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What law for transnational legal education? A cooperative view of an introductory course to transnational law and governance

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In this article, one professor and three students coming from four different jurisdictions reflect jointly on a singular educational experience in transnational law that took place at the Center for Transnational Legal Studies in London during the fall term of 2013. After a brief introduction to the concept of transnational law and the academic controversy surrounding it, the piece follows with a description of this unique educational experience, including the content and structure of the course, the composition of the class, the institutional environment, and the results achieved. In the more substantial part of the paper, the co-authors investigate several conclusions and lessons learned from the experience. The article argues against the alleged obscurity of the concept of transnational law itself, but rather roots the problems of transnational legal education in the methodological challenges it poses, the confusion of descriptive and ideological claims, and finally in different expectations about the pedagogical goals transnational education should achieve.

Keywords: legal education; transnational law; concept of law; legal pluralism; state-centered positivism

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César Arjona is Professor of Law at ESADE Law School (Barcelona) and Academic Co-Director at the Center for Transnational Legal Studies (London) 2013–2014. I want to express my gratitude to all my colleagues at the Center during the fall term of 2013, including both academic and administrative staff, and in particular to the faculty members who got actively involved in the course: Eva Maria Belsler Wyss, Ugo Pagallo and Nicola Palmer. Special thanks to Gregg Bloche, my co-director at the Center and co-teacher of the course. Joshua Anderson, François Meier and Sierra Robart attended CTLS in the fall of 2013. Joshua Anderson earned her *Juris Doctor* from the University of Melbourne in the spring of 2014. François Meier was at that time a student at the University of Fribourg (in Switzerland), and he follows his legal studies at University of Paris II and the College of Europe (in Bruges). Sierra Robart earned her *Juris Doctor* from the University of Toronto in the spring of 2014. We want to dedicate this paper to the students of the CTLS fall 2013 class.

1. Introduction

This article is based on a shared experience in transnational legal education. The authors took part in the course *An Introduction to Transnational Law and Governance* at the Center for Transnational Legal Studies (CTLTS), where they worked and studied during the fall term of 2013.¹ One of the co-authors, César Arjona, was the co-teacher of the course, while Joshua Anderson, François Meier and Sierra Robart were students. In this article we reflect with a single voice on our transnational teaching and learning experience.

This piece is concerned with the educational and methodological aspects of transnational law. Its contribution to the academic literature on transnational law lies in the singularity of this educational experience, which we believe is capable of shedding light on the benefits and challenges of teaching transnational law to students from different jurisdictions through a collaborative educational process. This also sets its limits. This article is based in a single experience, and thus we cannot draw conclusions from empirical data in any scientific way. Likewise, we have not implemented specific mechanisms to prevent our opinions from being tainted by subjectivity (if at all possible), and part of what we say here is inevitably impressionistic in nature. What follows does not pretend to build a general theoretical framework on the concept of transnational law, but should be read instead as a cooperative effort on the part of the authors to reflect genuinely and candidly on what certainly is a very unique experience in transnational legal education.² This article makes explicit use of the student voice through the three student co-authors, and also by using information from exams, student surveys, and even informal opinions expressed outside class. Using the students' voice is a crucial aspect of this article, something rare in the literature on legal theory and legal education.

A preliminary clarification of the term 'transnational legal education' is necessary. This expression may have three different meanings, depending on what term the adjective 'transnational' is meant to qualify: 'legal', 'education', or both.

¹For a detailed presentation of the CTLTS and the course, see section 3.

²To the best of our knowledge, this is one of the very few examples of transnational legal education both in terms of its content and the composition of the class (see below for the distinction between three meanings of transnational legal education), and is unique in a number of important ways. Another enterprise in transnational legal education is The Association of Transnational Law Schools, and its program Agora. However, unlike the CTLTS, this program is focused on graduate study and takes place during short periods in the summer. See P Bevens and J McKay, 'The Association of Transnational Law School's Agora: An Experiment in Graduate Legal Pedagogy' (2009) 10 *German Law Journal* 929. A list of Agora programs can be found at H Wenzel, *The Association of Transnational Law (ATLAS)* (15 May 2014), online: <<http://associationoftransnationallawschools.blogspot.co.uk>>.

First, if it affects the term 'legal', transnational legal education may refer to legal education of any sort as long as it deals with transnational law as its object. Thus, traditional domestic legal education becomes transnational in this first sense if it is devoted to the study of transnational law. A course or a program on transnational law offered by any particular law school would be an example of transnational legal education in this sense, even if all the participants come from the same domestic jurisdiction. It is the object of teaching and learning that makes their experience transnational.

Secondly, if it qualifies the term 'education', transnational legal education exists when there is a transnational element at the pedagogical level, independent of the object of study. For example, traditional exchange programs provide a transnational legal educational experience for students coming from abroad to participate in the program, even when they study the domestic law of the country hosting them. It could be argued that in such a case the class itself becomes 'transnational', which also affects the students who are studying domestic law at their home university.

Finally, we can have transnationalism both in the object of study and at the pedagogical level. The experience that will be related in this piece is an example of transnational legal education in this sense: modifying both the terms 'legal' and 'education'. The course *An Introduction to Transnational Law and Governance* was part of the curriculum of a center specifically devoted to transnational law and legal studies. It involved professors and students coming from 17 different jurisdictions, representing different legal families. Although it took place in London, only three of the 88 students enrolled were receiving their primary legal education in the United Kingdom. The two professors teaching the course came from two different law schools representing two different jurisdictions and legal families, and the different guest teachers that participated during the term added to this diversity. The class was as transnational as the object of study. When we covered domestic law it was for the purposes of illustration or comparison only.

Having clarified in what sense this is an experience in transnational legal education, in the next section we briefly review the conceptual problems posed by the term 'transnational law' itself. Although this article does not aim to provide an original contribution to the general theory of transnational law, nor does it conduct an exhaustive review of the burgeoning literature on the matter, we believe it is crucial to clarify the conceptual assumptions with which we worked in the course in order to have a proper framework to situate the experience. Subsequently, in the third section we offer a more detailed account of the course, including its content and methods, the composition of the class, the results, and the institutional environment in which it took place. This section is largely descriptive, and readers mostly interested in theoretical and scholarly aspects may want to skip it and jump into section 4. In the fourth section, we systematically develop our reflections on the experience of teaching and studying this course. Finally, we conclude in the fifth section by enumerating some lessons learned from the experience.

