

UIC School of Law

UIC Law Open Access Repository

UIC Law Open Access Faculty Scholarship

1-1-2009

Embracing Diversity through a Multicultural Approach to Legal Education, 1 Charlotte L. Rev. 223 (2009)

Julie M. Spanbauer

John Marshall Law School, jspanbau@uic.edu

Katerina P. Lewinbuk

Follow this and additional works at: <https://repository.law.uic.edu/facpubs>



Part of the [Law and Race Commons](#), [Legal Education Commons](#), [Legal Profession Commons](#), and the [Legal Writing and Research Commons](#)

Recommended Citation

Julie M. Spanbauer & Katerina P. Lewinbuk, Embracing Diversity through a Multicultural Approach to Legal Education, 1 Charlotte L. Rev. 223 (2009).

<https://repository.law.uic.edu/facpubs/56>

This Article is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Open Access Faculty Scholarship by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

EMBRACING DIVERSITY THROUGH A MULTICULTURAL APPROACH TO LEGAL EDUCATION

Julie M. Spanbauer*
and Katerina P. Lewinbuk**

*If we are to achieve a richer culture, rich in contrasting values,
we must recognize the whole gamut of human potentialities,
and so we weave a less arbitrary social fabric, one in which
each diverse human gift will find a fitting place.****

INTRODUCTION

As a result of globalization,¹ the English language is fast becoming “a global lingua franca,”² and is in increased demand by foreign lawyers for U.S. LL.M or J.D. degrees.³ On a superficial level, U.S.

* Professor of Law, The John Marshall Law School, Chicago.

** Associate Professor of Law, South Texas College of Law. The authors wish to thank Georgetown Law Center and Professor Craig Hoffman for supporting this project and for hosting the Global Legal Skills IV Conference at which this topic was presented. The authors would also like to thank Glen Weissenberger, Professor, DePaul University College of Law, and Carole Silver, Visiting Professor and Executive Director, Center for the Study of the Legal Profession, Georgetown Law Center, for their thoughtful comments on an earlier draft of this article. Professor Lewinbuk wishes to thank her research assistants, Gisele Davila and Kate Marinacci.

*** MARGARET MEAD, *SEX AND TEMPERAMENT IN THREE PRIMITIVE SOCIETIES* (1935).

1. Globalization has been defined as “the closer integration of the countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) people across borders.” JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 9 (W.W. Norton & Company 2002). For other definitions of globalization, see Barbara Stark, *Theories of Poverty / The Poverty of Theory*, 2009 *BYU L. REV.* 381, 405 n.124 (2009).

2. Cristina M. Rodriguez, *Beyond Citizenship: American Citizenship After Globalization*, 103 *AM. J. INT’L L.* 180, 185 (2008) (book review). English is frequently described “as the lingua franca of international commercial activity.” Asa Markel, *American, English and Japanese Warranty Law Compared: Should the U.S. Reconsider Her Article 95 Declaration to the CISG?*, 21 *PACE INT’L L. REV.* 163, 204 n.198 (2009).

3. A small number of international students enroll in U.S. J.D. programs—approximately 5% of J.D. students are international students, but this number is increasing. Julie M. Spanbauer, *Lost in Translation in the Law School Classroom: Assessing Required Coursework in LL.M. Programs for International Students*, 35 *INT’L J. LEGAL INFO.* 396, 397 n.5. (citing David E. Van Zandt, *Globalization Strategies for Legal Education*, 36 *U. TOL. L. REV.* 213, 217 (2004)). The majority of international students enroll in LL.M. programs. *Id.* at 398; see also Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 *CARDOZO J. INT’L & COMP. L.* 143 (2006). The ABA has estimated that 50% of all students enrolled in LL.M. programs are international students. And that “[i]n the past few years, there has been a large increase in the number of graduates from

popular culture is similarly becoming “a global popular culture.”⁴ Although the U.S. exports a uniform language and popular culture, recent U.S. Census Bureau statistics establish that the U.S. is, in reality, a multicultural society.⁵ In fact, there are more than thirty-seven million foreign-born U.S. residents and more than fifty-five million U.S. residents who speak a language other than English in their homes.⁶

The law school classroom is similarly multicultural.⁷ More than 20% of the J.D. student population consists of students who are members of ethnic or racial minority groups.⁸ Research documents that although many of these students do not speak English as a second language, they often experience feelings of isolation as they prepare to enter a largely white profession. This is often due to the fact that they are not a part of the dominant culture and are instead surrounded by a largely white student body, with few faculty role models.⁹

schools located outside the United States enrolled in advanced degree programs (such as the LL.M.)” American Bar Association, A Note to Graduates of Law Schools Located Outside the United States: Degrees Other Than a J.D. and Bar Admissions, <http://www.abanet.org/legaled/postjtdprograms/postjtdc.html> (last visited Nov. 4, 2009).

4. Rodriguez, *supra* note 2, at 185. Popular culture has been defined “as the commodities and experiences produced by the culture industry for mass consumption.” David Ray Papke, *12 Angry Men is not an Archetype: Reflections on the Jury in Contemporary Popular Culture*, 82 CHI.-KENT L. REV. 735, 736 (2007). “Varieties of American popular culture are available almost everywhere on the planet, and consumers in the majority of foreign countries are familiar with American movie stars, cartoon characters, and pop singers.” *Id.*

5. Sanford Levinson, *Thomas Ruffin and the Politics of Public Honor: Political Change and the “Creative Destruction” of Public Space*, 87 N.C. L. REV. 673, 685 (2009). “Another constant of almost all contemporary societies, including the United States, is that they are becoming ever more truly multicultural, which means by definition the inclusion of many more groups within a social order.” *Id.*

6. Barbara M.G. Lynn, *The Unique Challenges of Cross-Cultural Justice*, 92 JUDICATURE 190, 190 (2009) (citing U.S. Census Bureau, 2006 American Community Survey, <http://factfinder.census.gov> (last visited Nov. 4, 2009)).

7. The most recent ABA statistics for the academic year, 2008-2009, reveal that 21.9% of all students enrolled in J.D. programs are members of racial and ethnic minority groups. American Bar Association, Legal Education Statistics, <http://www.abanet.org/legaled/statistics/stats.html> (select “First Year J.D. and Total J.D. Minority Enrollment [PDF]”) (last visited Nov. 4, 2009).

8. Eli Wald, *The Rise and Fall of the Wasp and Jewish Law Firms*, 60 STAN. L. REV. 1803, 1857 (2008) (quoting David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity Is Good for Business”: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1584 (2004)).

9. Spanbauer, *supra* note 3, at 443 n.194. It is far from unusual to find students who speak English as a second language (ESL) in the J.D. classroom. SOURCEBOOK ON LEGAL WRITING PROGRAMS 202-03 (2d ed. Section of Legal Educ. & Admission to the Bar 2006). It is critical to acknowledge all of the cultural values represented in the law school classroom and thereby validate differing cultural perspectives. Rachel F. Moran, *Bilingual Education as a Status Conflict*, 75 CAL. L. REV. 321 (1987).

It is, therefore, not surprising that just beneath the surface of this superficially unified U.S. culture and emerging common global culture lie deep cultural differences.¹⁰ These cultural differences occur because language and culture are socially and reciprocally constructed, and language cannot be understood in isolation from culture.¹¹ Law too “is so deeply embedded in the particularities of each culture that carving it out as a separate domain and only later making note of its cultural connections distorts the nature of both law and culture.”¹²

For decades, anthropologists, psychologists, and sociologists have conducted research on the acculturation process.¹³ The first part of this article introduces into legal scholarship for the first time this body of research on “biculturalism.”¹⁴ This social science literature defines a bicultural individual as someone who has internalized more than one culture and language due to migration, mixed cultural heritage, or frequent travel to—or living for a time in—a different culture.¹⁵ The research in this area indicates that individu-

10. Rodriguez, *supra* note 2, at 185.

It is these historical points of reference, in particular, through which our core values have been contested and instantiated—the Revolution, west-ward expansion, the anti-slavery movement and free labor ideology, Gettysburg and Antietam, Jim Crow, Selma and the March on Washington—that give American identity a substantive content. Robust individualism, a customer-is-always-right mentality, the suspicion of government, and a peculiar-to-outsiders conception of race relations and civil rights drive our political culture.

Id.

11. Researchers in the field of contrastive rhetoric have long asserted that the link between language and culture is reciprocally and socially constructed. The link or connection is one of interdependence: “language reflects and affects culture” as culture reflects and affects language; just as “language serves as the construct that aids [our] cultural development” as we learn to communicate in our first language, the cultural context associated with the second language is an integral part of mastering that language.

Spanbauer, *supra* note 3, at 415 (quoting Alvino E. Fantini, *Language: Its Cultural and Intercultural Dimensions*, in *NEW WAYS IN TEACHING CULTURE* 3, 5 (Alvino E. Fantini, ed., TESOL 1997); see also Jill J. Ramsfield, *Is Logic Culturally Based? A Contrastive International Approach to the U.S. Law Classroom*, 47 *J. LEGAL EDUC.* 157, 160-61 n.13 (1997) (tracing the concept, “contrastive rhetoric,” to Robert B. Kaplan’s article *Cultural Thought Patterns in Inter-Cultural Education*, 16 *LANGUAGE LEARNING* 1 (1966))).

12. LAWRENCE ROSEN, *LAW AS CULTURE: AN INVITATION* xii (Princeton U. P. 2006).

13. Sylvia Xiaohua Chen, Verónica Benet-Martínez & Michael Harris Bond, *Bicultural Identity, Bilingualism, and Psychological Adjustment in Multicultural Societies: Immigration-Based and Globalization-Based Acculturation*, 76 *J. OF PERSONALITY* 803, 804 (2008) (citing research on acculturation dating back to 1936).

14. See *infra* notes 27–57 and accompanying text. Biculturalism describes “the socio-cognitive processes involved in the development and maintenance of a bicultural identity.” Verónica Benet-Martínez, Fiona Lee & Janxin Leu, *Biculturalism and Cognitive Complexity: Expertise in Cultural Representations*, 37 *J. CROSS-CULTURAL PSYCH.* 386, 387 (2006). For a definition of bicultural identity, see *infra* note 15 and accompanying text.

