 (1988); Susan G. Sample, *Intercultural Development and the International Curriculum* (on file with author) (reporting on positive intercultural gains at the University of the Pacific among students participating in the School of International Studies); Nash, *supra* note 161, at 196-201; Engle and Engle, , *supra* note 134, at 230; Anderson, *supra* note 154, at 464; Vande Berg, *supra* note 104; Pedersen, *Teaching Toward an Ethnorelative Worldview*, *supra* note 81, at 82-85; R. Michael Paige et al., *Assessing the Impact of a Strategies-Based Curriculum on Language and Culture Learning Abroad*, XVIII FRONTIERS, THE INTERDISCIPLINARY J. OF STUDY ABROAD 253, 265 (2009); and Nelson and Scott, *supra* note 122, at 452-455. *But see* Altshuler et al, *supra* note 159, at



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nal section, I discuss the instruments available in other disciplines to measure intercultural competencies and other related goals and discuss the innovative lessons and best practices that law schools and law professors can learn from to develop similar studies in order to advance best practices in the way we teach intercultural competencies.

### A. Instruments and Methodologies for Measuring Intercultural Sensibility

Scholars studying intercultural communications have designed several instruments and methodologies for measuring intercultural legal sensibility. These studies rely on either quantitative or qualitative measurements, as described below, and sometimes combine the two methods to deepen insights and compare/validate the data.

#### 1. Quantitative Measurements

##### a. IES MAP (Model Assessment Practice)

The Institute for the International Education of Students developed the IES Map for internal program assessment and first published it in 1999 after significant data analysis.<sup>165</sup> The IES Map is widely recognized now as a leader in study abroad program assessment and the IES widely freely shares and distributes the tool to faculty and administrators of such programs.<sup>166</sup> The IES MAP focuses on four academic areas: Student learning environment; Student learning, including assessment of intercultural development; resources for academic and student support; and program administration and development.<sup>167</sup> It is essentially a list of best practices in each of these areas that schools can use to self-assess their educational programming. These guidelines are easily accessible to anyone on the Internet.<sup>168</sup>

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399 (reporting no gain in intercultural development in group of health professionals following brief trainings on intercultural sensibilities) and Jane Jackson, *Intercultural Learning on Short-Term Sojourns* (on file with author) (reporting on several studies of study abroad programs where inadequate preparation and unsettling intercultural encounters had negative effects on students such as entrenching negative stereotypes about the host country).

165. See Joan Gillespie, Larry A. Braskamp, and David C. Braskamp, *Evaluation and Study Abroad: Developing Assessment Criteria and Practices to Promote Excellence*, 5 FRONTIERS: THE INTERDISCIPLINARY J. OF STUDY ABROAD 101 (1999).

166. *Id.*

167. *Id.*

168. Visit <http://www.iesabroad.org/study-abroad/advisors-faculty/ies-abroad-map/map-for-study-abroad>, last visited 2/21/14.

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b. *The IDI*

In a 2003 article titled “Measuring Intercultural Sensitivity: The Intercultural Development Inventory, M.R. Hammer, et al., describe the development of the Intercultural Development Inventory,<sup>169</sup> which was constructed to measure the reliability of M.J. Bennett’s Developmental Model of Intercultural Sensitivity (DMIS) in capturing the different phases of orientations toward cultural difference.<sup>170</sup> The IDI measures an individual’s or group’s fundamental worldview orientation to cultural difference, and thus the individual or group’s capacity for intercultural sensibility.<sup>171</sup> The IDI has been tested for validity and reliability in measuring a person’s degree of intercultural sensitivity guided the DMIS model.<sup>172</sup> Since its development, the IDI has become a widely used measurement of program effectiveness in helping students grow in intercultural sensibility. Dozens of educational programs whether in high school, college, graduate schools, and even employers have used the IDI to evaluate wide-ranging educational programming, including study abroad, service learning, classroom teaching, and trainings.<sup>173</sup>

169. M.R. Hammer et al., *supra* note 67.

170. *See supra* note 58-67 and accompanying text for a description of DMIS.

171. The IDI consists of a series of 50 statements with which the subject must either choose to disagree or agree on a five-point scale. IDI scores vary from an absolute low 5 to a perfect 25, when issues of cultural difference in five categories: DD, which combines the Denial and Defense stages of the DMIS and indicates a worldview that simplifies and polarizes cultural difference; R, which indicates a worldview that reverses “us” and “them” and polarization where “them” is superior; M; which refers to Minimization or a worldview that highlights cultural commonality and universal issues; AA, which combines Acceptance and Adaptation and indicates a worldview that can comprehend and accommodate complex and cultural difference; and EM, which measures “encapsulated marginality,” characterized by feelings of cultural alienation in which one’s worldview incorporates a multicultural identity with confused cultural perspectives. Engle & John Engle, *supra* note 173, at 229.

