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# Transnational Courses and Transnational Components in Traditional Courses: Does it Work in any Legal System, or in any Course?

Prof. Frans Vanistendael\*

## I. The Basic Conditions for Transnational Courses or Components

Transnational courses or transnational components work only under a certain set of conditions:

- A. The purpose of the course is to give an overview, to give an insight in policy issues, to analyse the structure of a certain area of law, or to educate lawyers to look for solutions on an independent basis in other legal systems. If the purpose of the course is to give precise and technical training in a narrow area of law (such as the reorganization regulations of the federal tax code) transnational components are not in order.
  
- B. The language in which the course is taught and the language of the transnational component is also important. Both may be incompatible. There are still large areas of law of many legal systems of which the legal concepts have not yet been translated. Many parts of Russian and Chinese law and many concepts of these legal systems have not yet been translated into languages like Swedish, Portuguese or Dutch. Using concepts of these other systems will add to confusion rather than to clarity. (Ex. The translation of cooperative society and company in Russian).

The use of English may be deceptive, because of the impression that we now have enough material to illustrate most legal problems with

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foreign examples in the English language. Nothing is further from the truth. The most successful areas for transnational components are those areas in which an effective international legal practice is developing: international contract law, international arbitration, international taxation and international law “tout court,” or international communication technology law.

- C. The transnational components used to illustrate a point must be relevant. Many legal systems are not very interesting to outsiders. Who is interested in Belgian, Armenian or Icelandic family law? The transnational components should be borrowed from a system that is widely used (ex. Common Law) or that representative of a very important legal tradition (the French Code Civil, Roman-Dutch law in South-Africa, or certain areas of Swiss law as a hybrid between the French and German legal tradition).

Conclusion: no transnational components please, when a teach the Belgian traffic regulations in a school of police officers in Brussels. There are many more situations in which transnational components are of no use at all.

## II. Transnational Courses

A transnational course or a generic course is at best an introductory raising the basic issues in a field of law. Courses at an advanced stage are less apt for purely transnational courses because they tend to go into the more complex legal rules and concepts, unless these advanced courses are set up as pure policy courses, because then the policy comparison becomes interesting, which often translates into policy choices for specific legal structures. To take my own field, taxation, such a course raises the following questions:

- What and who are we going to tax if we want to set up a tax system?
- Why is it that most countries use the same taxes: income tax, taxes on consumption (VAT, sales taxes, consumption taxes), excises, gift and inheritance taxes, taxes on real estate, import and export duties?
- What is the difference between taxes and social security charges?
- If we are setting up an income tax, do we tax individuals and legal entities?
- What are the basic concepts of income and how do translate into different categories of income? Should we distinguish

- between sources of income?
- What is the relationship between personal income tax and corporate income tax, should they be integrated or separate systems?
  - What is the unit of taxation, the individual or the family unit? How can we make taxation family neutral?
  - What is the relationship between social contributions and taxation?
  - How do we deal with social benefits, should they be included in the tax base, or not?
  - What is the international scope of the tax jurisdiction? Do we tax only within the national territorial limits, do we tax worldwide, do we tax on the basis of nationality or residence of the beneficiary of the income, or on the basis of the location of the source of income.
  - What should be the basis to distribute national taxing power at the international level?
  - If we have double taxation at the international level, how do we reduce or eliminate it? Do we need to eliminate double non taxation?
  - At what rate do we tax, a flat rate or a progressive rate? At what rate do we tax companies?
  - Do we tax capital gains, and if so do we tax them like any other sort of recurrent income?
  - Is there a relationship between taxation of capital gains and gift or inheritance taxes?
  - How do we tax consumption? VAT , sales taxes other form of consumption taxes. Do we tax consumption at origin (basic excises) or at the stage of final consumption (retail sales tax)?
  - What is the role of customs duties?

There are many more basic questions to be answered in such course. But from the list it should be clear that all the answers to these questions can be illustrated with a wealth of examples taken from foreign tax systems. If we explain why these different choices have been made in these foreign tax system, we can better explain (or criticize) the choice which we have been making in our own system.

The important consequence of such an approach is that graduates from such a course will not be surprised that the national solution is not the only road to legal salvation. They will be open to reforms and improvements, because they have experienced in their course that depending on the policy objectives other systems may work as well.

### III. Transnational Components

Transnational components can be useful in advanced courses, when the purpose of the course is not narrow technical training. In a merger and acquisitions course for instance it may be useful and fruitful to compare for instance merger and acquisition techniques under U.S. company law and the European merger directive. In such a course students will of course want to know what the basic and even the sophisticated U.S. rules are, but they may benefit from comparisons with the European directives. The advantage of such a course is that it can be set up in accordance with the framework of the national system and from time to time references to the other systems can be made.

### IV. Materials

Apart from the conditions mentioned above adequate materials are the key to success in transnational courses. Only very few colleagues have such wide a view and understand that many languages, that they can translate successfully so many foreign legal systems into their own. The two books that I know in the field of taxation are two co-productions with U.S. editors and many foreign co-authors. Materials for true transnational courses are always a collective transnational enterprise. Without adequate materials transnational courses tend to degenerate into amateur excursions.

Transnational components into a domestic course are easier to achieve, because the scope of the subjects is much narrower. It requires a good understanding of foreign systems, but some goodwill from foreign colleagues and a good copying machine make for adequate materials of specific subjects. To be realistic this is the way one should start in the hope that by the end of his career he will be able to edit and write (partially) the transnational course.