15. Ying-yi Hong, Michael W. Morris, Chi-yue Chiu & Verónica Benet-Martínez, *Multicultural Minds: A Dynamic Constructivist Approach to Culture and Cognition*, 55 *AM.*

als who adopt an integration strategy¹⁶ as they navigate a new culture and language are more likely to identify with both cultures because they perceive the two cultural identities as existing harmoniously.¹⁷ Acculturating individuals who achieve a high degree of bicultural identity integration (BII)¹⁸ are more adept or fluid in moving from one cultural interpretive frame of reference to another in response to social cues, a process known as cultural frame-switching (CFS).¹⁹ Thus, this research demonstrates the need for law school professors to provide a cultural context so that students are able to integrate the new cultural identity associated with learning law in a U.S. law school classroom with the cultural identity they bring to the classroom.²⁰

Part II of this article identifies a portion or segment of the available cultural research that can be utilized to identify American cultural values for exploration in the law school classroom.²¹ Part III of this article takes the next step and provides various classroom

PSYCH. 709, 710 (2000); Aurelia Mok, Michael W. Morris, Verónica Benet-Martínez & Zahide Karakitapoglu-Aygun, *Embracing American Culture: Structures of Social Identity and Social Networks Among First-Generation Biculturals*, 38 J. CROSS-CULTURAL PSYCH. 629, 629 (2007); Angela-Minh Tu D. Nguyen & Verónica Benet-Martínez, *Biculturalism Unpacked: Components, Measurement, Individual Differences, and Outcomes*, 1 SOCIAL AND PERSONALITY PSYCH. COMPASS 101, 102 (November 2007). In order for an individual to be bicultural, both cultures must be “alive inside of” the individual. Hong et al., *supra*, at 710.

16. Individuals high on BII tend to see themselves as part of a “hyphenated culture (e.g., Mexican-American) or even part of a combined ‘third’ emerging culture (e.g., Chicano culture), and find it easy to integrate both cultures in their everyday lives.” Daniel R. Miramontez, Verónica Benet-Martínez, & Angela-Minhtu D. Nguyen, *Bicultural Identity and Self/Group Personality Perceptions*, 7 SELF AND IDENTITY 430 (2008).

17. Nguyen & Benet-Martínez, *supra* note 15, at 106.

18. Acculturation involves “the process of learning or adapting to a new culture.” Nguyen & Benet-Martínez, *supra* note 15, at 102. Bicultural individuals “vary on a continuum called bicultural identity integration (BII), or the degree to which ethnic and mainstream cultural identities are perceived as compatible or in opposition to each other.” Chi-Ying Cheng, Fiona Lee & Verónica Benet-Martínez, *Assimilation and Contrast Effects in Cultural Frame Switching: Bicultural Identity Integration and Valence of Cultural Cues*, 37 J. CROSS-CULTURAL PSYCH. 742, 743 (2006). See also Verónica Benet-Martínez, Janxin Leu, Fiona Lee, & Michael W. Morris, *Negotiating Biculturalism: Cultural Frame Switching in Biculturals with Oppositional versus Compatible Cultural Identities*, 33 J. CROSS-CULTURAL PSYCH. 492, 493 (2002). See also Nairán Ramírez-Esparza, Samuel D. Gosling, Verónica Benet-Martínez, Jeffrey P. Potter & James W. Pennebaker, *Do bilinguals have two personalities? A special case of cultural frame switching*, 40 J. RES. PERSONALITY 99 (2004). Individuals with a high degree of BII “identify with both cultures, even if not at the same level. For example, when asked to describe if they are ethnic or American, these biculturals tend to say “I am both” or “I am Mexican (or African, or Asian) American.” Benet-Martínez et al., *supra*, at 495.

19. Benet-Martínez et al., *supra* note 18, at 493.

20. See Hong et al., *supra* note 15, at 718 (concluding that “[p]eople desiring to acculturate quickly surround themselves with symbols and situations that prime the meaning system of the host culture” and people “desiring to maintain the accessibility of constructs from their home culture surround themselves with stimuli priming that culture”).

21. See *infra* notes 58-88 and accompanying text.

applications or teaching techniques by which identified cultural values and beliefs can be contextualized through, for example, storytelling techniques applied to literature,²² judicial opinions,²³ and the stories of other participants in the dispute resolution process.²⁴ In the international classroom, these techniques can be applied comparatively to emphasize underlying political and social cultural differences.²⁵ In the J.D. classroom, culture can similarly be expressly addressed and thereby brought to the “front” of the law school classroom for those students who speak a language other than English in the home or who do not identify with the dominant political and social culture, and for all entering J.D. students who are immersing themselves in a new culture and language—U.S. legal culture and the language of U.S. law.²⁶

22. See *infra* notes 95-132 and accompanying text.

23. See *infra* notes 133-46 and accompanying text.

24. See *infra* notes 147-50 and accompanying text. Stories can be fiction-based narratives designed “to present compelling narrative discussions of issues in a life-like contextualized setting.” Magee, *infra* note 60, at 275 (citing the fiction-based approach of Richard Delgado and Derrick Bell). Another example of a fiction-based approach is designed “to provide the reader with a deeper insight into the human dimension of the law’s development,” and “to present the subtle non-linear qualities of legal reasoning at the point of a judicial determination.” Glen Weissenberger, *Judge Wirk Confronts Mr. Hillmon: A Narrative Having Something to do With the Law of Evidence*, 81 B.U. L. REV. 707, 709 (2001) (presenting a fictional judge’s resolution of an evidentiary issue). Stories can also take the form of first person, “true story” narratives, which are anecdotal in nature. Magee, *infra* note 60, at 276.

25. Ramsfield, *supra* note 11, at 161-62. For example, New Zealand is on the front lines of delivering bicultural education to its law students. See Nan Seuffert, Stephanie Milroy & Kura Boyd, *Developing and Teaching an Introduction to Law in Context: Surrogacy and Baby M*, 1 WAIKATO L. REV. 1 (1993), available at <http://www.waikato.ac.nz/law/wlr/1993/article2-seuffert.html> (last visited Nov. 4, 2009). Making biculturalism an important part of its curriculum, faculty at Te Peringa, acknowledged how difficult it was to create and adopt the new vision to methodology, topics, and materials. *Id.* (“It is much easier to say what is wrong with the old (why it is not bicultural) than to create the new, because one is stepping into the unknown.”). In fact, the Waikato University School of Law was specially created to fulfill the need for legal education in New Zealand to reflect the “needs and concerns of people in a bicultural society.” See Jacquelin MacKinnon & Kinda Te Aho, *Delivering a Bicultural Legal Education: Reflections on Classroom Experiences*, 12 WAIKATO L. REV. 63 (2004). The school adopted biculturalism as one of its founding goals. *Id.* Similar to Te Peringa, Waikato’s faculty also noted how difficult the task was, observing that “biculturalism means an ongoing challenge requiring one to change one’s own ideas, attitudes and behavior, and corresponding changes in the institutions which seek to foster biculturalism.” *Id.*

26. Spanbauer, *supra* note 3, at 443-44 n.197 (discussing the painful transition entering J.D. students undergo). See also Jessie C. Grearson, *Teaching the Transitions*, 4 LEGAL WRITING: J. LEGAL WRITING INST. 57 (1998); Lisa Eichhorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 ARIZ. L. REV. 105, 126 (1998). For examples of classroom techniques designed to raise “issues in culturally diverse contexts in the law school classroom,” see Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 LA RAZA L.J. 140, 140 (1995).

I. SOCIAL SCIENCE RESEARCH OF BICULTURAL INDIVIDUALS

Although individuals can become multicultural and multilingual, this article adopts the label “bicultural” as it is used in the literature to refer to the process by which all individuals acquire a new language and its corresponding culture regardless of whether the new language and culture is a second, third, or multiple language and culture.²⁷ An appreciation of the research on biculturalism requires an understanding of its underlying assumptions, several of which can be traced to Robert B. Kaplan’s pioneering work in the 1960s in which he introduced a new concept—contrastive rhetoric—which has since been relabeled “cultural rhetorical preferences.”²⁸ The premise underlying this concept is that “analytical paradigms are based in culture, that there is no inherent logic in thought, but that cultures create their own logic in problem-solving. If logic is culture-based, Kaplan reasoned, then educators must consider and contrast those bases in introducing U.S. thought patterns” when teaching individuals to understand and to communicate in English.²⁹

Other experts soon focused their efforts on developing a body of comparative research in the areas of linguistics, “reading theory, composition theory, and rhetoric.”³⁰ Building on Kaplan’s work, these researchers focused on the interdependence of language and culture and the corresponding impact of language and culture on

27. For a more detailed definition of biculturalism, see *supra* note 14. For a discussion of numerous assumptions underlying biculturalism research, see *infra* notes 27–37 and accompanying text.

28. See Ramsfield, *supra* note 11, at 160-61, 169. See also ULLA CONNOR, CONTRASTIVE RHETORIC: CROSS-CULTURAL ASPECTS OF SECOND-LANGUAGE WRITING 5 (Cambridge U. P. 1996) (describing Kaplan’s research at this time as “the first serious attempt by applied linguists in the United States to explain second language writing”); YASUKO KANNO, NEGOTIATING BILINGUAL AND BICULTURAL IDENTITIES: JAPANESE RETURNEES BETWEEN TWO WORLDS 2 (2003) (exploring “how young ESL learners first encounter another language and culture, and go on to mature into bilingual and bicultural young adults”).

29. Ramsfield, *supra* note 11, at 160-61.

30. Philippa J. Benson & Peggy Heidish, *The ESL Technical Expert: Writing Processes and Classroom Practices*, in *ACADEMIC WRITING IN A SECOND LANGUAGE: ESSAYS ON RESEARCH AND PEDAGOGY* 313, 315 (Diane Belcher & George Braine eds., Ablex Publ’g Corp. 1995). “Anthropologists, psychologists, and researchers [sic] in the field of education have also conducted empirical research in this area of ‘learning literacy and the effects of literacy on learners’ thinking as well as social behavior.” Spanbauer, *supra* note 3, at 413 n.72 (quoting CONNOR, *supra* note 28, at 20).

learning,³¹ thinking,³² writing,³³ and even classroom culture.³⁴ Inherent in this social constructivist view of culture is the corresponding assumption that culture cannot exist independent of language and that language, in turn, cannot exist independent of any particular culture.³⁵ Culture is also not static and is therefore defined as involving a process by which meaning is “produced, performed, contested, or transformed” through “any set of shared, signifying practices;” law or legal culture is but one very powerful “institutional cultural actor whose diverse agents (legislators, judges, civil servants, citizens) order and reorder meanings.”³⁶ Although cultural meaning is frequently contested and conflicting, a dominant or pervasive cultural belief system can and does exist within any given political, social, and legal order at any particular point in time.³⁷ These dominant cultural themes will, in turn, affect and be affected by the type of political and legal system that exists in a given culture, its formal and informal processes of dispute resolution, and cultural attitudes toward the legal system and “disputing.”³⁸

31. R.R. JORDAN, *ENGLISH FOR ACADEMIC PURPOSES: A GUIDE AND RESEARCH BOOK FOR TEACHERS* 95 (Cambridge U. P. 1997). Individual personality variables also influence learning style and, in turn, learning strategies. *Id.*

32. “[T]hought patterns . . . differ from culture to culture due, in part, to the structure of language within each culture” Spanbauer, *supra* note 3, at 418 n.93.

33. See Spanbauer, *supra* note 3, at 401 n.21. “For any writer, international or not, the initiation into the U.S. legal discourse community is complex and challenging. The initiation involves acquired responses to conventions created by U.S. scholars and lawyers, to new language, and to expected behaviors.” *Id.* (quoting Ramsfield, *supra* note 11, at 164).