2. Conceptual framework

Many works on transnational law take as a standard definition the one offered by the American jurist Philip Jessup in the mid-twentieth century. We used this definition as the conceptual starting point in our course. In his seminal book *Transnational Law*, which reproduces the Storrs Lectures delivered at Yale Law School in 1956, Jessup said:

I shall use, instead of ‘international law’, the term ‘transnational law’ to include all law which regulates actions or events that transcend national frontiers. Both public and private international law are included, as are other rules which do not wholly fit into such standard categories.³

From the point of view of legal orthodoxy, Jessup’s definition is controversial for two reasons. First, it considers the well-established areas of private and public international law as sub-categories of the broader category of transnational law, a new and ambiguous concept, the content and the uses of which we are still debating more than half a century after Jessup’s book was published. Secondly, it dramatically opens the doors of legality by including the very broad and generic third element: ‘other rules which do not wholly fit into such standard categories’. It is in the indefinite character of this third element where the radicality of the definition lies, inasmuch as it suggests the inclusion of rules and norms that escape the monopoly of the state in law-making and law-implementation as ‘transnational law’. Jessup himself points towards this when he adds that the term ‘transnational law’ can be applied to ‘corporate bodies, whether political or non political’.⁴

This radicality is well encompassed in Craig Scott’s much more recent conceptualisation of transnational law.⁵ In his approach to transnational law as a ‘proto-concept’, Scott addresses its ambiguities by suggesting three different possible conceptions of the term. Although the first two conceptions imply different ways of dealing with transnational issues that can be accounted by reference to either domestic state law or international law proper, the third conception ‘sees transnational law ... as being in some meaningful sense autonomous from either international or domestic law’.⁶ Scott refers to this third meaning as ‘transnational

³P Jessup, *Transnational Law* (Yale University Press, 1956) 2. Although he is often considered the first scholar to have used the term, in a footnote Jessup himself acknowledged previous uses of the word ‘transnational’ in a legal context.

⁴*Ibid.*, 3.

⁵C Scott, ‘“Transnational Law” as Proto-Concept: Three Conceptions’ (2009) 10 *German Law Journal* 859.

⁶*Ibid.*, 873. The first conception (transnational legal traditionalism) makes reference to the law that regulates transnational phenomena of any kind, considering that it is made up of ‘rules, principles and/or standards and related decisions and other juridical acts “located” in one of two kinds of legal systems: public international law or the state (national/domestic/municipal) law’, *ibid.*, 868–69. The second conception (transnationalised legal decisionism) makes reference to a sort of ‘law in the result’ in terms of the legal decisions

socio-legal pluralism'. By not excluding—but rather focusing on legal and law-like experiences that are independent from state law—this conception of transnational law suggests that '[l]aw as both social practice and animating ideal may well be constructed and continue to exist independently of "official" (in the sense of modern state) law'.⁷ This makes clear the connection between transnational law and legal pluralism, an area of legal studies mainly cultivated by social scientists (especially anthropologists) that has generated a vast literature both in terms of empirical studies and theoretical and conceptual construction.⁸

Legal pluralism can be simply defined as 'a situation in which two or more legal systems coexist in the same social field'.⁹ As a field of research, legal pluralism originated in the context of colonial and postcolonial studies, analysing how the official law imposed by the metropolis interacted with indigenous laws and other forms of normativity. But beyond its original context, legal pluralism offers a useful framework to describe the interaction between different legal systems and forms of normativity of any kind that can and has been used to describe law after globalisation.¹⁰ From this perspective, the global legal system (if we can speak in these terms) has been defined as 'an interlocking web of jurisdictional assertions by state, international, and non-state normative communities'.¹¹ A new legal pluralism has emerged in relation to the global arena, and in this new pluralistic situation 'multiple forms of order coexist in the same social space, only some of which are formal law'.¹² Thus, for example, in an open challenge to the state-centered nature of legal orthodoxy, 'global private

that are gradually building up with respect to transnational problems, taking into account that it is the domestic law and the interstate law that 'create the pool of norms that may be thought of as rules of decision *in potentia* and they also bestow authority upon certain actors to exercise a power of decision that leads to some kind of resolution of a transnational issue, problem or dispute', *ibid*, 871. Both conceptions, although introducing a transnational element in the field of law, are perfectly grounded in the traditional view that sees law as a state phenomenon. It is the third conception (to which, significantly, Scott devotes most of his attention) that challenges legal orthodoxy.

⁷*Ibid*, 874.

⁸On the relation between transnational law and legal pluralism, see C Arjona, 'Transnational Law as an Excuse' in C Menkel-Meadow, V Ramraj and F Werro (eds), *Teaching Transnational Law: Substantive Issues, Pedagogical Approaches* (forthcoming 2016). Also published as *ESADE Working Papers Series* n 219 (2011).

⁹S Engle Merry, 'Legal Pluralism' (1988) 22 *Law and Society Review* 869.

¹⁰W Menski, 'Plural Worlds of Law and the Search for Living Law' (2012) *Recht Analyse als Kulturforschung* 71; P Zumbansen, 'Transnational Legal Pluralism' (2010) 1(2) *Transnational Legal Theory* 141; P Berman, 'Global Legal Pluralism' (2007) *Southern California Law Review* 141; S Roberts, 'After Government? On Representing Law without the State' (2005) *The Modern Law Review* 1; B de Sousa Santos, *Towards a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (Cambridge University Press, 2002).

¹¹Berman (n 11) 1159.

¹²S Engle Merry, 'New Legal Realism and the Ethnography of Transnational Law' (2006) 31 *Law and Social Inquiry* 975.

regimes are creating their own substantive law. They have recourse to their own sources of law, which lie outside spheres of national law-making and international treaties'.¹³

By accepting that law 'need not be conceptualized as having to have either a direct or a derivative relationship to the state or the interstate order',¹⁴ legal pluralism offers a useful methodological platform to understand Jessup's third element of transnational law ('other rules which do not fully fit into such standard categories'), and thus to understand the concept in its broadest possible sense. It becomes clear that 'transnational law might not even be formal "law", as enacted by a state or formal governmental body'.¹⁵

Thus conceived, transnational law points towards the changing role of the state in the global world, a crucial problem not only in law but also in the fields of political theory and international relations. The discussion around the notion of state sovereignty has become a 'seemingly endless debate' reflecting the theoretical and methodological problems implied by that changing role.¹⁶ Although this is a controversial topic in itself, and opinions are diverse among different authors, there seems to be an agreement that sovereignty can no longer be conceptualised along the lines of the Westphalian paradigm that has been dominant in the field of law, politics and international relations since the eighteenth century. It is not uncommon today to hear that we have entered into a 'new world order',¹⁷ a phenomenon that some authors relate to a wider shift in civilization, questioning the very basis of Western 'modernity'.¹⁸

In the context of this course, we have worked with a wide conception of transnational law based on Jessup's initial definition taken at face value and interpreted in light of Scott's third conception ('transnational law as socio-legal pluralism'). The reason for doing so has been purely methodological, and it does not imply an endorsement of any particular position on the controversy around the concept of transnational law, nor on its normative value. Rather the opposite,

¹³P Berman, 'The Globalization of Jurisdiction' (2002) 151 *University of Pennsylvania Law Review* 311. By definition, legal pluralism as a scientific paradigm is in direct opposition to state centrality. See J Griffiths, 'What is Legal Pluralism?' (1986) *Journal of Legal Pluralism and Unofficial Law* 24. This becomes increasingly evident in globalisation: 'full understanding of legal pluralism is only possible if one abandons the assumption that global law exclusively derives its validity from processes of State law-making and from state sanctions'. See A Fischer-Lescano and G Teubner, 'Regime Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law' (2004) 25 *Michigan Journal of International Law* 1010.

