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THINKING PIECE

Describing difference or explaining it?

Troublesome knowledge and comparative reasoning in a short-format teaching context

Wesley Maraire[1]

1 Centre for Climate Change Law and Governance (CLIMA), University of Copenhagen
* wesley.maraire@gmail.com; wema@jur.ku.dk

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Abstract

Teachers across disciplines ask students to perform conceptual operations they seldom state, and short-format teaching rarely yields the evidence SoTL conventionally expects. I reflect on a ninety-minute online guest lecture delivered within a Comparative Political Institutions course at a Dutch university. The session compared constitutional election disputes in Zimbabwe and Malawi and aimed to move students from descriptive case comparison toward explanatory reasoning about judicial institutions and political context. Although students engaged actively and correctly identified doctrinal differences between the two judgments, the explanatory connections I anticipated were absent from the discussion. Reading the episode through Meyer and Land's account of troublesome knowledge, I suggest that the step from describing difference to explaining it remains tacit, held within a scholarly community and seldom stated to students entering it. I present this as an interpretive possibility raised by the experience and not as a finding. Finally, I also weigh what making such conceptual demands explicit might cost as well as offer.

Keywords*: Scholarship of Teaching and Learning, troublesome knowledge, comparative legal education, socio-legal pedagogy, comparative reasoning*

Introduction

Every discipline asks students to learn ways of thinking and develop intellectual habits

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that practitioners carry out without ever stating explicitly. Historians move from chronology to causal explanation, clinicians from presenting findings to differential diagnosis. Meyer and Land (2003, 2005) distinguish threshold concepts from troublesome knowledge, reserving the latter for the resistance learners encounter along the way. Their examples span diverse fields: economists reconceive choice through opportunity cost, physicists grasp that constant motion implies zero resultant force, and mathematicians accept counter-intuitive limits. Tacitness deepens the challenge because practitioners continue applying these modes of thought and concepts long after their own confusion has disappeared. This difficulty arises whenever fluency makes a conceptual step seem obvious. Although this analysis centres on law, the underlying difficulty may extend beyond that field.

Comparative law scholars have long argued that meaningful comparison reaches beyond doctrinal analysis, requiring students to connect legal texts, institutional structures, historical trajectories, and broader political conditions (Twining, 2004; Siems, 2014; Wiratraman, 2019). However, they say less about whether teaching itself contains implicit assumptions about the intellectual work students must perform.

This paper emerged from a single guest lecture that explored constitutional courts and judicial legitimacy by comparing presidential election litigation in Malawi and Zimbabwe. As a Zimbabwean legal scholar now based in Europe, I expected students to move from identifying doctrinal differences between the two cases toward explaining those differences in terms of institutional design. During the lecture, however, I became increasingly uncertain whether these connections had become evident in the discussions. This uncertainty initially seemed to concern student learning but, on reflection, increasingly drew my attention to my own assumptions about how explanation follows description in teaching.

The paper adopts a reflective approach informed by Schön's (1983) distinction between reflection-in-action and reflection-on-action. Following Leering's (2014, pp. 101–102) discussion of reflective practice in legal education, I approach reflection as retrospective evaluation as well as a means of making tacit assumptions evident and interrogating potential gaps between espoused intentions and actual practice. Schön's distinction became useful because the uncertainty I experienced arose during the act of teaching itself and only later became an object of sustained reflection. The paper as such uses a single teaching episode to think through a question that emerged from practice, asking whether some forms of comparative reasoning remain tacit expectations within teaching design, without claiming to establish generalisable conclusions.

The Teaching Context

I taught the session once, a ninety-minute guest lecture on Zoom with approximately fifteen students enrolled in a Comparative Political Institutions course at a university in the Netherlands. The course convenor had distributed the two cases and a documentary film through the institutional learning platform two weeks earlier, and the students were expected to arrive having read the material. The classroom camera let me see the group as I spoke. The course title itself announced comparison as its organising purpose, and I designed the lecture to foreground institutional structure through the juxtaposition of two constitutional election disputes. One was decided by the Zimbabwe Constitutional Court, sitting at the apex of the judicial hierarchy, and the other by the Malawian High Court sitting as a Constitutional Court, whose decision remained open to appellate review (*Chamisa v. Mnangagwa*, 2019; *Chilima v. Mutharika*, 2020). The two courts reached opposite outcomes. Zimbabwe's Constitutional Court heard the petition on 22 August 2018 and dismissed it two days later for want of evidence that irregularities had changed

the result, confirming Mnangagwa's election; the full written judgment followed fourteen months later. Malawi's Constitutional Court deliberated for nine months over the joint petition brought by Chilima and Chakwera and, on 3 February 2020, annulled Mutharika's re-election over widespread irregularities, ordering a fresh election within 150 days, which Chakwera won that June.