34. JORDAN, *supra* note 31, at 98. For purposes of the classroom,

[a]cademic culture consists of a shared experience and outlook with regard to the educational system, the subject or discipline, and the conventions associated with it. These conventions may, for example, take the form of the respective roles of student and lecturer/tutor/supervisor, etc. and their customary behavior; or conventions attached to academic writing, with its structuring and referencing system.

Id. “One of the communicative environments most unfamiliar to many ESL students when they arrive to study in the United States is, in fact, the American classroom.” Spanbauer, *supra* note 3, at 419-20 (quoting Benson & Heidish, *supra* note 30, at 325). For a discussion of educational practices throughout the world, see LESLIE KOSEL ECKSTEIN ET AL., *UNDERSTANDING YOUR INTERNATIONAL STUDENTS: AN EDUCATIONAL, CULTURAL, AND LINGUISTIC GUIDE* (Jeffra Flaitz, et al. eds., 2003).

35. Spanbauer, *supra* note 3, at 415. See also Fantini, *supra* note 11, at 5. Thus, “culture is communication.” *Id.* (quoting EDWARD T. HALL, *BEYOND CULTURE* (Anchor Books 1976)).

36. Naomi Mezey, *Law as Culture*, 13 *YALE J.L. & HUMAN.* 35, 45 (2001). For a detailed discussion of the meaning of the term “culture,” see PHILIP RILEY, *LANGUAGE, CULTURE AND IDENTITY* 21-30 (Continuum 2007). “[T]he term is highly polysemic, not to say frustratingly ambiguous, and yet it is at the same time the defining epistemological structure of social anthropology and is essential to any understanding of modern social sciences.” *Id.* at 21.

37. Mezey, *supra* note 36, at 42-43.

38. OSCAR G. CHASE, *LAW, CULTURE, AND RITUAL: DISPUTING SYSTEMS IN CROSS-CULTURAL CONTEXT* xiii (N.Y.U. Press 2005) (“It is easier to see the deep and reciprocal connection between a people’s disputing institutions and their culture when we are shocked not only

The research on biculturalism also requires a brief reference to the early acculturation studies, which traditionally focused on immigration and presumed the goal of assimilation or adoption of a new culture and rejection of the culture of origin.³⁹ This conceptualization of the acculturation process “as a unidimensional, one-directional, and irreversible process of moving toward the new mainstream culture and away from the original ethnic culture” does not apply to international students, most of whom study law in the U.S. and return to their culture of origin where they work using legal English skills or work directly with U.S. attorneys in a litigation or transactional context.⁴⁰ Moreover, the assimilation characterization has been rejected by researchers in favor of “a bidimensional, two-directional, multidomain complex process.”⁴¹ This bidimensional acculturation model assumes two issues directly impacting the decision of acculturating individuals to adopt an assimilation or other strategy: “(i) the extent to which they are motivated or allowed to retain identification and involvement with the culture of origin, now the nonmajority, ethnic culture; and (i) [sic] the extent to which they are motivated or allowed to identify and participate in the mainstream, dominant culture.”⁴²

Given the multicultural, global world within which people live and work as well as the resulting variety of reasons or goals acculturating individuals may have for learning a new culture and language, current research reveals that assimilation is only one of four possible strategies or attitudes the individuals may have toward acculturation: “[1] assimilation (identification mostly with the receiving culture), [2] integration (high identification with both cultures), [3] separation (identification mostly with the culture of origin), or [4] marginalization (low identification with both cultures).”⁴³ Acculturating individuals who adopt an integration strategy or attitude tend to be bicultural, endorsing both their home culture and their

by their difference from us but also by their own commitment to what appears to us as bizarre.”).

39. Chen et al., *supra* note 13, at 804; Robert Redfield, Ralph Linton & Melville J. Herskovits, *Memorandum for the Study of Acculturation*, 38 AM. ANTHROPOLOGIST 149, 149-52 (1936). “In the past decades, the majority of research in this area was focused on assessing bicultural identities of immigrants and ethnic minorities, mostly in Western cultural contexts, and on evaluating their psychological adjustment and sociocultural adaptation.” Chen et al., *supra* note 13, at 804.

40. Nguyen & Benet-Martínez, *supra* note 15, at 102.

41. *Id.* at 103.

42. *Id.* How individuals negotiate these two issues determines their level of BII. *Id.*

43. Chen et al., *supra* note 13, at 805; *see also* Nguyen & Benet-Martínez, *supra* note 15, at 103.

host culture.⁴⁴ It should also be noted that biculturalism is not itself a uniform construct but instead is negotiated, organized, and experienced differently by different bicultural individuals.⁴⁵

Researchers have recently developed a construct—bicultural identity integration (BII)—to measure the differing degrees to which bicultural individuals “perceive their mainstream and ethnic cultural identities as compatible and integrated vs. oppositional and difficult to integrate.”⁴⁶ As one author explained:

As an individual difference variable, BII focuses on bicultural individuals’ subjective perceptions of managing dual cultural identities (i.e., how much their dual cultural identities intersect or overlap) and encompasses perceptions of distance (vs. overlap) and perceptions of conflict (vs. harmony) between one’s two cultural identities or orientations. BII has been found to be positively associated with dispositional factors such as openness to experience and (low) neuroticism and negatively with perceived contextual pressures such as stress in the linguistic domain and the experiences of cultural isolation and discrimination.⁴⁷

Although research in this area is ongoing and questions remain, some researchers have found a positive relationship between the level or degree of BII and cultural frame-switching (CFS).⁴⁸ “Because biculturals with high levels of BII are unconflicted about their two cultural orientations and see them in nonoppositional terms, researchers find that high BII biculturals, as they are known, engage in CFS fluidly by reacting to external cues in culturally consis-

44. Nguyen & Benet-Martínez, *supra* note 15, at 105. Earlier research has “been inconsistent regarding the subjective experiences involved in acquiring and negotiating two or more languages and cultures. Some of the early work on this issue considered bilingualism and biculturalism to be psychologically handicapping and stressful, provoking anxiety and depression.” Chen et al., *supra* note 13, at 805. “This line of reasoning is reflected in the early beliefs that bilingualism hindered children’s cognitive development and academic achievement.” *Id.* Current evidence “supports the opposite view,” that “involvement and contact with two cultures can be beneficial as long as bicultural persons do not internalize the (potential) conflict between the two intersecting cultures.” *Id.*

45. Nguyen & Benet-Martínez, *supra* note 15, at 106-07 (discussing problems with early attempts at measuring “variations in bicultural identity” as alternating, fused, or resulting in a third distinct culture).

46. *Id.* at 107 (quoting Benet-Martínez et al., *supra* note 18, at 496).

47. Chen et al., *supra* note 13, at 806-07.

48. Nguyen & Benet-Martínez, *supra* note 15, at 107, 108. Some researchers continue to assert that biculturalism “is maladaptive, leading to stress, isolation, etc., because bicultural individuals constantly experience pressures to be more or less like the dominant or their ethnic culture. . . . In other words, findings have been mixed.” *Id.* at 109. Recent analysis, however, suggests that these mixed findings may be due to the different ways biculturalism has been measured and that in fact biculturalism “may only be stressful for those less oriented to their two cultures.” *Id.*

tent ways.”⁴⁹ This conclusion was tested through experiments in which bicultural individuals were primed, for example, with icons or symbols that are psychologically associated with one culture—e.g., pictures of the American flag, Superman, or the Capitol Building—individuals with a high BII reacted to subsequent questions in characteristically Western ways by focusing more on the individual or individual autonomy.⁵⁰ When primed with East Asian cues—such as a Chinese dragon, the Stone Monkey, or the Great Wall—high BII individuals within the same group reacted in a characteristically East Asian fashion, by emphasizing the greater authority of the group relative to the individual.⁵¹

Researchers assert that these icons trigger CFS due to the manner in which culture is internalized and consequently guides cognition.⁵² Borrowing theories of knowledge activation from existing social psychological research, biculturalism researchers assume that “culture is not internalized in the form of an integrated and highly general structure, such as an overall mentality, worldview, or value orientation. Rather culture is internalized in the form of a loose network of domain-specific knowledge structures, such as categories and implicit theories.”⁵³ Another important borrowed assumption from this body of research is that contradictory or conflicting cultural meaning systems “cannot simultaneously guide cognition.”⁵⁴ Instead, a particular meaning system must be accessible in order to be activated: (1) different pieces of individual knowledge vary in terms of their accessibility, (2) accessibility is, in turn, related to recent use, and (3) “the more accessible a construct is, the more likely it is to come to the fore in the individual’s mind and guide interpretation.”⁵⁵

All of this research points to the benefits to be derived from teaching techniques and methodologies designed to elicit cultural connections to prior learning experiences and to identify cultural qualities, values, and beliefs implicit in students’ culture of origin

49. Benet-Martínez et al., *supra* note 18, at 496. CFS occurs when an individual is primed with an external cultural cue or symbol and responds or reacts in a culturally consistent way. *Id.* See also *supra* note 19 and accompanying text.

50. Hong et al., *supra* note 15, at 713-18.

51. *Id.* at 714.

52. *Id.* at 710.

53. *Id.* But see MICHAEL TOOLAN, TOTAL SPEECH, AN INTEGRATIONAL LINGUISTIC APPROACH TO LANGUAGE 193 (Duke U. P. 1996). Toolan and other linguists who take an integrational perspective to language argue that this “model of language as a fixed code (or, for that matter, as a fluid code) ignores the actualities of language practice.” *Id.*

54. Hong et al., *supra* note 15, at 710.

55. *Id.* at 710-11.

and their host culture so that students will more readily integrate their two cultural identities.⁵⁶ This bicultural approach to teaching, however, should be undertaken with the understanding that deeply imbedded cultural assumptions and values require repeated examination and analysis. This is because research also establishes that individuals who are exposed to a single culture over their lifetime are often unaware of the assumptions underlying their own views and even those who have traveled to or have learned about other cultures often find it very difficult to assess their own assumptions.⁵⁷

II. IDENTIFYING CULTURAL QUALITIES, VALUES, AND BELIEFS

A bicultural approach to teaching law students is not premised upon dramatic reform of legal education.⁵⁸ Nor does it require that the professor adopt a normative view of culture.⁵⁹ In this way, a bicultural approach is similar to other approaches to the study of law, which many professors introduce and explore in order to provide students with a broad perspective and better understanding of the law and to enable students to make their own normative decisions.⁶⁰ These perspectives include, for example, legal realism,

56. Aneta Pavlenko, *Bilingual Selves*, in *BILINGUAL MINDS: EMOTIONAL EXPERIENCE, EXPRESSION AND REPRESENTATION* 1, 2 (Aneta Pavlenko ed. 2006):

[A]cquisition and use of a new language, in particular one that is typologically different from one's native language, is a much more challenging enterprise [than is expanding on multilingualism] that may be further complicated by the need to negotiate new and unfamiliar surroundings. These differences are especially pronounced in late bilingualism, when speakers are socialized into their respective languages at distinct points in their lives, childhood versus adulthood, and in distinct sociocultural environments.

Id.