¹⁴Scott (n 6) 874.

¹⁵C Menkel-Meadow, 'Why and How to Study "Transnational" Law?' (2011) 1 *UC Irvine Law Review* 101.

¹⁶AM Slaughter, 'Sovereignty and Power in a Networked World Order' (2004) 40 *Stanford Journal of International Law* 283.

¹⁷AM Slaughter, *A New World Order* (Princeton University Press, 2004).

¹⁸S Douglas-Scott, *Law After Modernity* (Hart Publishing, 2013).

the adoption of this broad framework allows for the consideration of the controversy itself with all its implications as part of the object of the course, a possibility that would have been precluded by using a narrower definition of ‘transnational law’.

It is also in this spirit that the term ‘governance’ was included in the title of the course. This must not be understood as reflecting any kind of strong position on the concept or uses of ‘governance’, another notion that is controversial in itself.¹⁹ The decision to add ‘governance’ was pragmatic and based on educational goals, inasmuch as it further opened the door to pluralism and complexity, thus allowing us to consider forms of soft-law alongside traditional hard-law.²⁰ Discussing the concept of transnational law in a large class that was greatly diverse necessitated accepting that different participants were going to hold different and even opposing preconceptions on the issue (as was confirmed, see below, section 3). The use of the term governance permitted us to deal with an array of normative, policy-related and law-like phenomena without having to impose on all the participants *an a priori* definition of legality, especially on those who felt more comfortable with a narrow and strict conception of law.

3. Description of the course

3.1 *The Center for Transnational Legal Studies, London*

The CTLS is a partnership in legal education made up of more than 20 law schools from around the world. Every academic year, the CTLS brings together around 20 professors and 150 students coming from different jurisdictions to the heart of London’s legal district to teach and learn transnational law in a transnational environment.²¹

As law scholars claim that globalisation challenges legal orthodoxy by moving law into a postmodern age, the CTLS reflects this post-modern global environment by bringing together students and professors from different nationalities into a neutral space where there is no national majority or dominance of any kind. In the words of a CTLS alumnus, the Center is ‘no man’s land’, and this is what

¹⁹M Bevir, *Governance: A Very Short Introduction* (Oxford University Press, 2012).

²⁰Slaughter (n 18).

²¹The founding partner schools are Georgetown Law, The Dickson Poon School of Law (King’s College London), ESADE Law School, Hebrew University of Jerusalem, National University of Singapore, University of Fribourg, University of Melbourne, University of Torino and University of Toronto. The regular partner schools are Amsterdam Law School, Bucerius Law School, Católica Global School of Law, Diego Portales University, Free University of Berlin, The Haim Striks School of Law (Colman), Moscow State University, Peking University School of Transnational Law, Pontificia Universidad Javeriana, Renmin University of China Law School, Tecnológico de Monterrey, Universidad de los Andes, University of Auckland, University of Liège and Yonsei University Law School (as of May 2014).

makes it different from a traditional exchange program or a visiting professorship. It is 'a place where everyone is a stranger', which has the effect of 'really pulling students and professors out of their comfort zones'.²²

In terms of content, the CTLS 'focuses on the law that governs interactions among different peoples of the world at all levels of human activity'.²³ In spite of the openness of this statement, it makes the Center unique, considering the strong bias towards domestic issues that is still predominant in legal education worldwide.

The academic organisation of the Center is driven by the principle of flexibility. Most courses are optional and students choose what they want to study among a range of subjects that cover different themes and areas of the law, with only three compulsory academic activities.

3.1.1 *The global practice exercise (GPE)*

The GPE is a macro-simulation exercise that takes place during the three days prior to the beginning of classes. It serves both as a general introduction to the CTLS and as an introduction to transnational law. The case that is the object of the simulation involves a problem of international commercial arbitration. The case also touches upon areas of labor law, contract law and corporate social responsibility, and the relevant sources of law include national laws, international treaties, private contracts, and rules of soft law. The mechanics of the exercise are designed in such a way that participation of all students and faculty is assured. Students have to adopt different roles during two different procedural stages of the case, in which they work in small groups made up of students of different nationalities. In particular, the contrast between how civil law and common law students confront the problem is noted every year in the students' feedback as a remarkable learning experience. It is certainly a first step into the process that they are about to begin.

3.1.2 *The transnational law colloquium*

The colloquium is a weekly meeting that revolves around the presentation and discussion of cutting edge scholarship and research in any area of transnational law (defined in the widest sense to include comparative law and international law proper). It is designed for works in progress by CTLS faculty and invited outsiders. Students play an active role in the colloquium: they have to attend every other session (seven in total for each student throughout the term) after reading

²²In the words of two former CTLS academic co-directors, Naomi Mezey and Kerry Rittich, 'Four-year-old Center in London is Devoted to Growing Field of Transnational Law' *New York Times*, 8 April 2012.

²³The Center For Transnational Legal Studies, *Mission Statement* (14 May 2014), <<http://ctls.georgetown.edu>>

the paper and writing a short reaction paper on it. These reaction papers are sent in advance to the speaker, so that she has the chance to organise her presentation around the students' comments, an opportunity that most speakers take. Subsequent debates follow between the speaker, students and other attending faculty.

3.1.3 *The core course*

This course is the only regular course of study that is compulsory for all students taking part in the program, meeting twice a week throughout the semester. Due to the rotational nature of the CTLS, it is taught by different professors every year, who have flexibility in designing its contents and general structure. This flexibility is constrained by the accumulated experience from previous editions and by the fact that, in one way or another, the course must play an introductory role to transnational law and, as its first and most obvious mission, levels the ground for students coming to the Center with diverse backgrounds.

The remainder of the paper is devoted to the teaching and learning of this core course during the fall term of 2013. The course was co-taught by professors César Arjona and Gregg Bloche, with the title *An Introduction to Transnational Law and Governance*.

3.2 *The class, fall 2013*

The class of fall 2013 had 88 students, both graduate and undergraduate.²⁴ They came from 21 different schools, representing 17 different countries, and were evenly distributed between common law and civil law jurisdictions: United States (15), Australia (11), Israel (11), Spain (10), Canada (9), Italy (6), Singapore (6), Switzerland (6), Germany (3), United Kingdom (3), China (2), Chile (1), the Netherlands (1), New Zealand (1), Mexico (1), Portugal (1) and Russia (1). Students came to the Center with varying levels of competence in English, as well as different educational backgrounds and expectations.

Diversity also prevailed within faculty. Of the two professors, one was from Georgetown Law, in the US, and the other from ESADE Law School, in Spain. There was also a diversity of nationalities, domestic jurisdictions and legal traditions among the 11 guest professors who were involved in the course in different capacities, both CTLS faculty and outside guests.

Diversity within the student body was enhanced by two additional factors besides countries of origin. The first is that some of these countries are federal

²⁴This contrast is due to the fact that in some countries law is an undergraduate degree whereas it is a graduate program in others. Thus, it is a contrast to a certain extent inevitable in a center such as the CLTS. In any case, graduate students were pursuing their first degree in law, and most undergraduates were very advanced in their programs, which made the gap manageable.

or semi-federal, or are part of a regional supranational legal system such as the EU, thus adding their own internal legal pluralism and political complexities to the diversity of the program.