172. M.R. Hammer et al., *supra* note 67, at 440.

173. *See, e.g.*, Engle and Engle, *supra* note 134, at 229 (reporting on a study using the IDI to test the effectiveness of a semester or full-year study abroad program in French study at the University Center of Provence (AUCP)); Altshuler, *supra* note 159, at 397 (reporting on the first use of the IDI on training for healthcare professionals); Anderson et al., *supra* note 154, at 460 (using the IDI on college students majoring in business administration and monolingual); Jane Jackson, *Globalization, Internationalization, and Short-Term Stays Abroad*, 32 *Int’l J. of Intercultural Relations* 349 (2008) (using the IDI on college English-major students who grew up in Hong Kong and spoke Cantonese as their first language); Medina-López-Portillo, *supra* note 151, at 183 (using the IDI to assess U.S. participants in study-abroad programs in Mexico); Michael J. Vande Berg, Al Balkcum, Marck Scheld, and Brian J. Whalen, *The Georgetown University Consortium Project: A Report at the Halfway Mark*, 10 *THE INTERDISCIPLINARY J. OF STUDY ABROAD* 101, 109 (relying on the IDI to evaluate the effectiveness of study abroad programs at 4 different colleges); Jackson, *Intercultural Learning*, *supra* note 163 (relying on the IDI, in part, to evaluate students from Hong Kong who took part in a short-term sojourn in England after fourteen weeks of preparation); Pedersen, *Assessing Intercultural*, *supra* note 111, at 74 (using IDI to test the effectiveness of a short-term and year-long study abroad programs in psychology); and R. Michael Paige et al., *supra* note 163, at 253 (using the IDI to test the effectiveness of different types of service learning programs in Hong Kong in teaching intercultural competence).

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### c. Other Measures

Other assessment instruments of intercultural sensitivity include the Cross Cultural Adaptability Inventory (CCAI),<sup>174</sup> the Intercultural Conflict Style Inventory (ICSI),<sup>175</sup> the Strategies Inventory for Learning Culture (SILC),<sup>176</sup> the Sociocultural Adjustment Scale (SCAS),<sup>177</sup> the Cross-Cultural World-Mindedness Scale,<sup>178</sup> and the Intercultural Adjustment Potential Scale (ICAPS).<sup>179</sup> In general, these tests attempt to identify and measure certain attitudes and responses to cultural differences. Their usefulness includes identifying the type of orientation and training that is appropriate for the student,<sup>180</sup> and could also be used to identify educational progress, like the IDI, if pre- and post-entry tests may trace changes in the results of each participant.

### 2. Qualitative Measurements

Researchers also combine (or rely solely on) qualitative assessments with the more objective data to assess students' progress in intercultural development. Some studies, for example, conduct interviews of students who have participated in particular programs designed to improve intercultural sensibility.<sup>181</sup> One signif-

<sup>174</sup>The CCAI is a 50-item self-assessment instrument that tries to assess a person's orientation to new ways of thinking and behaving by measuring four qualities of intercultural adaptability: flexibility and openness (FO), personal autonomy (PA), emotional resilience (ER), and perceptual acuity (PAC). R. Michael Paige & Elizabeth Stallman Madden, *Assessment of Cultural Knowledge*, THE ENCYCLOPEDIA OF APPLIED LINGUISTICS 46 (2013).

<sup>175</sup>The ICSI is a self-assessment instrument that measures a person's orientation to conflict in intercultural communication terms. It measures tendencies in intercultural communication in conflict situations such as directness vs. indirectness (DI scale) and emotional responsiveness vs. emotional restraint (ER). The test yields four intercultural conflict patterns: discussion (direct and emotionally restrained); engagement (direct and emotionally expressive); accommodation (indirect and emotionally restrained) and dynamic (indirect and emotionally expressive). *Id.* 44-9.

<sup>176</sup>The SILC measures an individual's tendency to use particular learning skills when living in another culture and can be used to determine to what extent students use certain types of culture-learning strategies during their education abroad experience. The SILC is a 52-item series of statements that ask respondents to indicate how often they use a particular strategy for culture learning, based on nine different approaches: adaptation; culture shock/coping strategies; interpreting culture; communicating across cultures; communication styles; nonverbal communication; interacting with culturally different people; home-stay strategies; and reentry strategies. *Id.* at 45.