57. See Filippa Marullo Anzalone, *It All Begins with You: Improving Law School Learning Through Professional Self-Awareness and Critical Reflection*, 24 *HAMLIN L. REV.* 325, 350 (2001).

58. In fact, "[t]here has not been dramatic reform of legal education for many years." Toni M. Fine, *Reflections on U.S. Law Curricular Reform*, 10 *GERMAN L.J.* 717, 717 (2009). The author identifies the Langdell method as the dominant teaching method in U.S. law schools and identifies three recent calls for reform: (1) The Crampton report, released in 1979; (2) The MacCrate Report, released in 1992; and (3) The Carnegie Report, issued in 2007. *Id.* at 718-19.

59. To teach, for example, from a majority or "white cultural norm that supports white people's way of life and political domination" is precisely what critical legal scholars and, in particular, minority theorists, argue against. Dorothy E. Roberts, *Why Culture Matters to Law: The Difference Politics Makes*, in *CULTURAL PLURALISM: IDENTITY POLITICS AND THE LAW* 85, 88 (Austin Sarat & Thomas R. Kearns eds., 1999).

60. See Rhonda V. Magee, *Toward an Integral Critical Approach to Thinking, Talking, Writing, and Teaching About Race*, 43 *U.S.F. L. REV.* 259, 277 (2008).

Critical legal scholars have not only relied on narrative to further the objectives of the critical theory project, but they have also led and participated in the broader movement toward increasing the role of narrative and the skill of narration and reflection among law students generally for more effective lawyering.

Id.

pragmatism, the critical legal studies movement, critical race theory, feminist theory, and queer theory.⁶¹ Viewed in this manner, a bicultural approach to legal education requires only modest change—consistent use of a broader cultural lens through which to analyze law than is traditionally utilized in a case-based approach to a doctrinal class.⁶²

A cultural perspective can be implemented in different ways. Professors can, for example, draw on the growing body of research undertaken by anthropologists and lawyers who have identified cultural qualities, values, and beliefs associated with particular political, social, and legal systems and their systems for dispute resolution.⁶³ This research views law as not merely a reflection of culture, but rather as “‘part of the cultural processes that actively contribute in the composition of social relations.’ Law is part of the everyday world, contributing powerfully to the apparently ‘stable, taken-for-granted quality of that world and to the generally shared sense that as things *are*, so *must* they be.’”⁶⁴ One author explained

61. See *Id.* (discussing feminist theory and critical race theory as “an act of courage against institutionalized power”); Eileen A. Scallen, *Evidence Law as Pragmatic Legal Rhetoric: Reconnecting Legal Scholarship, Teaching and Ethics*, 21 QUINNIPIAC L. REV. 813, 821-29 (2003) (discussing pragmatism and legal realism). See also Howard Erlanger, Bryant Garth, Jane Larson, Elizabeth Mertz, Victoria Nourse, & David Wilkins, *Is it Time for a New Legal Realism?*, 2005 WIS. L. REV. 335, 337 (2005) (describing a goal of new legal realism to “bring together legal theory and empirical research to build a stronger foundation for understanding law and formulating legal policy”). Magee, *supra* note 60, at 270 n.35 (commenting that the critical legal studies movement “was developed primarily by white male scholars, including, notably, Duncan Kennedy, Peter Gabel, and Michael Fischl”). This scholarship is sometimes described as “dissent scholarship”:

Dissent can be found in all legal subdisciplines, including corporate law, critical race theory, environmental law, feminist theory, international law, and tax law, among others. Dissent scholarship can include, for example, civil rights scholarship, critical legal studies, critical race theory, feminist theory, public choice theory, queer theory, various “law and[sic]” scholarship that employs quantitative or humanistic methodologies, and other scholarship that, at one point in time or another, is not aligned with ideologies or methodologies that the reader values or considers legitimate.

Rachel J. Anderson, *From Imperial Scholar to Imperial Student: Minimizing Bias in Article Evaluation by Law Reviews*, 20 HASTINGS WOMEN’S L.J. 197, 206 (2009) (footnotes omitted).

62. The case method originated with Christopher Columbus Langdell who asserted that “law is science”; it remains the dominant teaching method more than a century later. Fine, *supra* note 58, at 718, 731.

63. A sampling of the recent books addressing law and culture include the following: CHASE, *supra* note 38; ROSEN, *supra* note 12; RILEY, *supra* note 36; FAULT LINES: TORT LAW AS CULTURAL PRACTICE (David M. Engel & Michael McCann eds., 2009) [hereinafter FAULT LINES]; LAW IN THE DOMAINS OF CULTURE (Austin Sarat & Thomas R. Kearns eds., 1998). For an early text on this topic, see LAW IN CULTURE AND SOCIETY (Laura Nader ed., 1969).

64. Austin Sarat & Thomas R. Kearns, *The Cultural Lives of Law*, in LAW IN THE DOMAINS OF CULTURE, *supra* note 63, at 6-7 (quoting Susan Silbey, *Making a Place for Cultural Analyses of Law*, 17 LAW & SOC. INQUIRY 39, 41 (1992); Austin Sarat & Thomas R. Kearns, *Beyond the Great Divide: Forms of Legal Scholarship and Everyday Life*, in LAW IN EVERYDAY LIFE 21, 30 (Austin Sarat & Thomas P. Kearns eds., 1993)).

the reciprocal, interdependent relationship of law and culture as follows:

[M]any differences between litigation in the United States and elsewhere are not wholly, or even predominantly, a matter of “legal culture” as opposed to a more general culture, i.e., a set of values and understandings generally shared by the population that constitutes the nation. . . . [In the United States,] the professional corps of lawyers and judges that operate the legal system have far more influence over its practices than the layman Ordinary citizens seldom experience the civil justice system directly and popular accounts of even famous cases are unlikely to focus much on the details of procedure. People are inclined to defer to the experts out of respect for their knowledge and status. This leaves legal specialists a good deal of room within which to shape court procedures. Professional self-interest and parochialism is, however, cabined by broad parameters imposed by the people subject to and served by the system, at least in any democratic state. Further, the professionals are themselves a product of the same culture and cannot readily escape its basic values and beliefs.⁶⁵

The contemporary research in this area reaches back more than 150 years to Alexis de Tocqueville who identified something he described as American exceptionalism, a core system of uniquely American qualities, values, and beliefs consisting of “individualism, egalitarianism, and a readiness to pursue disputes through litigation.”⁶⁶ Although contemporary researchers have not uniformly embraced the thesis that America is unique, a number of scholars have recently expanded and modified this list of qualities to include five: “liberty, egalitarianism, individualism, populism, and laissez-faire.”⁶⁷ For these scholars, “egalitarianism in the United States ‘involves equality of opportunity and respect, not of result or condi-

65. CHASE, *supra* note 38, at 48.

66. *Id.* at 50. See generally ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (J.P. Mayer ed., George Lawrence trans., Perennial Classics 2000) (1835). “Tocqueville is the first to refer to the United States as exceptional—that is, qualitatively different from all other countries.” CHASE, *supra* note 38, at 50 (quoting SEYMOUR MARTIN LIPSET, *AMERICAN EXCEPTIONALISM: A DOUBLE-EDGED SWORD* 18 (1996)). “Tocqueville suggested, equal and open social and economic conditions, combined with an ideological legacy conducive to liberty and democracy, helped to produce a society that was fundamentally free, egalitarian, and democratic in both theory and practice.” Mark Kessler, *Free Speech Doctrine in American Political Culture: A Critical Legal Geography of Cultural Politics*, 6 *CONN. PUB. INT. L.J.* 205, 219 (2007).

67. Randy E. Barnett, *Is America Different from Other Major Democracies?*, 32 *HARV. J.L. & PUB. POL’Y* 451, 451 (2009) (quoting LIPSET, *supra* note 66, at 31). See also CHASE, *supra* note 38, at 51. For challenges to the American exceptionalism thesis, see Larry G. Gerber, *Shifting Perspectives on American Exceptionalism: Recent Literature on American Labor Relations and Labor Politics*, 31 *J. AM. STUD.* 253, 253 n.1 (1997). See also Sidney Verba, *Review of American Exceptionalism: A Double-Edged Sword*, 91 *AM. POL. SCI. REV.* 192, 193 (1997) (reviewing LIPSET, *supra* note 66).

tion.’ Thus, American egalitarianism is consistent with individualism and laissez-faire. . . . It is the emphasis on the individual as a person equal in status to all other citizens that produces populism, rights orientation, and laissez-faire (or antistatist) attitudes.”⁶⁸

To the extent that these qualities, values, and beliefs are reflected in the American litigation system and structure of government, law students would benefit from a more nuanced discussion than the typical categorization of the United States with other common law countries.⁶⁹ For example, students can be introduced to the unique role of the civil jury in the United States legal system: “The power of the jury in the American tradition has been called ‘[t]ruly astonishing in the Continental view.’ And England, where it originated, has abandoned the civil jury in all but a very few kinds of cases. Other common law jurisdictions have followed suit.”⁷⁰

Students can similarly be exposed to egalitarian cultural arguments regarding the role of a civil jury—jury service is considered a duty of citizenship and this duty vests lay people with superior power to the judge to determine and assess facts.⁷¹ Notions of the

68. CHASE, *supra* note 38, at 51 (quoting LIPSET, *supra* note 66, at 19) .

69. *See id.* at 53-66. For example, individualism is reflected in the U.S. “litigation system’s commitment to individualized claim resolution,” and egalitarianism is reflected in principles underlying the rule of law “that everyone in the same situation should be treated the same way. . . . [S]imilar injuries in similar situations should produce similar liability determinations and similar compensation.” Jennifer B. Wriggins, *Whiteness, Equal Treatment, and the Valuation of Injury in Torts*, in *FAULT LINES*, *supra* note 63, at 156, 159-60. *See also* CHASE, *supra* note 38, at 90 (discussing how U.S. law schools privilege legal reasoning and “teaching students to ‘think like lawyers’” over a consideration of the role of social relations in influencing outcomes). One author describes the core curriculum in U.S. law schools in the following manner:

the casebook dominates the teaching text model used in the first year curriculum of U.S. law schools. The casebook as a genre privileges common law, generally not registering the existence of statutory and regulatory law, let alone the myriad of practices and texts that regulate a culture; it also reifies doctrine, (re)produces boundaries between doctrinal categories in ways that ill-equip law graduates for most law practice, and characteristically strips away both the messiness of facts and the textual evidence that might reveal to a critical reader evidence of the *habitus* of the embodied subject who made the choice whether or not to apply the rule that the writer selects as appropriate to the dispute before him and articulates as he sees fit.

Penelope Pether, *Measured Judgments: Histories, Pedagogies, and the Possibility of Equity*, 14 L. & LITERATURE 489, 506 (2002). There are, however, upper-level seminars focused on law and culture, usually popular culture. For an example of a textbook commonly used in a law and culture course, see DAVID RAY PAPKE, ET AL., *LAW AND POPULAR CULTURE: TEXT, NOTES, AND QUESTIONS* (2007). In fact, law and culture courses have become a part of the mainstream curriculum. Anthony Chase, *The Real French Constitution*, 30 NOVA L. REV. 209, 210 (2006).