The second factor is that some students had a multinational background themselves, including some doing their primary legal studies abroad. Strikingly, 52 per cent of the students declared that they had been abroad for a period of at least 2 months doing professional or academic work at some point prior to their coming to the CTLS.²⁵

If there was a wide variety in background, students' expectations were equally diverse. A survey was administered to the participants of the program during the very first day of class in which, among other things, they had to identify their main goal for coming to the CTLS by reference to a few broad profiles. Most students (37 per cent) identified as their main motivation for coming to the CTLS what the survey labelled a 'theoretical/intellectual' profile; namely, they were primarily interested in gaining further understanding of the law as a social phenomenon and of its transformations during the age of globalisation. The interests of the students were rather evenly divided though: 31 per cent of the students declared their main motivation to be acquiring practical experience in order to pursue a private career in the fields of business and commercial law and 26 per cent were seeking practical knowledge in public-interest oriented fields (such as human rights, environmental law, public administration, and so on). Finally, 10 per cent of the students stated that their main reason for being at the Center was networking.

The results of the survey also offered an interesting point of contrast with the transnational composition of the class that was described above. In spite of the diversity in national and cultural backgrounds, a vast majority of students (79 per cent) declared that they see their own country as their final professional destination, either immediately (in most cases) or after a period abroad. This probably tells something about the predominantly domestic tendency in legal education and in the legal profession.²⁶

²⁵This fact significantly enriched the class experience during the term. For example, in our discussion session on legal transplants and exports (see below, section 3.5) different students described concepts and legal institutions from their jurisdictions that they deemed difficult to export, translate or even understand from the viewpoint of a different legal culture. One of the most fascinating examples turned around the philosophy of labour law in Japan, very different from both common law and civil law conceptions. Interestingly, there is no Japanese partner school at the CTLS, and the point was made by a Canadian student of Japanese origin.

²⁶This is consistent with the fact that international law firms go local with regard to the particular jurisdiction where their foreign offices are situated, hiring lawyers that are licensed and mainly trained in that jurisdiction. See C Silver, D Van Zandt and N De Bruin, 'Globalization and the Business of Law: Lessons for Legal Education' (2008) 28 *Northwestern Journal of International Law and Business* 399.

3.3 *The core course: mission*

An introductory course on transnational law at the CTLS poses challenging problems at the design phase. The course is compulsory, and is to be delivered to an heterogeneous multicultural group of students with different legal educational backgrounds and different expectations in regards both to their future legal careers and how transnational law affects them. Further, it deals with a topic that is intrinsically controversial, academically unsettled, and as vast as the instructors wanted it to be. Some of these problems became the very object of the course.

During the design stage, the instructors found guidance by considering the role that the course plays within the context of the program. The role of the course is, albeit fundamental, mainly instrumental. As has been said above, most of the course load for the students at the Center is made up of optional subjects in their fields of choice. Most of these subjects deal with specific areas of law, addressing in a partial way different phenomena of transnational law; some of them within the framework of traditional international or comparative law, and others moving beyond that paradigm. The courses offered during the fall term of 2013 were evenly divided in terms of their focus and areas of study, and in broad terms could be grouped according to the three main interests that students expressed as their main motivations for coming to the Center.²⁷

This range of choice reinforced the role of the core course as offering a general framework that related to the different courses (and to which the different courses could relate). This crucial interconnectedness was reinforced by the participation of other CTLS faculty in the core course, as well as by informal exchange among professors and among professors and students.

With this in mind, the professors designed the core course with the aim of building the playing field in which the whole program was played, or even building the playing field in which the students will practise law tomorrow. This constructive task had to be accomplished cooperatively between professors and students, due both to the diverse origins of the students and to the novelty of the field. In a way it was impossible to foresee how the course was going to work without knowing how students were going to react as the course went on. In this, as in many other things, it was very different from a standard law course where the main goal is the transmission of legal information or the particular development of some specific and marketable professional skills.

²⁷Broadly speaking, several courses satisfied the interest of students that were private practice oriented: Conflicts of Law, International Commercial Arbitration, Secured Transactions in Transnational Perspective and Trusts: Comparative Law and Practice. Students interested in public oriented practice had the opportunity to study International Human Rights, Comparative Constitutional Law, and International Criminal Law. Finally there was a group of courses mostly theoretical in their approach that covered both private and public areas of the law, including Advanced Property Law, Comparative Private Law, Internet Law, and Transnational Legal Theories.

In terms of materials, and the way in which these materials were going to be presented, the course had to offer a toolkit for the students to work with, and allow for space to let them work freely. The guiding principle here was to strike a balance between guidance and openness (see below, section 5.3). Students had to be taught some principles, concepts and ideas, without which no educational goal was possible. However, these concepts had to be used by the instructors in such a way as to provoke the students, opening their minds, and forcing them to reflect on where they placed themselves in relation to different crucial issues.

As an example of how these two apparently opposing tendencies interacted, the contrast between international law and transnational law was initially dealt with as pure transmission of knowledge, using relevant sources that defined both concepts, and underlining the differences between them.²⁸ However, this did not close the debate on the value of state sovereignty (very much at the center of international law) or on the normative attractiveness of transnational law (very much discussed during the course: see below, section 4.3). Quite the opposite, the information was presented in such a way as to encourage, rather than resolve, the debate.

3.4 *The core course: substance*

There were many reasons why an exhaustive approach to phenomena of transnational legality was not practicable (if only, because of the methodological difficulty of actually determining what constitutes transnational law (see below, section 4.1)). Likewise, the temptation of devising the subject as a purely theoretical course on transnational law had some problems, among them the foreseeable risk of alienating a good number of students in a subject that they were required to take. Although the instructors leaned towards a theoretical approach, for the systematic reasons expressed above, they strove for a combination of specific illustrations of phenomena of transnational law and governance with several overarching theoretical sessions intercalated in crucial moments of the course to reinforce the overall framework.

These contents were organised around a chronological thread: beginning with illustrations from the Ancient World and the Middle Ages that were followed by a systematic presentation of the dominant Westphalian model, and moving towards contemporary examples of transnational law in the global world. The main purpose of this diachronical organisation was to emphasise the historically limited character of the Westphalian model and the Western and modern roots of the concept of state. This did not imply an endorsement of the value of the state as a scientific concept or as a political reality, but was devised with the intention of offering a richer perspective than the usual two-sided picture of legal orthodoxy being challenged by new developments.

²⁸On this particular issue, see section 4.1.2.

Within this framework, the course was made up of four different sections or parts.

Part I: Theory and History. The first two sessions, introductory in their own nature, were designed to lay out a roadmap of the course from the beginning. The instructors presented Jessup's as a working definition for the course, and pointed at the contrast between transnational and international law (using classic sources of international law and a macro-case with subnational, national, regional, international and soft-law layers of legality). The main points of controversy that would be discussed throughout the term were thus outlined, both by professors and students. Subsequently, three pre-Westphalian examples of transnational law were reviewed: Roman law (both during Roman times and as it was later received in Middle Ages Europe), religious law, and pre-modern private governance, illustrated by the law of merchants (*lex mercatoria*) and medical ethics (Hippocratic Oath).