I opened the discussion with a question I had prepared to reach beyond the immediate facts of the rulings. After recapping the two outcomes, I asked: "How can we explain this difference beyond going straight to the narrative of judicial capture or impartiality?" Judicial capture describes courts whose rulings track the interests of those who control judicial appointments and tenure, rather than independent legal reasoning. I intended to direct students toward the institutional, political, and systemic conditions that might shape judicial behaviour, including electoral systems, patterns of political incumbency, colonial legal inheritances, the presence or absence of judicial review, and the incentives different appellate structures create. I expected the question to open a conversation about why courts behave differently, expanding the focus from individual judges to the institutional ecologies in which they operate.

What followed was not a failure of participation since several students raised their hands and offered responses. In paraphrase, they noted that Malawi's Constitutional Court had placed significant emphasis on procedural integrity and accountability, while Zimbabwe's Constitutional Court had demanded higher standards of evidence for overturning an election. These responses captured genuine doctrinal differences between the judgments. As I probed further, reformulating the question and inviting students to consider what might explain those differences beyond the legal reasoning itself, the contributions I heard remained anchored to the texts and reached no political or structural dimension.

Recognition came gradually, accumulating across the session, since each time I recast the initial question the contributions remained close to the doctrinal plane, and I registered in the moment itself that the teaching was drifting from my design. In Leering's (2014, pp. 89–92) terms, this noticing-in-practice marks the first opening for reflection, when a practitioner becomes aware of a misalignment before fully understanding its causes.

From Noticing in the Moment to Reflecting on the Lesson

In the days and months following the lecture, my initial observations developed into a deliberate reflection on the experience. My immediate instinct was to interpret the experience as a limitation of student preparation or a gap in their comparative reasoning skills. I wondered whether I had overestimated their familiarity with the institutional variables that political science and legal scholarship invoke as explanatory resources. During a university pedagogy programme at a Norwegian university, class discussions on course design, lecture design and student evaluations prompted me to consider how comfortably this interpretation shielded my instructional choices. However, lacking student work, follow-up discussions or post-session evidence of learning, I realised I could not sustain that position. A third explanation lies in the facilitation itself, specifically in how I framed the question, how long I waited for responses and how I handled each reformulation. I set that possibility aside because memory offers no better evidence of facilitation quality than of student understanding, though it does grant direct access to what I planned and what I left unsaid. The convenor also selected and distributed the pre-reading, so any assumption embedded in the preparation for this session may sit across two teachers, not one.

Unable to settle where the difficulty lay, I stopped asking why students had failed to perform the intellectual operation I planned for and anticipated and began asking what I had assumed about the operation itself. I had designed the lecture around the two cases and supplied rich historical, institutional, and political context. I had assumed that this contextual richness would, almost automatically, invite students toward the kind of analysis I hoped to elicit, but I had not paused to consider whether explaining what students had described was itself a distinct intellectual step requiring explicit articulation.

Troublesome Knowledge and the Limits of Contextual Richness

Comparative legal education scholarship has long insisted that meaningful comparison requires going beyond doctrinal comparison into an understanding of the social, political, and institutional contexts within which legal systems operate. Siems (2014) advocates multidisciplinary approaches that embed legal systems in their social contexts, and Twining (2004) emphasises that legal ideas travel across jurisdictions through processes of diffusion that demand contextual understanding. Wiratraman (2019) argues that comparative legal education often struggles to situate legal questions within broader social realities. I had tried to teach the contexts that produce legal outcomes, supplying material on history, institutions, and politics in both Zimbabwe and Malawi.

What the session unsettled for me was the assumption that contextual information alone would activate the kind of reasoning these scholars describe. The step from "the two courts reasoned differently" to "the institutional structures within which they operate shaped those differences" never arose in our exchange. I began to suspect the step differed in kind from the next item on an intellectual agenda, perhaps because it was a particular form of conceptual movement I had held as self-evident while designing the session.

Meyer and Land (2003) help explain what I had treated as self-evident, characterising knowledge as troublesome when learners find it conceptually difficult, counter-intuitive or alien to their accustomed discourse. Their later work formalises tacitness into a distinct theoretical concept, locating trouble in knowledge held and practised within a scholarly community yet seldom stated to those entering it (Meyer & Land, 2005). Comparative explanation embodies this tacit quality because institutional scholars seldom articulate the progression from establishing that two courts reasoned differently to asking what conditions produced the difference. Within the scholarly community, that analytical step constitutes the work itself, whereas students entering the discipline possess no such orientation. Consequently, what strikes an instructor as the obvious next question may strike them as no question at all.

I maintain a deliberate limit on this theoretical scope. Meyer and Land reserve the term threshold concept for transitions that transform understanding, integrate previously separate knowledge and resist reversal once crossed, whereas a single session provides no grounds for claims of that scale. The episode points instead to something narrower, showing that the step I hoped to elicit carries the tacit quality they identify as troublesome, a feature originating in my teaching design as much as in the material. Even that modest reading rests on a single unverified session and my own recollection, leading directly to the limits of such evidence.