70. CHASE, *supra* note 38, at 55 (quoting MIRJAN R. DAMASKA, *THE FACES OF JUSTICE AND STATE AUTHORITY: A COMPARATIVE APPROACH TO THE LEGAL PROCESS* 219-20 (Yale Univ. 1986)).

71. *Id.* at 56.

cultural value—populism—can also be explored in relationship to the civil jury, which arguably allows direct participation in government; although it appears to operate in an anti-individualist fashion, due to the collective nature, and in most instances mandated unanimity, of a verdict, the civil jury can be explored as simultaneously individualist in that a hold-out juror can, in effect, command a new trial.⁷²

In a civil procedure course, for example, students can be introduced to the idea of pre-trial discovery as reflecting similarly exceptional American cultural qualities by virtue of the fact that the parties, not the court, control the investigation of the facts of a case.⁷³ The discovery process arguably reflects egalitarian values “because it ‘levels the playing field’ in that discovery gives an economically weaker party the means to make a deserving case that would otherwise be hidden in the files of a wrongdoer.”⁷⁴ Litigant-controlled pre-trial discovery can also be explored as an expression of “populism, laissez-faire, and antistatism so pronounced in American culture. For Americans there is nothing wrong with a procedural device that allows citizens and their attorneys to exercise substantial litigation powers without obtaining judicial permission.”⁷⁵

In almost any course, a professor can examine another arguably unique American legal cultural tradition—the discretionary decisional authority of judges, which rests “uneasily in a legal system that purports to embody a ‘rule of law’”⁷⁶:

The conflict between the rule of law and the freedom of discretion parallels a conflict between the American values of individualism (which is promoted by the flexibility of discretionary decision making) and egalitarianism (which is promoted by an even-handed application of law). So what nudged the American dispute system in the direction of flexibility? It was an expression of two broader developments. The first is the increasing status accorded to effective organizational functioning – businesslike efficiency – in the late nineteenth and early twentieth centuries. Second, the embrace of discretion was

72. *Id.* at 56-57.

73. *Id.* at 60.

74. *Id.*

75. CHASE, *supra* note 38, at 61. The use of experts by parties rather than by court appointment also renders the U.S. “exceptional.” *Id.* at 65-66. “In the Continental tradition experts are selected and commissioned by the court, although with great attention to safeguarding party interests.” *Id.* at 65 (quoting John H. Langbein, *The German Advantage in Civil Procedure*, 52 U. CHI. L. REV. 823, 835 (1985)).

76. *Id.* at 74 (citing PAUL W. KAHN, *THE CULTURAL STUDY OF LAW: RECONSTRUCTING LEGAL SCHOLARSHIP* 39 (Univ. Chicago Press 1999)).

part of the legal regime's response to intellectual attacks that threatened its legitimacy: it was a paradoxical but successful effort to preserve the mythic status of the autonomy of law.⁷⁷

These same cultural qualities, values, and beliefs can also be identified in the uniquely American structure of government—possessing a weak, fragmented, and decentralized federal government—and also in the rituals associated with its dispute resolution processes.⁷⁸ Although law professors routinely discuss and explain the implications of this federal structure of government, the cultural values reflected by this system may not be examined in a law school classroom.⁷⁹ The “reactivist” nature of the U.S. government may similarly not be highlighted and presented to law students as a “framework within which citizens pursue their own goals” with the administration of justice focused on resolving conflict rather than implementing state policy.⁸⁰

Distinctly American cultural rituals and ceremonial practices permeate every aspect of dispute resolution thereby providing a rich source for cultural analysis.⁸¹ Researchers in this field assert that “disputing institutions employ ceremonial practices in the service of legitimacy. For this to work, the ceremonies borrowed must

77. *Id.* at 81. The judge in the U.S. legal system has also been described as “distinctive for the extent to which he is autonomous within his realm; there are few social roles invested with such power in American society that are yet subject to so little control.” Gresham M. Sykes, *Cases, Courts, and Congestion*, in *LAW IN CULTURE AND SOCIETY*, *supra* note 63, at 331.

78. CHASE, *supra* note 38, at 67. “Hierarchical authority, with its emphasis on ‘the authority of rules,’ would be antithetical to American values of populism, individualism, and egalitarianism.” *Id.* “American federalism, which allows each state a large degree of autonomy . . . , is quite different from the French Jacobin tradition, which is concerned with centralized authority, legal uniformity, and legal rules that are made and applied by national officials.” David Corbe-Chalon, *Tort Reform A La Francaise: Jurisprudential and Policy Perspectives on Damages for Bodily Injury in France*, 13 *COLUM. J. EUR. L.* 231, 235 (2007). *But see* Barry C. Campbell, *Federalism, the Constitution, and the Brady Act: States’ Rights and the National Government*, 19 *MISS. C. L. REV.* 393, 420 (1999):

There is no doubt that many Americans believe that the federal government is too involved in the minute details of their daily lives; this group of Americans sees only a strong, centralized government. This generalization cannot be readily dismissed. The federal government has pervaded the state government on all levels, including the sub-levels of state government such as county and municipal governments.

79. *See generally* Pether, *supra* note 69.

80. CHASE, *supra* note 38, at 68 (citing DAMASKA, *supra* note 70, at 71-88).

81. CHASE, *supra* note 38, at 114-24. Ritual has been defined as “symbolic behavior that is socially standardized and repetitive. . . . It follows highly structured, standardized sequences and is often enacted at certain places and times that are themselves endowed with special symbolic meaning.” *Id.* at 114-15 (quoting DAVID I. KERTZER, *RITUAL, POLITICS, AND POWER* 9 (Yale U. P. 1988)). “The role of ritual in influencing behavior in the service of an ostensibly broader good can be termed its ‘legal function’—that is, the idea of law is employed generally to describe attempts by the broader society, enforced if necessary by compulsion, to impose social controls on individual behavior.” Geoffrey P. Miller, *The Legal Function of Ritual*, 80 *CHI.-KENT L. REV.* 1181, 1182-83 (2005).

resonate culturally through symbolic association with other institutions that are themselves revered. In this sense, . . . official disputing draws upon and reflects culture.”⁸² For example, the uniform judicial attire, a simple black robe, along with the judicial bench, situated in a place of prominence in the courtroom, together signify that the judge is learned and neutral.⁸³

The participants’ behavior in relationship to the judge is also ritualistic—individuals routinely stand when the judge enters and exits the courtroom; they also seek permission before approaching the judge.⁸⁴ The judge is thus superior to these individuals.⁸⁵ Students’ exposure to these rituals and others exemplify the mechanisms by which the judge’s individuality is suppressed and the judge instead represents the authority of the state or federal government to resolve disputes. On the other hand, attorneys are not attired in uniform and are not neutral participants because they represent individualistic values and concerns.⁸⁶ All of these and other symbols provide rich examples of imbedded cultural values and assumptions, which can be employed to enable students to better understand the U.S. legal system and laws.⁸⁷ For law students,

82. CHASE, *supra* note 38, at 114.

83. *Id.* at 119. See Keebet Von Benda-Beckmann, *Torts and Notions of Community: More Observations on Units of Legal Culture*, in FAULT LINES, *supra* note 63, at 39, 40 (describing one view of judges “as the most important representatives of communities to determine and interpret what the shared values are”). U.S. judges did not adopt the English wig, which “judges and barristers began wearing” during the Restoration of the English monarchy in 1660 “because everybody in polite society was wearing wigs.” Charles M. Yablon, *Judicial Drag: An Essay on Wigs, Robes and Legal Change*, 1995 WIS. L. REV. 1129, 1133 (1995). “Today, the legal community in England continues to use judicial wigs to distinguish the specific roles within the courtroom: barristers wear a small ‘tie-wig,’ which has ‘a few rows of curls at the sides and the back.’” William C. McMahon III, *Declining Professionalism in Court: A Comparative Look at the English Barrister*, 19 GEO. J. LEGAL ETHICS 845, 847-48 (2006) (quoting Yablon, *supra*, at 1134). In 1992 and again in 2003, the House of Lords issued a series of Consultation Papers explaining the reasons for retaining the judicial wig: “‘traditional judicial garb imbued in laypersons a sense of solemnity and dignity of the law.’” *Id.* at 848 (quoting Yablon, *supra*, at 1139 (citing COURT DRESS—A CONSULTATION PAPER ISSUED ON BEHALF OF THE LORD CHANCELLOR AND THE LORD CHIEF JUSTICE 10 (Aug. 1992))).

84. CHASE, *supra* note 38, at 120.

85. See *Id.* at 119-20.

86. CHASE, *supra* note 38, at 121. “Like the judges, the attorneys have undergone long training and ritual validation exercise. When in court they have privileges of movement and space not accorded others.” *Id.* Some scholars have argued that these rituals serve other purposes—“they quintessentially create masculine markers of power. These traditional dress codes influence a modern lawyer’s dress as a result of centuries of female exclusion from the practice. Women in the current practice of law must physically adopt a masculine appearance and contain their bodies within this supposedly neutral facade.” Andrea Macerollo, *The Power of Masculinity in the Legal Profession: Women Lawyers and Identity Formation*, 25 WINDSOR REV. LEGAL & SOC. ISSUES 121, 123 (2008) (footnote omitted).

87. See CHASE, *supra* note 38, at 114 (describing the existence of such rituals and their impact on disputing systems).

“comparisons to other societies can highlight the unique—some would say peculiar—features of our common law approach” as illustrated in the teaching applications that follow.⁸⁸

III. USE OF STORIES TO TEACH BICULTURALISM

Successful application of the bicultural teaching method in a multicultural classroom requires techniques that elicit and explain not only mainstream cultural values, but also the values, backgrounds, perceptions, and assumptions all students bring to the classroom.⁸⁹ A multicultural classroom is itself a rich source of comparative cultural values, which can be explored in order to assist students to become aware of their own deeply imbedded, unspoken values and assumptions, and also to understand the relativistic, contingent nature of these values and beliefs.⁹⁰ This analysis, in turn, will enable both entering J.D. students and international students to build a bridge for integration into their new culture and language—U.S. legal culture and the language of U.S. law.

Storytelling accomplishes these goals for a variety of reasons: (1) each culture-based⁹¹ narrative or story can be used to demon-

88. David M. Engel & Michael McCann, *Introduction: Tort Law as Cultural Practice*, in *FAULT LINES*, *supra* note 63, at 8.

89. For example, in order to demonstrate how issues related to gender, class, disability and sexual orientation may affect the stereotypes held by society and the assumptions relevant to the study of law, one professor incorporated these topics into a substantive discussion of law-related concepts in her classroom. See Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School Teaching*, 32 *WIL-LAMETTE L. REV.* 541, 547 (1996). In addition, professors often focus on looking forward, i.e., preparing their students for various types of experiences and interactions they may encounter when they practice law after graduation. As such, Professor Susan Bryant of City University of New York School of Law, who believes in the importance of cross-cultural lawyering, which occurs when lawyers and their clients possess different cultural heritages and “when they are socialized by different subsets within ethnic groups,” incorporates these concepts into her law school teaching. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *CLINICAL L. REV.* 33, 34, 40-41, 43 (2001) (“Cultural differences may also cause lawyers and clients to misperceive body language and judge each other incorrectly.”). More specifically, she focuses on the critical role different cultures play in the lawyering process, including communications, rapport building and decision-making thereby creating more “inclusive classroom conversations while building cross-cultural skills.” *Id.* at 34. Further, she argues that a legal clinic teaching cross-cultural skills and perspectives would enable law students to build a “more just legal system.” *Id.* at 36 (footnote omitted).