Part II: National Law and the Westphalian System. Now within the paradigm of modern law, the course spent three sessions in a more or less classical comparative law approach by contrasting civil law with common law systems, and both with non-Western systems (Asian and Muslim in particular). Despite the admitted oversimplification involved in this exercise due mainly to time constraints, it was essential from a methodological point of view, and the last session of this part provided students with a first introduction to the concept of legal pluralism (a necessary concept to understand non-Western legal traditions). This was followed by a discussion of legal transplants and exports and a review of the regulatory state in different parts of the world. This second part of the course came to a close with a theoretical session on the Westphalian paradigm, focusing both on its historical and geopolitical origins and on its analytical consequences.

Part III: Forms and Examples of Transnational Governance. This part contained the bulk of the illustrations of contemporary legal or law-like phenomena that were dealt with during the course. The list of examples, in the order they were reviewed, included: WTO, International Human Rights, WHO and International Health Regulations, the law of the Internet and other forms of private governance, and examples of rogue governance (including pirate and terrorist groups).

Part IV: Overlapping Governance Schemes and the Role of Lawyers. This last section of the course began with another overarching theoretical session devoted to Legal Pluralism, as an alternative paradigm (to the Westphalian model) through which to view the different phenomena that had been reviewed in Part III. The subsequent two sessions were focused on how the legal profession faces problems of legal pluralism, one case involving the confrontation between international health regulations with international human rights, the other investigating the interplay of medical ethics and the law of war. A final session aimed to provide a general picture of the legal profession in the era of globalisation, and the possibly revolutionary changes that are taking place in its organisation, structure, functioning, and ethos.

3.5 The core course: methods

The pedagogical challenges involved in a subject of this nature and in a class as diverse as this one advised for a combination of methodologies. The instructors made quite a deliberate effort to move in the direction of this principle by intercalating different methods and activities.

3.5.1 Lectures and Socratic dialogue

Although these methods are often presented as in contrast with each other, no class was purely devoted to one or the other, and many of the sessions combined both. Broadly speaking, sessions devoted to the theoretical framework leaned towards lecturing, whereas the review of particular phenomena usually included a short lecture-like introduction to the particular topic followed by Socratic dialogue. However, no general rule applied and, due to the different backgrounds of the students, the instructors had to be flexible enough to modify their plans in-class (it was impossible to know beforehand how many knew how much).

3.5.2 Discussion groups

Four sessions (one for each part of the course) were organised as a discussion group. The class was divided into four groups of 22 students, led by the two main instructors and two guest CTLS faculty. The purpose of the small-size discussion groups is obvious: to provide the opportunity for more inclusive and in-depth debate that is not always possible in a large class. The readings for these sessions were carefully selected to include controversial and opposing views, which allowed discussion in class to flow quite naturally. In this respect, the success of the method was obvious: the discussion group sessions were very active and dynamic, concentrated much of the controversy expressed during the course, and the student feedback on the surveys was overwhelmingly positive. The four discussion sessions were:

Introduction to Transnational Law II. After the first general session introducing the course and the concept of transnational law, this session was devised to outline and confront the differing *a priori* views held by students on the most fundamental problems of the field. The three readings selected for this session represented three different views on transnational law and legal education, from enthusiast endorsement, to a cautious and eclectic acceptance, to overt rejection. The three readings are written by former CTLS faculty, and thus this session had the secondary goal of creating a sense of continuity with the whole CTLS project for the newly arrived students.

Legal Transplants and Exports. After our sessions on basic comparative law, the students were faced with two readings defending antithetical views on the possibility and desirability of legal transplants and exports.

Human Rights—A Universal Concept? The debate over the universality of human rights versus cultural relativism was introduced by two opposing readings that defended at the foundational level each of the two extremes. We also explored

a third reading that put the debate in context through discussing the practice of female genital mutilation.

Public and Private Transnational Governance Intertwined—Medical Ethics and the Laws of War. The position of American CIA and military doctors was used to bring to life legal pluralism by showing how professionals are in fact confronted with both state and non-state laws, at both the national and the transnational level. Beyond the particularities of this dramatic situation, this discussion worked as an interesting review session on many of the general concepts and debates that had been prominent during the course.

3.5.3 *Class exercises and presentations by the students*

Although the size of the class limited creativity in designing student-led activities, some exercises were integrated into the course. For example, an initial description of the contrast between the common law and the civil law traditions was provided through a student-led activity. First, we divided the class based on the origin of the students as civil or common law, and then asked each group to offer a list of features that, in their view and knowledge, characterised the other group. This was made operational by breaking each half into smaller groups and then comparing the results arrived at by them.²⁹ Subsequently, three representatives of the other group would stand in front of their colleagues and confirm, refute or qualify, one by one, the elements in the list. These three representatives, although sharing the same legal family (common law or civil law), came from different countries themselves, which introduced more nuances into the exercise. Another exercise included a simulated argument between groups of students within the context of the WTO Dispute Resolution system regarding a real case arising from the US ban on flavored cigarettes (the *clove cigarettes* case).³⁰ We also had several students present throughout the fall on particular topics that were relevant for the more general issues we dealt with in the course.

3.5.4 *Guest lecturers*

Due to the diversity of topics, examples and illustrations used in the course, it seemed advisable from the beginning to resort to CTLS faculty and other professors from the London-based academic community to deal with areas of their expertise. Besides the obvious academic benefit, this increased the methodological and also the cultural diversity of the course. The guest lecturers and their topics were as follows: Pascal Pichonnaz (University of Fribourg, and former CTLS

²⁹The exercise was initially devised by Roberto Caranta and Joaisia Luzak, who were teaching the Core Course during the spring term of 2013.

³⁰WTO Appellate Body Report on United States - Measures Affecting the Production and Sale of Clove Cigarettes, WT/DS406/AB/R (24 April 2012).

Faculty), on Roman Law; Werner Menski (SOAS), on Legal Pluralism and Non-Western Systems of Law; Satvinder Juss (King's College Law and CTLS Faculty), on International Human Rights; Allyn Taylor (Georgetown), on the WHO and International Health Regulations; Ugo Pagallo (University of Torino and CTLS Faculty), on the Law of the Internet; Jonathan Marks (Penn State), on International Health Regulations vs International Human Rights; the topic of Religious Law was addressed by a panel of representatives of the Muslim, Christian and Jewish religions. The panelists were Farrah Ahmed (University of Melbourne and CTLS Faculty), John Conneely (Diocese of Westminster), and David Hillel-Ruben (Birkbeck College).

3.6 The core course: results

Following a common practice at the CTLS, the final exam aimed at striking a balance between different backgrounds and styles of legal education. With that goal in mind, it contained two separate questions. The first question required students to write a short essay expressing their agreement or disagreement with a particular statement concerning transnational law. It was broadly designed to be more favorable to students coming from civil law countries, as it assessed abilities of systematic and abstract reasoning conveyed from an objective standpoint.