<sup>177</sup>SCAS consists of 29 items designed to test a person's socio-cultural adaptation in terms of how that persons thinks (cognitive dimension) and responds to (behavioral dimension) to a new culture. *Id.* at 47.

<sup>178</sup>Finally, the CCWMS measures a variety of attitudes and values such as immigration, patriotism, world government and global economic justice based on responses to 26 statements with which the participant must agree or disagree strongly. *Id.* 44-9.

<sup>179</sup>The ICAPS helps identify elements of a study abroad experience that contribute to intercultural adjustment. Richard J. Rexeisen et al., *Study Abroad and Intercultural Development: A Longitudinal Study*, XVII *Frontiers: The Interdisciplinary J. of Study Abroad* 1, 2 (2008).

<sup>180</sup>Paige and Stallman, *supra* note 173, at 44-9.

<sup>181</sup>One such study asked U.S. college students who had participated in a year abroad program in France the open-ended question of what their main accomplishments had been, or sought self-assessment by way of self-conceptions through the completion of open phrases like "I am ..." or through a series of more directed

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icant challenge with self-assessment to measure student growth is that, in general, students tend to overestimate their self-perceptions about intercultural sensibilities.<sup>182</sup>

In some studies, the approach is ethnographic and over-time with the researcher relying on a number of observations both formal and informal, including the reading of reflective journals and weekly open-ended surveys designed to draw out student views, their intercultural adjustment and reactions to cultural differences. In such studies, researchers use open coding and pattern-matching techniques to analyze the qualitative data, and generally rely on more than one researcher assessing the data (e.g., interviews, journal entries) to aim for consistency in the observation.<sup>183</sup>

### 3. Methodologies

The types of assessments to measure the effectiveness of teaching intercultural sensibility have varied not only as to the instrument used but also as to methods used to make the evaluation. In general, many quantitative studies are conducted using a before and after, and sometimes during the program assessment of the students who participate in an educational experience such as study abroad. For example, using the IDI, students can be assessed prior to the program on their degree of intercultural sensibility, which also allows for the categorization of students according to factors that may already influence where they may score on the pre-test.<sup>184</sup> It can also help teachers and students alike gain insight about students' stages of intercultural development that can help guide and tailor the type of culturing mentoring necessary for a particular student during the program.<sup>185</sup>

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questions aimed at assessing degrees of acculturation (e.g., preference for speaking French). Nash, *supra* note 161, at 192. See also Medina-López-Portillo, *supra* note 151, at 184 (similar study design for U.S. study abroad program in Mexico). Yet another study used a survey instrument in a Spanish foreign language program that implemented service learning in order to improve students' intercultural development. The survey instrument was designed by the Spanish department based on the learning objectives identified for the program in five categories: Applied Spanish and Service Satisfaction; Cultural Understanding and Knowledge of Hispanics; Citizenship and Social Responsibility; Leadership Skills and Personal Development; and Career Impact. Nelson and Scott, *supra* note 160, at 456-460.

182. See, e.g., Altshuler et al, *supra* note 159, at 393.

183. See, e.g., Medina-López-Portillo, *supra* note 151, at 184. See also Colón-Muñiz et al., *supra* note 162, at 66-7; and Paige et al., *supra* note 163, at 258, 261-2.

184. One such study conducted by the American University of Provence of a semester or year-long French study program abroad, for example, was able to determine that students with previous study abroad or with two years of foreign language study tended to score higher in the pre-IDI test than others. This knowledge also allowed researchers to trace student's degree of progress (or even regression) based on their participation in the program being assessed. Engle & Engle., *supra* note 173, at 230. See also Vande Berg, Balkcum, Scheld, & Whalen, *supra* note 172, at 109 and Durocher, *supra* note 89, at 150-55 (describing a similar methodology of testing students three times: At entry; during the program; and post-entry).