90. ROSEN, *supra* note 12, at 4 (“[W]e create our experience, knit together disparate ideas and actions, and in the process fabricate a world of meaning that appears to us as real.”).

91. See Katerina P. Lewinbuk, *Can Successful Lawyers Think in Different Languages?: Incorporating Critical Strategies that Support Learning Lawyering Skills for the Practice of Law in a Global Environment*, 7 *RICH. J. GLOBAL L. & BUS.* 1, 9 (2008). In fact, it has been argued that narratives are important because “human beings experience their lives and identities in narrative form.” YASUKO KANNO, *NEGOTIATING BILINGUAL AND BICULTURAL IDENTITIES: JAPANESE RETURNEES BETWEEN TWO WORLDS*, 9 (Lawrence Erlbaum Associates, Inc. 2003).

strate specific values and beliefs representative of that culture;⁹² (2) stories are available in a variety of genres and can be explored using differing pedagogical approaches;⁹³ and (3) stories are a part and parcel of the dispute resolution process and thereby provide students with a familiar jumping off point to explore the law.⁹⁴ The notion that stories reflect values and shared expectations about law is not new; some experts believe that “‘all respect for the law is a product of the social imagination, and the social imagination is what literature directly addresses.’”⁹⁵ Literature, particularly children’s literature, provides a rich source for analysis of “common understandings and background assumptions about the Anglo-North American concept of the rule of law.”⁹⁶ Children’s texts introduce children to the concept of political authority and power and also confront them with “problems in literature that have analogues in philosophical debates about justice and the very nature of law.”⁹⁷

92. Although it is well-established that narratives are fundamental to the understanding of our human experience, there are still disagreements about where narrative structures came from. J. Christopher Rideout, *Storytelling, Narrative Rationality, and Legal Persuasion*, 14 LEGAL WRITING J. LEGAL WRITING INST. 53, 58 (2008). One theory asserts that they “might lie outside linguistic or psychological structures, as ways of sharing culturally-shared human experiences,” while another one supports the view that narratives are “fundamental mental models.” *Id.* (citing ANTHONY AMSTERDAM & JEROME BRUNER, *MINDING THE LAW*, 115-118 (Harv. U. Press 2000) and Steven L. Winter, *Making the Familiar Conventional Again*, 99 MICH. L. REV. 1607, 1630-32 (2001)). It is also critical to acknowledge narratives in the world of law and the legal profession. As an example, lawyers listen to clients’ stories during their interview and they also engage in the fact-finding process. Lewinbuk, *supra* note 91, at 9. “Lawyers are storytellers” and recognizing their role as such would make an important addition into the legal education. Sandra Craig McKenzie, *Storytelling: A Different Voice for Legal Education*, 41 U. KAN. L. REV. 251, 265 (1992).

93. For a description of frequently used courtroom films, see PAUL BERGMAN & MICHAEL ASIMOW, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996); Bill Nichols, *The Unseen Jury*, 30 U.S.F. L. REV. 1055, 1055 (1996) (citing *Twelve Angry Men*, *Call Northside 777*, *The Wrong Man*, *The Thin Blue Line*, and *Inside the Jury Room* as belonging to “the sub-genre of the courtroom movie that address the theme of the wrong man”). Television programming also provides dramatizations of legal proceedings and even actual trials. Paul Bergman, *Teaching Evidence the “Reel” Way*, 21 QUINNIPIAC L. REV. 973, 973-89 (2003). Music can also provide an entertaining way to address narratives about law and culture. Lewinbuk, *supra* note 91, at 10 n.47. For example, the “Bar and Grill Singers” modify the lyrics to popular music to create spoofs and cultural commentary on the legal profession. *Id.*

94. See generally McKenzie, *supra* note 92, at 265 (arguing for the need to incorporate the storytelling method in the classroom and advocating for storytelling-oriented reforms). See also Rideout, *supra* note 92, at 68 (discussing that the narratives imposed on experiences are “culturally formed” and may easily transform themselves into legal narratives). The main benefit of the storytelling method is to allow students to practice what lawyers do: “tell stories to solve problems for clients.” McKenzie, *supra* note 92, at 267.

95. Mary Liston, *The Rule of Law Through the Looking Glass*, 21 LAW & LITERATURE 42, 42 (2009) (quoting Northrop Frye, *Literature and the Law*, 4 L. SOC’Y UPPER CAN. GAZETTE 70 (1970)).

96. *Id.*

97. *Id.* at 45.

Given the sheer volume and variety of children's literature, stories can be carefully chosen to correspond to course subject matter, to pedagogical goals, and to the composition of the student group.⁹⁸

A. *Children's Literature as a Reflection of Imbedded Cultural Values*

Stories from cultures with different histories and traditions may prove useful in guiding students to a broader understanding of cultural context. For example, the fairytale "Chipollino,"⁹⁹ which is a favorite among children from the former Soviet Union and other Eastern European countries, offers a contrast to mainstream U.S. cultural values.¹⁰⁰ The author, journalist and writer Gianni Rodari, was born in 1920 in Italy.¹⁰¹ His books were translated into Russian and a well-known children's cartoon, "Chipollino," was produced in Moscow in 1961.¹⁰² After its translation into Russian, the story was so widely read and loved that it became a staple of Russian children's literature.¹⁰³

The narrative involves a kingdom in which the citizens are all fruits and vegetables; the hero, Chipollino,¹⁰⁴ an onion, is a typical Russian folktale hero—a young man who is "kind, gentle, simple,

98. See Laurie Shanks, *Whose Story Is It, Anyway?— Guiding Students to Client-Centered Interviewing Through Storytelling*, 14 CLINICAL L. REV. 509, 521 (2008) ("[W]ould they have picked another story if their audience was another woman as opposed to a man, a person of a different race, an older or younger person, or if they knew the entire class would hear the story?"). Narratives can present a powerful way of establishing empathic understanding—a more concrete story is likely to be associated with an actual experience and thus will facilitate a stronger empathic response than a more abstract example. Toni Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 MICH. L. REV. 2099, 2100 (1989).

99. The full title of the book, originally published in Italian in 1951, is "Il romanzo di Cipollino," (Ital.), which translates into English as "the Romance of Little Onion" or "the Adventures of Little Onion." GIANNI RODARI, *THE GRAMMAR OF FANTASY: AN INTRODUCTION TO THE ART OF INVENTING STORIES*, xvi (Jack Zipes trans., Teachers & Writers Collaborative 1996) (introduction by Jack Zipes). See also Cipollino, <http://en.wikipedia.org/wiki/Cipollino#Works> (last visited Nov. 6, 2009).

100. See Cipollino, *supra* note 99.

101. RODARI, *supra* note 99, at xiii. Rodari was an active and radical member of the Italian Communist Party and a participant in the Italian Resistance movement during World War II. He followed Chipollino with another children's book in 1952. "Piccolo vagabondi," or "Small Vagabonds," "a realistic novel about two impoverished brothers, eight and nine years old, who are forced to wander about Italy after World War II, seeking work and refuge." *Id.* at xvi.

102. See images at http://www animator.ru/db/?ver=eng&p=show_film&fid=2093 (last visited Nov. 6, 2009).

103. Cipollino, *supra* note 99.

104. See *supra* note 99.

and unhurried.”¹⁰⁵ In this sense, he is similar to many other key players from Russian ballads and legends, as he is “not prone to a quick energetic reaction, and starts to act only in a critical situation, then showing wonders of strength and courage.”¹⁰⁶ The story offers a striking contrast between the poverty and misery endured by the kind and friendly fruits and vegetables, who work very hard but are unable to provide for themselves or their families, and the greedy, selfish, and arbitrary ruler, Prince Lemon, who decrees that everyone will be taxed for good and bad weather, including the air, the fog, and the rain.¹⁰⁷ Chipollino ultimately resists the tyrannical Prince Lemon.¹⁰⁸ Together with his friends, Chipollino is able to overthrow the government in order to liberate his father, Chipollone, from prison.¹⁰⁹ Chipollino is later captured, but his friends rescue him and together they liberate all prisoners who have been unfairly imprisoned.¹¹⁰

This fairytale arguably represents political propaganda by reinforcing the contrast between the bourgeoisie and the proletariat with the rich taking advantage of the poor.¹¹¹ This narrative can also be understood to reflect the historic Russian skepticism and lack of respect for unjust laws.¹¹² Unlike American individualism,

105. Vladimir N. Podoprigrora & Tatiana I. Krasnopevtseva, *Russian Cultural Values and Their Effect on Domestic and Foreign Policy*, 3 THE JOURNAL OF POST-SOVIET DEMOCRATIZATION 166 (1995).

106. *Id.*

107. GIANNI RODARI, ADVENTURES OF CHIPOLLINO 160 (Minsk 1986). Images available at <http://www.amazon.com/Priklyucheniya-Chipollino/dp/5040032617> and http://www.hyevideos.com/media/307/___-Chipolino/ (last visited Nov. 3, 2009).

108. RODARI, *supra* note 107, at 168-74. See also images at *supra* note 102.

109. RODARI, *supra* note 107, at 156, 168-74. See also images at *supra* note 102.

110. RODARI, *supra* note 107, at 134-56.

111. The communist systems of Eastern and Central Europe “gave inordinate and essentially arbitrary power to a small group of individuals.” Paul B. Stephen, III, *The Fall—Understanding the Collapse of the Soviet System*, 29 SUFFOLK U. L. REV. 17, 27 (1995). The fairytale also shows the gap between official propaganda about what Soviet citizens were expected to believe and what they actually believed or thought about the Soviet system.

According to official propaganda, “Soviet man” possesses the following unimpeachable traits: he accepts the party’s goals and principles and elevates society’s interests over personal ones; work for the public good is for him the major source of meaning, dignity, and fulfillment in life; solidarity, collectivism, and internationalism are the norms that guide his relations with other people. Needless to say, hardly any Soviet person took this ideological fiction seriously. At best, it was a vague normative statement telling people what they were supposed to be or, rather, appear. More often than not, this was mere ideological verbiage with no direct link to reality.

Igor S. Kon, *Moral Culture*, in RUSSIAN CULTURE AT THE CROSSROADS: PARADOXES OF POSTCOMMUNIST CONSCIOUSNESS 185, 193 (Dmitri N. Shalin ed., 1996) (footnotes omitted) [hereinafter RUSSIAN CULTURE].