The second question, more in line with common law systems of legal education, was devised to evaluate specific lawyering skills of students by adopting a partisan position. It required students to write a legal memo for their employers, the Council of Bars and Law Societies of Europe (CCBE), advising the organisation on what position to take concerning a hypothetical proposed amendment to the General Agreement on Trade and Services (GATS, one of the agreements that constitutes the WTO system of treaties) that would limit attorney–client privilege when lawyers engage in lobbying.³¹

Although the main goal of the examination was to assess the students' abilities and knowledge acquired during the course, the first question also became an objective way to ascertain the final position of the class concerning transnational law. In particular, it required students to express their view on the most fundamental conceptual controversy concerning the concept, namely, the struggle between state law and the normative powers of non-state entities. The question asked the students to what extent did they agree or disagree with the following statement and why:

As a result of globalization, businesses, professionals, trade associations and other private entities now have law-making capacities in a way that challenges the legal monopoly of the state.

³¹Remarkably, most students had a leveraged performance throughout the exam, obtaining similar partial raw grades in both questions. In a base point five grading system only 12.5% of the exams had more than a one point difference between the two questions.

Consistent with the active degree of discussion and expression of opposing views that we saw throughout the term, students' responses were evenly distributed in terms of substance. 53 per cent were in complete agreement with the statement, whereas the remaining 47 per cent expressed total or partial disagreement. Partial disagreement generally took the shape of accepting that non-state entities actually pose a challenge, but underlining the ongoing importance of the state (17 per cent), whereas many of the responses overtly confronted the statement by arguing that such a challenge actually does not exist (30 per cent).

Students on both sides of the spectrum were often very direct and even blunt in their opinions. In answers supporting the statement, there were expressions such as 'there has been a rearrangement of the sources of law', 'globalization has definitely led to the decline of state sovereignty', and 'to deny that private actors hold a law-making power today amounts to deny [*sic*] reality'.³²

Disagreement with the statement was equally vigorous. One student affirmed that 'regardless of this increasing role of non-state actors, the state remains the dominant source of law even in the post-globalisation era', and another concluded that 'state sovereignty is alive and well'. In a direct response to the reading materials that pointed towards a paradigmatic revolution, one of the students stated that the 'reports of Westphalia's death are greatly exaggerated'.

The reasons most often used to justify disagreement (or qualified or partial agreement) were the following:

- (i) The consideration of non-state entities as legal sources is conceptually confusing, and a strong distinction between state and non-state sources should be in place for the sake of descriptive clarity. One student affirmed that 'the definition of law as an application of the peculiar and unique power of the sovereign Westphalian state should not be so hastily abandoned'. In another response, a student explicitly rejected the idea that the project of transnational legal education needs to dispose of traditional categories: 'states are still the most relevant and powerful actors in a globalised world. We as lawyers can still engage in transnational legal studies without abandoning this truth: and in fact, our argument and analysis will be stronger for it'.
- (ii) Although private law making is becoming important in some specific areas or processes, in many others the state is still the main if not the only actor. In particular, it is only the state that can actually enforce law, certainly a crucial criterion of legality. Thus, in the words of one student, 'characterizing this [privately-generated] systems as "law" . . .

³²This and all the following quotations in this subsection are from exam answers. In all cases we have maintained the anonymity of the students (exams were in fact codified and anonymous when marked). All the quotations are from exams that deserved a very good or excellent grade.

may be misleading insofar as they are either ultimately subordinate to state control, fill gaps that state governance will fill in due course, or supplement, in a narrow and technical sense, existing schemes of state governance’.

- (iii) Non-state entities are becoming legally relevant because the state is actually delegating its powers, and thus maintains its prevalent position by being in control of the whole process. According to this view, it is the states who, in the words of one student, ‘have opened the door’. But in fact, according to another response, ‘states not only continue to have authority to create, implement, and enforce international law; they also have the authority to determine who else may participate in the process’.

Interestingly, 28 per cent of students argued that there is nothing new with the challenge (regardless of how strong they thought the challenge to be) and thus questioned the validity of the Westphalian picture as having ever been reflective of reality. For these students, the problem in the statement was in the expression ‘as a result of globalization’. Drawing on the literature that sustains that the Westphalian model has never been anything more than a myth, one student titled her answer ‘The Legal Monopoly of the State: Challenging a Fallacy?’, whereas another response had an even more explicit title: ‘It is Not about Globalization, It Has Always Been This Way’.

Finally, 14 per cent of the exams expressed normative concerns with the statement. We found this remarkable considering that the normative dimension was completely absent from the question as it was expressed. In general terms, these points referred to the ‘loss of transparency and democracy in law-making’, and were used both by students who agreed with the statement and by those who disagreed, although the tone was different depending on the overall position. Thus, those who used the normative argument to contend the validity of the statement implicitly rejected the separation of fact and value by implying that only ‘legitimate’ normative phenomena should be seen as law. For those who were in agreement, however, the point was made as an additional recognition of a problem, indicating that the statement rightly describes a state of facts that is unfortunate (from the subjective viewpoint of the student). One exam response expressed the separation of fact and value with scientific accuracy, affirming that ‘when in a post-globalized world, non-state legal orders are run by powerful companies and professional associations, the supremacy of non-state law is accepted as the dominant reality (in a descriptive context) and, for those who believe in the power of markets, seen as a potentially desirable development (from a normative context)’. We will tackle this issue in section 4.3, below.

4. The experience: analysis and reflections

The very use of the concept of transnational law both in education and scholarship is usually met with a strong degree of scepticism. Although we believe there is nothing essentially obscure or inevitably troubling in the concept itself, especially

as it was defined by Jessup, the core course experience demonstrates that teaching transnational law is rendered difficult by the uncertain, deeply contentious, and unorthodox nature of this area of study. The field is an 'inherently contested terrain'³³ and this poses educational difficulties for a number of reasons. In particular, Jessup's definition in his last element ('other rules which do not wholly fit. . .'), while appealing from a completeness perspective, is problematic for methodological reasons.

For the sake of systematisation, we have organised the different problems encountered during the course under four broad categories: conceptual, methodological, ideological and pedagogical.

4.1. *Conceptual problems*

4.1.1 *Vastness and ambiguity*

The concept of 'transnational law' has been characterised by commentators as designing a reality that is 'blurred' or 'ambiguous', with no settled meaning.³⁴ Although we contest that there is inherent obscurity or internal inconsistency in Jessup's definition, it is certainly true that it dramatically opens the doors of what can be considered law. Thus, although the definition seems to us clear enough from an intensional point of view, it is problematic and ambiguous from an extensional point of view, as scholarly discussions on what constitutes transnational law demonstrate.

The completeness perspective imbued in Jessup's definition, especially in its last element, has the noted benefit of not excluding anything that may appear 'law-like', independent of its source. This allows students of transnational law to look at things that they might not otherwise look to, in order to find commonality and to extrapolate values and concepts which may prove useful in their overall understanding of their legal surrounding. However, the issue with this 'complete definition' is that it becomes very difficult for students to understand the bounds within which their education is held. Its breadth begins to be overwhelming.