185. The American University of Provence study, *supra*, also distinguished students who completed the study abroad program for a semester and those who stayed the full year in order to trace the progression of the

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Many studies also rely on control group of students who have not participated in an intercultural learning experience, such as those who choose to stay at home rather than study abroad.<sup>186</sup> The selection of the control group is always challenging and may put to question the validity of the results in the study. For example, it may not be possible to choose comparable students and other differences, rather than the educational experience itself, between the control group and the participants may explain the outcome in the study.<sup>187</sup> Another challenge relates to the lack of motivation of control students in particular to participate in the study; it is generally easier for students to respond when motivated by faculty at the home institution.<sup>188</sup>

Many studies are simply measuring whether participation in the educational experience in general have helped students who participated gain intercultural sensibility. These types of studies, however, fail to identify what components of the program can actually be credited with the success. This has started to change. In June 1998, for example, John and Lili Engle pioneered a very different approach to measuring the success of study-abroad programs by classifying them into eight independent variables that could significantly impact student learning.<sup>189</sup> Until then, the differentiation focused on program type (e.g., island, direct enrollment, experiential, service learning, etc.), without highlighting the differences in program design or factors that might be responsible for the success of the program. These new factors which include both programmatic and participant characteristics, include length of the program; student pre-departure second-language sensibility; required second language use, in class and out; host or home institution faculty teaching students; type of courses students take abroad (if immersion in host university or separate program enrolling solely program students or also international students); presence or absence of mentoring and guided cultural reflection; the inclusion of experiential learning opportunities; and the type of student housing.<sup>190</sup>

The most ambitious study that took all eight of the Engle factors into account is the Georgetown University Consortium Project.<sup>191</sup> This particular study, which was a three-year assessment, decided to include the students at four different institutions of higher learning – Georgetown, University of Minnesota, Rice University, and Dickinson College – to capture a diverse range of very different stu-

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IDI score over time. Not surprisingly, students who stayed for the full year showed greater progress in the IDI score than those who stayed only a semester. Jackson, *Intercultural Learning on Short-Term Sojourn*, *supra* note 217, at 235.

186. *See, e.g.*, Nash, *supra* note 161, at 194 and 196. *See also* Durocher, *supra* note 89, at 123.

187. Nash, *supra* note 161, at 194.

188. Vande Berg, *supra* note 137, at 112.

189. Comp et al., *supra* note 204, at 107-08.

190. *Id.*

191. Other studies look at some but not all of the Engle factors. *See, e.g.*, Anderson, et. al., *supra* note 197, at 460 (study seeking to ascertain whether a 4 week program in an English speaking country improves the cultural sensitivity of its participants).

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dent profiles participating in 61 different study-abroad programs or those staying at home as a control group.<sup>192</sup>

Additional programmatic factors that some studies have attempted to isolate as potentially significant to the learning of intercultural sensibility have included pre- and post programmatic interventions, such as orientations, trainings about intercultural sensibility, and post-entry programs.<sup>193</sup> As well, some studies evaluate whether trainings on intercultural sensibility as part of job training is helpful to improve human development in intercultural sensibilities.<sup>194</sup> Additional characteristic factors that some studies have assessed as predictive of intercultural sensitivity include gender, nationality, cultural background,<sup>195</sup> and academic ability.<sup>196</sup> Interestingly, several studies confirm that females tend to gain greater intercultural sensibilities when exposed to similar educational programming as compared to males.<sup>197</sup>

Another variation of some studies is to measure the long-term impact of certain educational experiences by surveying participants months or years after the completion of the program.<sup>198</sup> Other studies have used the IDI test to assess stu-

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192. Vande Berg, Blalkcum, Scheld & Whalen, *supra* note 172, at 101. The finding of this major study included 14 findings related to intercultural education: (1) that study abroad participants made significant progress in intercultural learning; (2) that females but not males increased their IDA significantly as a result of the study abroad; (3) that academic major such as humanities/social science and foreign languages showed greater gains in IDA when compared to students in other majors; (4) that prior language study is significantly associated with gains in intercultural competence; (5) that previous experience living in another culture and (6) prior study abroad was not meaningfully associated with intercultural competence gains, although these students tended to start the program with higher IDI scores; (7) that program duration is significantly associated with intercultural gains and that 13-18 weeks showed the greatest gains; (8) that teaching courses in the target language was positively associated with intercultural gains; (9) that students who enrolled in target language courses made significantly more intercultural progress than those who did not; (10) that students learn best when they study in a hybrid classroom that combines host and U.S. students as opposed to in classrooms made up entirely of host country students; (11) that students who received cultural mentoring made greater gains in intercultural competence than students who did not; (12) that students' perceptions of degrees of similarity/dissimilarity of the host culture matters to intercultural gains, with the largest gain occurring among students who perceived the other culture as dissimilar as opposed to very similar, similar, or very dissimilar; (13) that students who lived with other U.S. students or with students from the host country showed statistically significant gains in intercultural learning in contrast to those who lived with host families (although those who chose to live with host families tended to have higher IDI scores); and (14) that students who tended to spend more time with host nationals tended to show greater intercultural gains. Vande Berg, Connor-Linton & Paige, *supra* note 102, at 18-24.