112. See Katerina P. Lewinbuk, *Russia’s Labor Pains: The Slow Creation of a Culture of Enforcement*, 32 FORDHAM INT’L L. J. 846, 869 (2009). See also Podoprigrora & Krasnopevtseva, *supra* note 105, at 167. “What the Soviet experiences prove is that even a government with virtually unchecked power to impose punishment on those who disobey it cannot sustain

collective interests represented a key value in the Soviet society and culture at the time Rodari wrote this children's story.¹¹³ Accordingly, main characters and heroes in Russian children's literature, including the image of Chipollino, focused on what was best for the people, frequently sacrificing their individual self-interest and freedom for the greater social good.¹¹⁴

In light of the major changes Russia has undergone in the last decade, the story "Chipollino" may appear outdated. Surprisingly, however, Chipollino remains popular.¹¹⁵ Two feasible explanations exist. First, parents who were alive during the time of the former Soviet government are not only reading stories to their children that were read to them as children, but they are also transmitting their cultural values to their children. Second, political and social change continues to occur in Russia and these changes will take time to coalesce into a new system of values and become deeply rooted in the culture's value system.¹¹⁶

As a contrast to the unfamiliar "Chipollino," the well-known children's story "Alice in Wonderland"¹¹⁷ by Lewis Carroll¹¹⁸ can be introduced in the classroom because it offers "a familiar basis

a complex and ambitious regulatory program over an extended period without convincing the population that most people will prosper if they actively support the authorities' goals." Stephen, *supra* note 111, at 42.

113. See Podoprigora & Krasnopevtseva, *supra* note 105, at 167.

The New Soviet Man would unquestionably place collective welfare over personal desires, work over pleasure, future goals over present difficulties. He would be implacable with foes of the Soviet Union and ever ready to serve it in any way that might be required. Last but not least, he would blindly accept the Communist party's authority in defining the elucidation of all of the above categories in practice.

Maurice Friedberg, *Literary Culture*, in *RUSSIAN CULTURE*, *supra* note 111, at 242.

114. *RUSSIAN CULTURE*, *supra* note 111, at 242.

115. See Cipollino, *supra* note 99.

116. Frederick Starr, *Conclusion: Toward a Post-Soviet Society*, in *RUSSIAN CULTURE* *supra* note 111, at 313 (commenting that "the cultural outlook of a people changes only slowly"). See Linda Edwards, *Russia Claws at the Rule of Law*, 95 A.B.A. J. 38 (2009).

117. Published in 1865, the name of the book is actually "Alice's Adventures in Wonderland," but the popular name, "Alice in Wonderland," derives from the name given to the numerous movie versions of the book. See *THE ANNOTATED ALICE: THE DEFINITIVE EDITION* xxiv, 305-12 (2000) (introduction and notes by Martin Gardner). Alice's adventures were further chronicled in Lewis Carroll's 1871 publication, "Through the Looking-Glass, and What Alice Found There." *Id.* at 305. For purposes of this discussion, children's stories are intended to include not only stories that children read, but also stories that are read to children by adults and stories that are made into movies or television shows. See Liston, *supra* note 95, at 43.

118. Lewis Carroll is the pseudonym for Charles Lutwidge Dodgson, a professor of mathematics at Christ Church of Oxford University. Martin Gardner, *Introduction to THE ANNOTATED ALICE*, *supra* note 117, at xxiii. Although the book was written by a British author during the Victorian era, it has been translated into many different languages and has become a cultural staple in the United States. *Id.* at xi. It has been made into a feature film on a dozen occasions and, in fact, a new version directed by Tim Burton is scheduled for release in March, 2010. John Gaudiosi, *Tim Burton explores "Alice in Wonderland,"* REUTERS, July

from which to consider the social imaginary of the rule of law” thereby “indirectly present[ing] and reaffirm[ing] to children a set of expectations about the way a political order does, does not, or should work.”¹¹⁹ The story provides a stark example of “deficiencies in a world of rule-making,”¹²⁰ alerts children to the dangers of absolute power, and impresses upon their young minds the lesson that legal struggles involving authority figures do not have a “guaranteed happy ending.”¹²¹ Alice is confronted with a legal system consisting of “topsy-turvy new rules,” which “Alice comes to realize, are a curious admixture of the rules of chess, the rules of battle, and the rules of etiquette, all operating within a political system ordered by the concept of absolute sovereignty.”¹²² In contrast to the U.S. legal system, the system Alice must contend with reflects a hierarchical, activist, and authoritarian government with rules that are devoid of egalitarian values because they are “unknowable, arbitrary, and illogical.”¹²³

In this unfair, ever-shifting world, however, Alice represents a core American cultural value—individualism: she is “an outsider, a foreigner, even a kind of ‘outlaw’ in Wonderland.”¹²⁴ It is with this very aspect of the book that international students and entering J.D. students may most closely identify because they too may find themselves in an unfamiliar, seemingly impenetrable, or, at the very least, inaccessible, culture and legal system, and, for this reason, they may be encouraged by Alice as she “begins to master the meaning of the language . . . and proves that she has the capacity to function as a regular resident in the Looking-Glass world.”¹²⁵ This dominant character trait, individualism, can also be analogized to the preferred status individualism occupies in the hierarchy of American cultural values, particularly when they conflict, and in

25, 2009 available at <http://www.reuters.com/article/entertainmentNews/idUSTRE56O13J20090727> (last visited Nov. 6, 2009).

119. Liston, *supra* note 95, at 43. For a very detailed analysis and interpretation of the story, see *Id.*

120. *Id.* at 46.

121. *Id.* at 44. “Wonderland is an inverse rule-of-law world—not quite an evil twin, but more like a completely deranged sibling of a properly functioning legal order.” *Id.* at 46.

122. *Id.* at 46.

123. *Id.* at 49. For a discussion of the U.S. legal system, see *supra* notes 69-75 and accompanying text.

124. Liston, *supra* note 95, at 52.

125. Liston, *supra* note 95, at 53. “One of the communicative environments most unfamiliar to many ESL students when they arrive to study in the United States is, in fact, the American classroom.” Spanbauer, *supra* note 3, at 419-20 (quoting Benson & Heidish, *supra* note 30, at 325). Entering J.D. students face similar problems. Spanbauer, *supra* note 3, at 444.

this sense, Alice may be argued to most closely represent U.S. legal culture.¹²⁶

The story's value as a classroom tool is enhanced by the many references made to it over time by United States Supreme Court Justices¹²⁷ and other jurists,¹²⁸ by legal scholars,¹²⁹ and legal advocates.¹³⁰ Such references can be shared with students as direct evidence of how firmly rooted this story is in the collective consciousness of Americans and of its enduring legal cultural values and recurring themes of justice.¹³¹ After eliciting core cultural values from the story, some of this primary and secondary legal authority can be presented to the students as a bridge, for example, to introducing the judicial opinion and common law as "story."¹³²

B. *Stories from the Dispute Resolution Process as Reflections of Cultural Values*

As students progress through law school, they come to understand that the common law system consists of an endless number of "concrete human stories that take into account our different human

126. See *supra* note 68 and accompanying text.

127. Michael Frost, *Justice Scalia's Rhetoric of Dissent: A Greco-Roman Analysis of Scalia's Advocacy in the VMI Case*, 91 KY. L.J. 167, 170-71 (2002) (citing Justice Scalia's dissenting opinion in *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 705 (2001) referring to the majority's decision to allow Casey Martin to use a golf cart in professional tournaments as based upon an "Alice in Wonderland determination that there are such things as judicially determinable 'essential' and 'nonessential' rules of a made-up game").

128. An entire law review article has been devoted to finding judicial references to "Alice in Wonderland" and "Through the Looking Glass." Parker B. Potter, Jr., *Wondering About Alice: Judicial References to Alice in Wonderland and Through the Looking Glass*, 28 WHITTIER L. REV. 175, 307 (2006) (noting that "[w]hile judges have freely unleashed Alice on both litigants and their own colleagues on appellate panels, it is relatively rare for an appellate court to accuse a lower court of engaging in Wonderland reasoning"). British courts have also referred to "Alice in Wonderland" in published opinions. See e.g., *Liversidge v. Sir John Anderson*, [1942] A.C. 206, 245 (H.L. 1942).

129. See, e.g., Lawrence M. Friedman, *The One-Way Mirror: Law, Privacy, and the Media*, 82 WASH. U. L.Q. 319, 339 (2004); Christine M. Schverak, *In Time of War: Hitler's Terrorist Attack on America*, ARMY LAW. MARCH 2006, at 23, 23 (2006) (reviewing PIERCE O'DONNELL, *IN TIME OF WAR: HITLER'S TERRORIST ATTACK ON AMERICA* (2005)).

130. Potter, *supra*, note 128, at 182-86 (noting that judges are more tolerant of such references when they are made in closing arguments rather than, for instance, in writing or in "oral references directed to the bench").

131. Allan Kanner, *Trying Mass Torts*, 7 SEDONA CONF. J. 241, 248 (2006) (describing stories as "a critical means by which people navigate the tangled web of human experience"). Author Christopher Booker identifies seven basic story lines or plots: "Overcoming the Monster; Rags to Riches; the Quest; Voyage and Return; Rebirth; Comedy; Tragedy," with "Alice in Wonderland" falling in the "Hazardous Journey" plot line. *Id.* at 248 n.50 (citing CHRISTOPHER BOOKER, *THE SEVEN BASIC PLOTS* (2005)).

132. See *supra* notes 92 & 94 and accompanying text.

voices”¹³³ in the dispute resolution process.¹³⁴ Students, however, frequently struggle with the idea that the judicial opinion is anything other than objective truth and fail to see it as another narrative subject to cultural influences and beliefs.¹³⁵ They, therefore, would benefit from vivid examples illustrating the influence of culture on the judiciary, including, for instance, two judicial opinions arising from the same set of operative facts, authored by the same Supreme Court Justice, *Walker v. City of Birmingham*¹³⁶ and *Shuttlesworth v. City of Birmingham*.¹³⁷ Both majority opinions were written by Justice Stewart and arise out of Dr. Martin Luther King, Jr.’s 1963 Good Friday march in Birmingham, Alabama.¹³⁸ Because these two opinions are offered primarily for their facts, this exercise is not limited to a particular doctrinal class or subject, but can be utilized in almost any class, including doctrinal, writing, and other skills-based classes.¹³⁹

If Justice Stewart were simply presenting an objective statement of the facts, this portion of each opinion would present the relevant

133. Massaro, *supra* note 98, at 2100.

134. Lewinbuk, *supra* note 91, at 9. The gist of a compelling story is a very strong plot, “in which conflict is revealed, the protagonist struggles to resolve the conflict, and the protagonist ultimately succeeds.” Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief As Story*, 14 J. LEGAL WRITING INST. 127, 132 (2008). See also Kim Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. (LEGAL STORYTELLING) 2073, 2075 (1989). Stories are powerful because they represent history, experience and various points of view. *Id.* See also Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1988-1989).

Stories, parables, chronicles, and narratives are powerful means for destroying mind-set—the bundle of presumptions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place. . . . They are like eye-glasses we have worn for a long time. . . . Stories build consensus, a common culture of shared understandings, and deeper, more vital ethics.
Id. at 2413-14.