This also creates difficulties for the professors in setting the parameters of what should be included in the course and how class materials are to be structured. Instructors are prevented from resorting to what otherwise would be the easy expedient of designing a descriptively exhaustive course of study, where students are shown 'what there is out there'. There is literally 'too much out there', and in any case too much discussion about what actually is out there.

To this complexity we must add the problem that the many phenomena that can be potentially dealt with in a course on transnational law diverge dramatically

³³de Sousa Santos (n 11) 94.

³⁴F Werro, 'Is There Such a Thing as Transnational Law? Suggestions for Defining the Object of Transnational Legal Studies', in S Keller and S Wiprächtiger (eds), *Recht zwischen Dogmatik und Theorie, Marc Amstutz zum 50 Geburtstag* (Dike, 2012) 314.

in their very nature, which adds to the conceptual confusion and also poses its own problems at the ideological and pedagogical levels (see below 4.3 and 4.4).

4.1.2 *Re-categorisation: transnational law vs international law*

As stated above, the concept of transnational law entails a re-categorisation of traditional legal understandings by placing the well-established domain of international law theory and practice within a new and controversial category.³⁵ This creates all sorts of problems, not the least of which (in terms of professional and academic sociology) includes a natural resistance on the part of international law professors. For the students in our course, this re-categorisation problem was exacerbated by the different background knowledge and experience of the students in the field of international law. Some students had a fairly developed mastery of the field while others had never received formal education in it.³⁶ This problem was underlined by several students in their evaluation reports. One of them suggested that a teaching system should be employed alternating ‘one class establishing what the current position is in international law; and another challenging the status quo. That way everyone would be in the same position in class discussions’.

Whatever the difficulties, the point is essential and the problem must be dealt with in a direct way. Jessup himself presented the notion of transnational law as a contrast with international law, finding the term international law ‘misleading since it suggests that one is concerned only with the relations of one nation (or state) to other nations (or states)’.³⁷ The instructors had to confront this problem by devoting one of the first sessions of the course on distinguishing international law from transnational law, a line of distinction that was thereafter frequently discussed throughout the course.³⁸ Accumulated experience in teaching the CTLS

³⁵ Although the traditional view of international law has problems in itself. The principle that international law is meant to be applied to state actors is being challenged by the inclusion of legitimate parties of international organisations as well as individuals. See Menkel-Meadow (n 16) 119. Likewise, the recent international law doctrine of responsibility to protect implies a dramatic change in the role of the state and the conception of state sovereignty. See International Development Research Centre, *The Responsibility to Protect* (2001), online: <<http://responsibilitytoprotect.org/ICIS%report.pdf>>.

³⁶ This difference was due among other things to the fact that the place international law occupies in law schools’ curricula diverges among jurisdictions and legal cultures. Thus, for example (and all other things being equal), students coming from European Union jurisdictions had been much more exposed to at least one sort of international law (EU law) than their classmates from other parts of the world.

³⁷ Jessup (n 4) 1.

³⁸ As a source for the traditional view of international law we used Shaw’s definition of the international system as

the network of relationships existing primarily, if not exclusively, between states recognising certain common principles and ways of doing things. While the legal

core course throughout the years advises teachers to treat the distinction between international and transnational law as an essential component of the course. And it is indeed essential to establish this distinction if we believe that transnational law is something different from just a fashionable way of referring to international law by another name.

4.1.3 *The concept of law revisited*

By advocating the acceptance of non-state sources of law, the notion of transnational law points towards an urgent conceptual concern since, as Twining notes, we are in desperate need of ‘useable conception(s) of non-State law that enable us to make some differentiations, appropriate to context, between the legal and the non-legal’.³⁹ This is part of the struggle and interest of this new and innovative field of study. But it is also a source of conflicts, since this conceptual uncertainty invites reconsideration of the meaning of ‘law’ which introduces complex philosophical and theoretical questions into the picture that are not easy to negotiate in a classroom environment.⁴⁰

Having said that, it must be also noted that what constitutes ‘law’ is a perennial debate amongst legal scholars, and a debate that is not exclusive to the field of transnational law. This rare feature of legal studies, namely, the inability of its practitioners to agree on a settled definition of their object of study, was famously denounced by Hart in the often quoted first paragraphs of his seminal book *The Concept of Law*.⁴¹

The classical jurisprudential debate between natural law theories and positivism, the traditional and ongoing lack of understanding between socio-legal researchers and dogmatically-minded lawyers, and the contemporary and debated distinction between soft law and hard law, are some notorious examples

structure within all but the most primitive societies is hierarchical and authority is vertical, the international system is horizontal, consisting of over 190 independent states, all equal in legal theory (in that they all possess the characteristics of sovereignty) and recognising no one in authority over them. The law is above individuals in domestic systems, but international law only exists as between the states. Individuals only have the choice as to whether they obey the law or not. They do not create the law. That is done by specific institutions. In international law, on the other hand, it is the states themselves that create the law and obey or disobey it. (MN Shaw, *International Law* (Cambridge University Press, 2003) 5–6.)

Both the centrality of the state and the classic conception of state sovereignty are apparent in the definition.

³⁹W Twining, ‘Globalisation and Law: Ten Theses’, in S Muller, S Zouridis, M Frishman and L Kistemaker (eds), *The Law of the Future and the Future of Law: Volume II* (Torkel Opsahl Academic EPublisher, 2012) 31.

⁴⁰Werro (n 34).

⁴¹HLA Hart, *The Concept of Law* (Clarendon, Oxford, 1961).

of how the very notion of what law is (and is not) is unsettled. However, this lack of certainty does not preclude us from actually engaging in the study, teaching, learning and practising of law. By the same token, we do not believe that the conceptual indeterminacies of transnational law constitute an unsurmountable obstacle to its study. Again, there is nothing in the suggested definition that is inevitably obscure: Jessup's definition uses plain terms and does not present inconsistencies. The problem of transnational law is beyond definitional: it presents further methodological, ideological and pedagogical problems that we review in the next three subsections.

4.2 *Methodological problems*

It is a fact that inasmuch as it allows for the consideration of non-state sources of law, the conception of transnational law that we worked with in the core course is fundamentally at odds with the classical positivist legal training received by all or almost all of the students participating in the CLTS program, and indeed the legal scholarship of many of the academic staff involved. This background is almost universally rooted in the dominant Westphalian paradigm. Its key tenets are the primacy of the nation state; the sole legitimacy of domestic law as promulgated by the state's legislature and judiciary; and the central role of the state in treaty-making and custom as the twin sources of international law.⁴² These principles are often deeply ingrained in students as fundamental assumptions about the law which have been continually reinforced without challenge at their home institutions, usually controlled by the dominant paradigm of state-centered positivism.⁴³

As the core course progressed from more traditional forms of comparative and international law towards the review of less conventional examples of transnational law, it became obvious that its object of study was placed within the shifts of boundaries between states, the market and other forms of social ordering, and the reconfiguration of the respective roles as well as the legitimacy of law understood in a broad sense—including hard and soft law. This forced the students to revisit their previous assumptions about the law and the object of legal education. In particular it urged students to reconsider whether the norms of various non-state entities, such as cultural or religious practices or private regulation by corporations or professional associations, could be potential sources of law, thus questioning the positivist assumption that sees the state and its agents

⁴²The dominance of domestic law and state controlled international law goes in the literature by the graphic name of the 'Westphalian duo'. See Twining (n 39) 29.