193. Vande Berg, Blalkcum, Scheld & Whalen, *supra* note 172, at 112-13.

194. Altshuler et al., *supra* note 159, at 390.

195. See, e.g., *id.* at 392. See also Jackson, *Globalization*, *supra* note 172, at 351 (using the IDI on ólege English-major students who grew up in Hong Kong and spoke Cantonese as their first language).

196. Rexeisen et al., *supra* note 178, at 4 (studying, *inter alia*, whether academic ability as measured by GPA scores related to changes in intercultural development).

197. Altshuler et al., *supra* note 159, at 394. See also Vande Berg, *supra* note 137, at 20.

198. The 2002 survey conducted by the Institute for the International Education of Students, for example, surveyed more than 3,400 students (23% yield rate of response) years after participated in IES study abroad programs. The students overwhelmingly self-reported that they continued to develop their self-confidence and worldview after returning home from their study abroad experience. See Rexeisen et al., *supra* note 178, at 7-13 (finding that while college-aged U.S. students who studied in London showed short-term gains in intercultural

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dents' long term effects of study abroad programs.

### B. Measuring in the Individual Classroom

Measuring intercultural legal sensibility can also be done of individual students in the classroom through the development of rubrics. Other disciplines have already designed incredibly useful rubric instruments that law professors can adopt when assessing for intercultural legal competence through, for example, the reading of journal entries or through observations of either actual or simulated lawyering experiences (e.g., client interviews, etc.).<sup>199</sup> Appendix A includes a rubric I adapted from these other disciplines to apply to the assessment of journal entries by students engaging across cultures in field placements or through service learning opportunities.

### C. Measuring Beyond Intercultural Learning

While many academic disciplines and professions are aiming for similar gains in intercultural sensibilities, there is no question that specific fields of study and professions also have distinct learning outcome objectives. For example, foreign language programs also wish to assess language competencies and a number of assessment instruments have developed to measure, *inter alia*, the degree of language proficiency that is acquired in study abroad opportunities as compared to stay at home programs.<sup>200</sup> Few other disciplines, however, have developed similar instruments to test learning objectives beyond language and intercultural competencies but there is some progress from which law schools can benefit.

One study conducted as part of the Georgetown University Consortium Project, for example, included a third domain of discipline-specific learning objectives other than language and intercultural proficiency to assess the gains of study abroad programs. To develop such instruments, researchers held a series of workshops with faculty different disciplines, including humanities, business, engineering and science, to agree on a set of discipline-specific learning outcomes and design potential instruments to measure those gains.<sup>201</sup> At the end of the

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development, the findings raised questions about the long-term effects since IDI score declined overtime).

<sup>199</sup> A few great sample model rubrics to measure intercultural legal sensibility have been designed by the Association of American Colleges & Universities, for example. See <https://www.aacu.org/sites/default/files/files/VALUE/InterculturalKnowledge.pdf> and [http://teachingcommons.depaul.edu/Documents/aacu\\_value\\_rubrics/InterculturalKnowledge.pdf](http://teachingcommons.depaul.edu/Documents/aacu_value_rubrics/InterculturalKnowledge.pdf).

<sup>200</sup> See, e.g., Vande Berg, *supra* note 137, at 108 (describing the Simulated Oral Proficiency Interview (SOPI) and the Oral Proficiency Interview (OPI) language competencies measurements). See also R. Michael Paige and Elizabeth M. Stallman, Using Instruments in Education Abroad Outcomes Assessment in A Guide to Outcomes Assessment in Education Abroad at 137, 140-41 (Mell C. Bolen, ed. ????) (discussing, in addition to the OPI and SOPI, the Speech Act Measure (SAM) and the Language Strategies Survey (LSS) which are used to measure second language acquisition).

<sup>201</sup> Vande Berg, *supra* note 137, at 110.