135. Julie M. Spanbauer, *Teaching First-Semester Students that Objective Analysis Persuades*, 5 LEGAL WRITING 167, 178 (1999). See also Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 165 (1993) (arguing that students hesitate to read judicial opinions critically because “they are adjudication, and adjudication is power, coercion, even violence”); Reginald Oh, *Remapping Equal Protection Jurisprudence: A Legal Geography of Race and Affirmative Action*, 53 AM. U. L. REV. 1305, 1311 n.11 (2004) (citing L.H. LARUE, *CONSTITUTIONAL LAW AS FICTION: NARRATIVE IN THE RHETORIC OF AUTHORITY* 2 (1995) (describing judicial opinions as “persuasive because judges include fictitious rhetoric throughout opinions”).

136. 388 U.S. 307 (1967) (upholding conviction for violating an injunction).

137. 394 U.S. 147 (1969) (finding parade ordinance unconstitutional).

138. *Id.* at 148-49; 388 U.S. at 310-11. See also David Benjamin Oppenheimer, *Kennedy, King, Shuttlesworth and Walker: The Events Leading to the Introduction of the Civil Rights Act of 1964*, 29 U.S.F. L. REV. 645 (1995) (discussing both cases); Sally Frank, *Eve was Right to Eat the “Apple”: The Importance of Narratives in the Art of Lawyering*, 8 YALE J.L. & FEMINISM 79, 84 (1996) (using Walker and Shuttlesworth cases to “illustrate the flexibility that lawyers and judges may enjoy in constructing narratives”).

139. See Spanbauer, *supra* note 135, at 168 (used in legal writing class).

facts in a nearly identical manner, but the 1967 *Walker* opinion “tells the story of Birmingham entirely from the point of view of the city’s white officials”:¹⁴⁰

The next afternoon, Good Friday, a large crowd gathered in the vicinity of Sixteenth Street and Sixth Avenue North in Birmingham. A group of about 50 or 60 proceeded to parade along the sidewalk while a crowd of 1,000 to 1,500 onlookers stood by, “clapping, and hollering, and whooping.” Some of the crowd followed the marchers and spilled out into the street. At least three of the petitioners participated in this march.¹⁴¹

By reading Justice Stewart’s 1969 *Shuttlesworth* opinion students can learn of the persuasive power of judicial characterization of facts and of omission or silence.¹⁴² In the *Shuttlesworth* opinion, these techniques create a completely different tone, presenting the marchers as peaceful and law-abiding citizens:

On the afternoon of April 12, Good Friday, 1963, 52 people, all Negroes, were led out of a Birmingham church by three Negro ministers, one of whom was the petitioner, Fred L. Shuttlesworth. They walked in orderly fashion, two abreast for the most part, for four blocks. The purpose of their march was to protest the alleged denial of civil rights to Negroes in the city of Birmingham. The marchers stayed on the sidewalks except at street intersections, and they did not interfere with other pedestrians. No automobiles were obstructed, nor were traffic signals disobeyed. The petitioner was with the group for at least part of this time, walking alongside the others, and once moving from the front to the rear. As the marchers moved along, a crowd of spectators fell in behind them at a distance. The spectators at some points spilled out into the street, but the street was not blocked and vehicles were not obstructed.¹⁴³

Several important social and political cultural events that occurred between 1967 and 1969 may explain the changes in Justice Stewart’s description of the events: “Dr. Martin Luther King, Jr.,

140. Oppenheimer, *supra* note 138, at 675.

141. *Walker*, 388 U.S. at 310-11.

142. Spanbauer, *supra* note 135, at 182. A similar exercise can be utilized focusing on the law in each case:

In *Walker*, Justice Stewart uses very strong language, declaring that the marchers were not “free to ignore” the injunction and “carry their battle” to the public streets. Stewart then describes the marchers as “impatient” and chides them to show “respect for judicial process” as a “small price” in order to have “the civilizing hand of the law.” In contrast the opinion in *Shuttlesworth* acknowledges a duty to disobey unjust laws, a recognition of civil disobedience, and a fear of tyranny. Justice Stewart’s language is very different as he declares that the marchers “may ignore” the ordinance “and engage with impunity in the exercise of the right of free expression.”

Id. at 184 (footnotes omitted).

143. *Shuttlesworth*, 394 U.S. at 148-49.

one of the defendants in *Walker* was assassinated; Senator Robert Kennedy, a prominent civil rights leader, was also assassinated; and there were many demonstrations and violent confrontations throughout this country, particularly in the South. The rule of law emphasized in *Walker* was breaking down.”¹⁴⁴ These two cases thus serve a dual purpose: they expose students to case analysis and legal concepts¹⁴⁵ while simultaneously demonstrating the effect of a changing political and social culture on the rule of law and legal culture.¹⁴⁶

Dr. Martin Luther King Jr.’s *Letter from Birmingham Jail* is another compelling narrative arising from these cases that can be used to illustrate a minority cultural perspective. It has come to be regarded as his “greatest written work, and the most important statement of principles of the civil rights era.”¹⁴⁷ Dr. King wrote *Letter from Birmingham Jail* after his arrest in the *Walker* case and during his incarceration in solitary confinement.¹⁴⁸ This persuasive narrative, with its eloquent and beautiful prose provides an alternative perspective to the *Shuttlesworth* opinion and again can be used to teach case analysis by contrasting it with other kinds of narratives.¹⁴⁹ This narrative uses powerful images to convey the hopeless situation of African Americans in the U.S. in the 1960s, and thereby refutes the principles of equality, individualism, and egalitarianism.¹⁵⁰ This document also provides students with a stark example of the narrow range of the judicial opinion, which frequently tells a

144. Spanbauer, *supra* note 135, at 184-85 (footnotes omitted). Dr. King was assassinated in April, 1968, and Robert Kennedy, former Senator from New York and then Attorney General of the United States, was assassinated on June 5, 1968. Dennis Keating, *The Parma Housing Racial Discrimination Remedy Revisited*, 45 CLEV. ST. L. REV. 235, 237 (1997). During a five-year period, “this country ‘had endured the assassination of a president and two other national leaders . . . We had experienced Kent State, riots at the Democratic National Convention, and the bombing of Cambodia.’” Spanbauer, *supra* note 135, at 185 n.99 (quoting William R. Glendon, *The Pentagon Papers—Victory for a Free Press*, 19 CARDOZO L. REV. 1295, 1306 (1998)).

145. It has been argued that “concepts are constituted out of experience through the use of symbolic forms of representation, of which language is the most important, and, through language, can be altered in response to new experience.” Clark D. Cunningham, *A Tale of Two Clients: Thinking About Law as Language*, 87 Mich. L. REV. (LEGAL STORYTELLING) 2459 (1989).

146. See *supra* note 46 and accompanying text.

147. Oppenheimer, *supra* note 138, at 662-63.

148. Martin Luther King, Jr., *Letter from Birmingham Jail*, reprinted in 26 U.C. DAVIS L. REV. 835 (1993). “Dr. King used the edges of the newspaper, and a later paper smuggled in by his attorney, to write” it. Oppenheimer, *supra* note 138, at 662.

149. Spanbauer, *supra* note 135, at 185.

150. See *Id.* at 187-89.

very small part of the story of an event and its impact on the litigants.¹⁵¹

These kinds of exercises, beginning first with familiar genres and moving to legal genres, accomplish something linguists and other theorists advocate as necessary—immersion, via which acculturating individuals avoid using their native language dictionaries¹⁵² or even communicating in their native language during their period of conversion to proficiency in a new language.¹⁵³ For J.D. students, who are new to the language of the law, but not necessarily to the English language, the “quest . . . is to think . . . about law as a kind of language and lawyering as a form of translation.”¹⁵⁴ Because language and culture are inseparable, however, complete immersion, thus, requires both language and cultural immersion.

IV. CONCLUSION

Globalization of the practice of law requires legal professionals all over the world to work together.¹⁵⁵ Legal practitioners, as well as judges, can no longer isolate themselves from working with lawyers from other nations and legal cultures, which often presents a “nearly infinite variety of legal philosophies and approaches.”¹⁵⁶ “The task is then to understand and then meld these legal cul-

151. *Id.* In fact, in recognition of the judicial opinion’s failure to tell the whole story or the story from a single perspective, Foundation Press released a series of books designed to provide a legal, political, and social context for some of the standard cases used in contract law, tax, civil procedure, constitutional law, criminal procedure, employment discrimination, environmental law, immigration law, intellectual property law, labor law, property law, and torts law courses. See, e.g., *CONTRACT STORIES* (Douglas G. Baird ed., 2007).

152. “Although dictionaries are useful for divining the derivations and denotations of individual lexical items, dictionaries are not so useful when interpreting complex phrases in legal texts. Lawyers and judges resort to dictionaries out of habit and ignorance.” Craig Hoffman, *Parse the Sentence First: Curbing the Urge to Resort to the Dictionary When Interpreting Legal Texts*, 6 N.Y.U. J. LEGIS. & PUB. POL’Y 401, 438 (2003). The problem is compounded by foreign language dictionaries.

153. “Language differences are mind-expanding, and the more languages one knows, the more philosophical one becomes.” Nancy Festinger, *Law in a Multilingual Environment—The Advantages of Cross Fertilization*, http://www.biculturalfamily.org/law_multilingual.html (last visited Nov. 6, 2009). Unfortunately, these differences are often misunderstood and treated as “regrettable, rather than something worthy of attention.” *Id.* (quoting Neil Cohen). See Lewinbuk, *supra* note 91, at 10; McKenzie, *supra* note 92, at 251. Even professionals who study the same language often take quite a different approach to its analysis. See Craig Hoffman, *When Worldviews Collide: Linguistic Theory Meets Legal Semantics in United States v. X-Ciment Video, Inc.*, 73 WASH. U. L.Q. 1215 (1995) (comparing the theoretical approach to language employed by linguists with the practical approach used by lawyers and proposing to integrate the two into a workable framework).

154. Cunningham, *supra* note 145.

155. Charles H. Koch, Jr., *Judicial Dialogue for Legal Multiculturalism*, 25 MICH. J. INT’L L. 879, 879 (2004).

156. *Id.*

tures.”¹⁵⁷ In order to do so, it is important to introduce and teach culture in the law school classroom.

Anthropologists, psychologists, and sociologists who have studied the process by which individuals successfully master a new culture and corresponding language advocate adoption of a bicultural approach to teaching so as to promote bicultural identity integration (BII)¹⁵⁸ and cultural frame-switching (CFS).¹⁵⁹ The storytelling method can be utilized with this bicultural approach to education of both international and entering J.D. students.

While teaching culture is crucial to teaching international students who are immersing themselves into the legal profession in a different language situated within a different culture, entering J.D. students are also learning the language and culture of the law within new and foreign formats—statutes and judicial opinions. They too will benefit from a cultural approach to teaching as they immerse themselves in the study of law and as they prepare to enter the global practice of law.

157. *Id.*

158. *See supra* note 18.

159. *See supra* note 19.