Evidence, Observation, and the Limitations of a Single Session

SoTL scholarship encourages systematic enquiry into teaching and learning, drawing clear distinctions between reflective impressions and methodologically grounded investigation (Bishop-Clark & Dietz-Uhler, 2012). Felten (2013) emphasises that good SoTL remains anchored in questions about student learning, not solely in instructor reflection. These

principles are necessary and valuable; however, they can leave instructors in short-format teaching contexts uncertain about what counts as meaningful evidence when formal data collection is neither feasible nor appropriate.

The guest lecture I delivered generated no student evaluations, no written responses, and no recorded interaction beyond my own memory. Berenson (2018, p. 43) argues that distinct "traditions of inquiry" structure SoTL research, each grounded in particular paradigmatic assumptions about knowledge, reality, and the role of the researcher. Within a constructivist or interpretive tradition, the instructor's reflective account can function as a form of evidence in its own right, generative of questions about teaching design even where it cannot speak to what students learned. The choice of tradition answers to the question as much as to the evidence at hand. My question concerns what a teacher assumed and left unsaid while designing a session, which is a question about intention and meaning in practice, and an interpretive tradition takes exactly that as its object. A post-session questionnaire would have told me more about what students grasped while leaving the design assumption where it stood. The form of evidence available to me is observational, partial, and bounded by a single ninety-minute interaction. Therefore, it cannot establish what students understood, although it can disclose what I assumed, what I asked, and what I heard in response.

Learning may occur later, in students' own study, subsequent sessions with the convenor, or written assignments. I have no evidence either way. The absence of explicit reasoning practice during the session does not establish its absence from students' thinking, just as the lively participation does not establish its presence. Such uncertainty belongs to a reflective paper like this one; it is the condition from which the reflection arises. Accordingly, I do not treat the discomfort I felt during and after the lecture as a signal of pedagogical failure needing diagnosis and resolution, but as a signal that my assumptions about the visibility of conceptual work were worth examining.

Implications for Short-Format Comparative Teaching

If noticing and reflection are to do more than clarify previous experience, they must also shape future practice (Leering, 2014, p. 102). Reflecting on this episode has altered my approach to guest lectures, where follow-up is virtually impossible. Rich contextual information remains essential for meaningful comparisons; however, the session left me less willing to assume that it alone guides students toward systematic reasoning. The intellectual operation itself, explaining institutionally what students have described doctrinally, may need to become an explicit learning goal.

In future iterations, I would open by stating the conceptual basis upfront, not by presenting the cases and expecting patterns to emerge. At the outset, I would distinguish descriptive comparison (what is different?) from explanatory comparison (what explains the difference?) and signal that the session pursues the latter, since answering the explanatory question requires us to examine institutional design, political context, and legal history.

These reflections notwithstanding, I hold the proposed adjustment with some unease, for explicit signposting comes with its own pedagogical cost. A class told at the outset to look for institutional design, political context, and legal history may produce the vocabulary on demand without performing the underlying analysis, generating fluency that mimics critical thinking without enacting it. The very move I had wanted to elicit may, once stated too directly, be hollowed into recitation. I cannot resolve that tension here, and resolution may even be the wrong ambition. The choice could in fact be between two different forms of incompleteness, the unprompted silence I encountered in the session and the prompted recitation I might inadvertently produce in its replacement.

Conclusion

I still do not know whether the students in that online session developed the insights I had hoped they would. But the university pedagogy programme helped me accept that empirical certainty may never arrive. What the experience has done is challenge a set of assumptions that had guided my teaching. In particular, I had assumed that contextual information automatically invites critical thinking, that comparison naturally leads to explanation, and that the conceptual work I intend is as clear or obvious to students as it is to me.

The session also left me with a broader question about my teaching practice: whether instructors routinely embed expectations about conceptual work that remain tacit in Meyer and Land's (2005) sense, making them inaccessible to learners who might otherwise meet them. Whether such expectations constitute a hidden curriculum of conceptual demand, alongside the institutional norms that literature more commonly describes (cf. Snyder, 1970; Margolis, 2001), is a question this single session can raise but cannot address. It is not a finding, but a wondering, born from ninety minutes of teaching and sustained by continuous self-critical reflection.

The question this paper addresses may extend beyond one guest lecture and beyond comparative law teaching. Short-format teaching increasingly forms part of internationalised higher education through visiting lectures, interdisciplinary collaborations, and compressed encounters where ambitious expectations meet little time for follow-up. In such formats, the assumption that learners will follow the conceptual path the instructor has internalised may go undetected.

What lingers most is a mid-question recognition that I was about to accept another doctrinal response. No evidence tells me whether students would have travelled the further distance had I pointed out the destination, nor is it clear whether my naming would have made the journey theirs. I invite colleagues to examine their own teaching designs for tacit demands of this kind, expectations they hold as obvious and leave unstated.

About the Author

Wesley Maraire is a Marie Skłodowska-Curie Postdoctoral Fellow at the Centre for Climate Change Law and Governance (CLIMA), University of Copenhagen. His research focuses on climate governance and access to justice, and he recently completed the university pedagogy programme at the University of Bergen (UiB).

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