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workshop, the four-disciplines agreed on the following four additional learning outcomes: The ability to function on multicultural teams; an understanding of ethical and professional responsibility; an understanding of the impact of disciplinary solutions in a global and societal context; and an ability to apply the disciplinary knowledge.<sup>202</sup> As well, the faculty consultants developed an interview guide that was field tested and consisted of three different hypothetical scenarios each of which asked students to imagine how they would response to a series of questions posed by an interviewer during a job interview or an interview for admissions to graduate school.<sup>203</sup> This is a fairly new instrument that has yet to be tested, but it reflects consensus for representatives of these various disciplines on learning outcomes and ways to measure gains in those outcomes from certain types of educational experiences.<sup>204</sup>

There are also other instruments that measure either gains in substantive knowledge or measure ethics and values in ways that could be useful to educational programs that include global and social justice engagement. The most widely adopted approaches used in the study of moral judgment are the Defining Issues Test (DIT2), which is based on an adaptation of L. Kolberg's theory of cognitive moral development, and the Ethics Position Questionnaire (EPQ), which is based on D.R. Forsyth's approach to the study of moral reasoning. Kolberg proposed a six-state developmental framework for understanding moral orientation: Pre-convention stages 1 and 2 focus more-or-less on self-centered fear of punishment; in conventional stages 3 and 4 individuals tend to make moral decisions based on rigid rules or for reasons that are influenced by peers; the principles stages 5 and 6 is when behavior is more autonomous and is controlled by universal principles of right and wrong.<sup>205</sup> The DIT2 instrument is comprised of five moral dilemmas, each of which is followed by 12 statements that participants rate according to their importance to the solution of the dilemma.<sup>206</sup> In contrast to Kolberg's more rigid model, Forsyth believes in personal variation in moral judgments and behavior that can be understood in terms of a person's preference for idealism and relativism. Forsyth's approach does not present a developmental model but relies on idealism and relativism to provide a classification of an individual's moral orientation.<sup>207</sup> The EPQ study asks students to complete three different questionnaires – demographics/psychographic questionnaire, a moral reasoning survey, and an intercultural development inventory or another test– at the beginning and at the conclusion of the study abroad experience. This approach allows the study of the relationship between intercultural sensibility and

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202. *Id.* at 111.

203. *Id.*

204. Paige & Stallman, *supra* note 190, at 50.

205. Rexeisen, et al., *supra* note 178, at 195.

206. *Id.*

207. *Id.*



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moral judgment (as measured by the EPQ study).<sup>208</sup> Another study called the “new environmental paradigm” (NEP) assesses eco-values and to measure environmental orientation. The most recent scale called the NEP2 is comprised of 15 Likert scale questions that evenly measures the resulting five hypothesized facets of ecological worldview: (1) people’s beliefs about how easily the balance of nature is upset; (2) the right of humanity to rule over the rest of nature; (3) the existence of physical limitations for growth of human populations; (4) the possibility of an eco-crisis; and (5) human exceptionalism or the belief that humans are exempt from the constraints of nature.<sup>209</sup>

#### *C. Some Preliminary Lessons to law schools from Study Design and the Results of Studies Measuring Intercultural Sensibility and Beyond*

There are a number of valuable lessons for law schools from the wealth of theory, research, and studies in other disciplines evaluating educational programs designed to teach students intercultural sensibility and other values of intercultural engagement, including ethics. The first is the need for law school faculty to come together to establish common learning outcomes and objectives in a more systematic way across a number of teaching methodologies (clinics, field placements, service learning, and study abroad) to prepare lawyers who will service different types of clients in different types of settings. Of course, this effort has already begun. This article as well as many others cited in Part II of this article written by legal educators have already theorized on the desired skills, values, attitudes and practices associated with good intercultural lawyering. A more recent book chapter co-authored by Prof. Andi Curcio also starts to help legal educators think about developing desired outcomes in the area of educating intercultural competent lawyers whether as a community of educators or as individuals.<sup>210</sup> Professor Curcio, for example, offers a series of proposed learning outcomes in intercultural lawyering training categorized in terms of knowledge, attitudes, and skills.<sup>211</sup>

The second lesson is that law schools need to start to measure the effectiveness of educational programs designed to help law students develop into the type of inter-culturally competent lawyer we have identified. The great news is that law schools can rely on pre-existing instruments already tested for validity and reliability in other disciplines. The IDI, for example, as well as some of the ethics assessments have applicability in all academic fields. As well, law schools can learn significantly from best practices in the type of methodology that has devel-

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208. *Id.* at 196.

209. *Id.* at 197-98.

210. Andrea A. Curcio, Nisha Dogra, & Teresa Ward, *Using Existing Frameworks to Develop Ways to Teach and Measure Law Students’ Cultural Competence in THE LEGAL PROFESSION: EDUCATION AND ETHICS IN PRACTICE* (DAVID A. FRENKEL ED., 2013).

211. *Id.*

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oped in other disciplines to measure the effectiveness of educational programs in teaching intercultural sensibility. For example, law schools individually should assess their own programming, whether by isolating specific programs or by testing the entire curriculum's effectiveness in teaching students intercultural sensibility as part of the law school program. This would mean testing all incoming students for their intercultural sensibility at admissions and then again at graduation, at a minimum. Ideally, as well, students could be tested as part of their participation in programs offered at the school to help schools identify the most effective programs to teach intercultural sensibility in the context of law schools (i.e., simulations, clinics, field placements, service learning). We can also adopt the best practices that other disciplines have adopted through their own testing on the effectiveness of educational programs that are comparable to ours. Ideally, law schools should partner to do joint projects to assess programming to improve the data and learn from each other.

We also, as law faculty, need to consider adapting or developing our own instruments that respond to the identified particular intercultural or related values associated with intercultural lawyering. Here, too, there has been some progress. Professor Curcio partnered with social scientists to develop a 29-question survey instrument designed specifically for law students based on previously identified learning outcomes and conducted a pilot study of the instrument to test it for validity and reliability.<sup>212</sup> The study sought information about students' knowledge of how culture affects the lawyering process, their attitudes toward cultural diversity education, and their awareness of how their cultural background affects the ways in which they, and others, communicate and interact. The survey also asked demographic questions and contained a series of open ended questions seeking information about the survey design as well as students' thoughts about the role culture plays in their world-view and interactions.<sup>213</sup> After some revisions, this survey instrument has already been administered to incoming and upper level law students at two law schools with some promising results about the effectiveness of these two law schools in teaching intercultural sensibilities. For example, in general, upper level students revealed greater awareness on how culture influenced lawyering and legal decision-making.<sup>214</sup> The study, however, did not identify which aspects of the educational experience could be credited with these gains. The results, as well, isolated certain demographic factors (such as gender and ethnicity) significant to intercultural sensibilities. The study, for example, revealed that minorities and women in law school tend to be more self-aware of how culture influences their views of the U.S. legal system, as compared to white students.<sup>215</sup> The authors acknowledge several limitations to this initial study, in-

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212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

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cluding the unreliability of self-reporting;<sup>216</sup> however, it is promising and exciting that legal educators are partnering with social scientists to conduct and develop instruments to be applied in the context of legal education.

A third important lesson for law schools relates our preparedness as legal educators to engage in the teaching of intercultural competencies. As law schools increase (or seek to increase) the multicultural and class diversity in the enrollment of law students into their J.D. or L.L.M. programs,<sup>217</sup> the pluralistic classroom demands approaches to teaching that recognize and are sensitive to difference not only in what we teach but how we teach law. As well, as law schools shift to consider more seriously the inclusion of intercultural legal education for all law students as an essential component of legal training in response to shifting demographics in the U.S.<sup>218</sup> or the role of globalization in transforming the practice of law, then law schools must take seriously whether the educators are ready to practice intercultural sensibility in the traditional law school classroom or to teach intercultural competencies in programs with that stated purpose. The results may surprise us. In 2008, Kenneth Cushner published the results of a few recent studies testing the intercultural competency of mostly elementary school teachers in the U.S. and Hong Kong relying on the IDI instrument which reveal low levels of intercultural sensibility among the overwhelming majority of teachers.<sup>219</sup> Cushner suggests that the lack of diversity among teachers in the samples contributed to the low scores given the influence that early socialization has on the development of ethnic and cultural identity.<sup>220</sup> Law schools have made some progress in diversifying law faculty,<sup>221</sup> but it has not on offering intercultural training to educators. This may also need to change.

A fourth lesson may relate to how and whether a law school's ability to assess intercultural sensibility accurately should bear on admissions decisions. In this article I have argued in favor of educating all students admitted to law school in intercultural competencies irrespective of their developmental stage. Once admitted, law schools need to provide a curriculum that is responsible to the needs of the profession and the needs of students. Levels of intercultural sensibility

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216. *Id.*

217. Matt Leichter, 'White Flight' Hits Nations Law Schools, THE AMERICAN LAWYER (Feb. 27, 2014) <http://www.americanlawyer.com/id=1202629911659/White-Flight'-Hits-Nation's-Law-Schools?slreturn=20140127143114>

218. *Estimates of the Components of Resident Population Change by Race and Hispanic Origin for the United States: April 1, 2010 to July 1, 2012*, UNITED STATES CENSUS BUREAU (Feb. 27, 2014) <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

219. Cushner, *supra* note 95, at 167 (reporting, inter alia, on the Mahon (2003) study of 155 teachers in the U.S. Midwest in which all tested at minimization levels and below; the Grossman and Yuen (2006) study of 107 teachers in Hong Kong in which 55% of teachers were in the Denial/Defense or Reversal stages, and 43% in Minimizations, with only 2% in the Acceptance and Adaptation stages).

220. *Id.* at 164-66.

221. See, e.g., Chris Chambers and Sarah E. Redfield, *A Teacher Who Looks Like Me*, 27 J. CIV. RTS. & ECON. DEVL. 105 (2013).

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should not, in my view, impede access to law schools. Intercultural sensibility is teachable and students do make progress from thoughtful educational programming designed to teach intercultural competency. A different issue, however, is whether high levels of intercultural sensibility should weigh in favor of students seeking admission into law schools and the profession. Currently, law school admissions decisions are narrowly focused on measuring a narrow set of skills such as reading, writing, and analysis as measured by the LSAT or GPA. Many law schools do adopt holistic admissions policies and consider other factors such as demonstrated leadership, overcoming hardship, and work experience, to name a few. We have not, however, measure highly desirable skills, such as intercultural sensibility, as part of admissions decisions. This is at least something worth exploring.

#### IV. CONCLUSION

My purpose for writing this article has been to welcome a conversation about the meaning of a law school's responsibilities to educate inter-culturally competent lawyers and the implications of this definition on how we teach our students. My hope is also that it will provoke reflection among law faculty and law schools about how we can improve and learn from other disciplines that have been thinking systematically through these issues for much longer than we have. Another goal is to encourage us to come together as legal educators and in partnerships with other disciplines to design joint studies of our respective educational programming. We owe it to our students and to the profession.



**APPENDIX A:**  
**JOURNALING AND INTERCULTURAL KNOWLEDGE AND EFFECTIVENESS**  
**A SAMPLE RUBRIC**

		<b>BEGINNING</b> <b>1</b>	<b>DEVELOPING</b> <b>2</b>	<b>CONVERSANT</b> <b>3</b>	<b>ADVANCED</b> <b>4</b>
<b>K N O W L E D G E</b>	<b>Cultural self-awareness</b>	<i>Demonstrates little or no awareness</i> of one’s own assumptions, judgments and/or biases about self and others	<i>Begins to identify</i> own assumptions, judgments and/or biases about self and others	<i>Articulates the influence of</i> one’s own assumptions, judgments and/or biases during interactions with one’s own culture and the culture of others	<i>Evaluates</i> one’s own assumptions, judgements and/or biases about one’s own culture and the culture of others <i>Demonstrates ability to assess the impact of</i> assumptions, judgements, and/or biases related to one’s own and other cultures
	<b>Cultural Worldview Frameworks</b>	<i>Demonstrates surface understanding</i> of the complexity of elements important to members of another culture in relation to its history, values, politics, communication styles, economy, or beliefs and practices.	<i>Demonstrates partial understanding</i> of the complexity of elements important to members of another culture in relation to its history, values, politics, communication styles, economy, or beliefs and practices.	<i>Demonstrates adequate understanding</i> of the complexity of elements important to members of another culture in relation to its history, values, politics, communication styles, economy, or beliefs and practices.	<i>Demonstrates sophisticated understanding</i> of the complexity of elements important to members of another culture in relation to its history, values, politics, communication styles, economy, or beliefs and practices.

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<b>A T T I T U D E S</b>	<b>Curiosity</b>	<p><i>Demonstrates minimal interest in learning more about other cultures.</i></p>	<p><i>Asks simple or surface questions about other cultures.</i></p>	<p><i>Asks deeper questions about other cultures and seeks out answers to these questions.</i></p>	<p><i>Asks complex questions about other cultures, seeks out and articulates answers to these questions that reflect multiple cultural perspectives.</i></p>
	<b>Openness</b>	<p><i>Shows minimal receptivity to interacting with culturally different others. Has difficulty suspending any judgment in her/his responses to culturally different others, and is unaware of own judgment.</i></p>	<p><i>Reveals openness to most, if not all, interactions with culturally different others. Has difficulty suspending any judgment in her/his interactions with culturally different others, but is aware of own judgment and expresses a willingness to change.</i></p>	<p><i>Begins to suspend judgment in valuing her/his interactions with culturally different others.</i></p>	<p><i>Suspends judgment in valuing her/his interactions with culturally different others.</i></p>