⁴³We prefer the expression 'state-centered positivism' to the more usual of 'legal positivism' since it emphasises the centrality of the state, and in doing so better reflects the dominant tenet of traditional legal thinking. Although legal positivism is usually formulated in relation to state law, non-state positivism is conceivable.

as the sole legitimate source of law.⁴⁴ The exploration of transnational legal phenomena was experienced by many students as a departure from their accustomed understanding of law along Westphalian lines.

Of course this methodological challenge to state-centered positivism does not need to come from a transnational environment but could equally be discussed at a national or domestic level. Similarly, there is no need to look beyond borders to affirm the existence of legal pluralism; that can be affirmed within the limits of particular legal communities. However, the challenge is much stronger at the global level, where the struggle of the state to maintain its monopolistic position as a source of law becomes crystal clear. In the words of one student, 'it was at the Center that I began to understand how "the law" contained more than the words in a statute and could have a greater reach than I had ever imagined'. The fact that this new perspective of the law can thereafter be applied also at the domestic level does nothing but reinforce the seriousness of the challenge posed by transnational law.

Breaking the molds of pre-assumed traditional state-centered legal conceptions and engaging with the 'new world order' was a truly exciting endeavor which engaged the passions of the students in the course. These passions could go both ways. The review of the exam questions conducted before (see section 2) confirms the general impression that the co-authors of this paper obtained during the course, which is that while some students enthusiastically embraced the idea of a radically new paradigm in legal studies, many others reacted with discomfort, if not with scepticism and even resistance. Such a response was to be expected, and we dare to say that it can be predicted in any alternative course on transnational law. It is human to latch on to fundamental assumptions of any kind and as one author eloquently put it, '[t]he more wedded we become to a particular classification or definition, the more our thinking tends to become frozen'.⁴⁵ Reluctance to accept and adopt legal pluralist thinking is further exacerbated by the fact that a positivist legal education offers students certainty and clarity about the law and its contents, thus creating what has been referred to in the literature as a 'comfort zone' for lawyers.⁴⁶

Students often felt that their domestic education had created a system of neat boxes that law and legal problems fit into. Abandoning this comfort zone of rigid compartmentalisation placed them, potentially for the first time, into an uncomfortable world of confusion and uncertain boundaries. This level of uncertainty and

⁴⁴That assumption has been taken as far as to affirm the conceptual identification of law and state, notably in H Kelsen, *General Theory of Law and State* (Harvard University Press, 1945).

⁴⁵Jessup (n 4) 7.

⁴⁶Scott (n 6) 876. Although Justice Oliver Wendell Holmes famously said that 'certainty generally is illusion, and repose is not the destiny of man'. See O Wendell Holmes, 'The Path of the Law' in W Fisher, M Horwitz and T Reed (eds), *American Legal Realism* (Oxford University Press, 1993) 3.

intellectual uneasiness is not a negative result of the course; quite the opposite, it is something that the instructors hoped to achieve. The objective of the course was never to turn students into converts of transnational legal theory, nor to encourage them explicitly to adopt as correct a particularly radical version of the concept, but rather to ensure that they were exposed to these ideas and encouraged to revisit former assumptions which may ultimately be reaffirmed or revised. The variety of opinions expressed during the course (especially in the small group discussion sessions), and reflected in the final exams, were an element of enrichment, very much reflecting real-life complexity.

4.3 *The ideological problem*

The comfort zone not only works at the methodological level, but also has an ideological component.⁴⁷ The Westphalian model of international relations aspires to be more than a descriptive framework, including ‘the claim that such a system of distinct sovereignties upheld the well-being of humanity, that inter-state law was the best vehicle by which to achieve the objectives of humanity’.⁴⁸ In fact, the Westphalian model of autonomous sovereign states interacting with each other in conditions of rough equality is a ‘remote aspiration’ that can be traced back to the pioneering works of international law visionaries such as Hugo Grotius or Francisco de Vitoria.⁴⁹ At the domestic level, the identification of law and state proclaimed by legal positivism is intimately connected with the idea (and ideal) of popular sovereignty, that is the foundation of liberal democracies. Furthermore, the idea of the sovereign nation-state has a ‘popular emotive appeal’, that although rooted in nineteenth century ideologies of nationalism still persists to a greater or lesser extent in the age of globalisation.⁵⁰

All this is threatened by the new idea of transnational law in the context of globalisation. And while ‘transnational law’ was initially used in this course as a purely descriptive concept that captures ‘all law which regulates actions or events that transcend national frontiers’, the term has inherently normative undertones. This is exacerbated by the fact that under the label of transnational law the course covered many different phenomena both in their ethos and their social consequences, from human rights to *lex mercatoria*, from religious law to the norms of criminal organisations.

This ideological element manifests itself as a powerful reason for resisting the acceptance of non-state sources of law, pointing at the obvious problems of

⁴⁷ Arjona (n 9).

⁴⁸ R Falk, *Law in an Emerging Global Village: A Post-Westphalian Perspective* (Transnational Publishers, 1998) 35.

⁴⁹ *Ibid*, 209.

⁵⁰ A Osiander, ‘Sovereignty, International Relations and the Westphalian Myth’ (2001) 55 (2) *International Organization* 251.

accountability and democratic legitimacy involved.⁵¹ By affirming that the power of each individual vote decreases along with the internal sovereignty of the state, a strong argument is made in favor of the centrality of the state.⁵² On the other hand, many critics emphasise the connection between hegemonic powers, economic neo-liberalism and transnational law that is then conceived as an instrument of 'hegemonic power in order to cater to the interests of the few—namely the rich groups within society and the large transnational corporations—to the detriment of the many both in the developing world and the Western world'.⁵³

This instrumental and hegemonic use of transnational law, denounced by some critics, is challenged by the results of the motivational survey that was conducted at the beginning of the term. As noted (see section 3.2), most students coming to the CTLS declared that they had a scholarly and not a primarily instrumental interest in transnational law, or that they conceived it as a tool to advance the public interest. This was probably at the source of ideological clashes that came to the surface several times in class. For example, our guest lecturer on internet law was confronted with students that were poignantly criticising his implication that leaving the regulation of the internet in the hands of non-state entities was not only a descriptively accurate statement but also a desirable result from a normative point of view. Points were raised from the class 'in defence' of the traditional role of the state, and similar points were repeated during the sessions dealing with other topics such as international health regulations or professional ethics. And of course, as stated above, these normative concerns were expressed in the final exams as well.

But this ideological element is complex in itself and it can play in a different and almost opposing way. In encouraging an expansion of what constitutes 'law', transnational legal theory calls into question the legitimacy of the present system of legal classification and its justifications for the exclusion of many other non-state norms from legal status. It attacks in this way another sort of hegemony, also Western in origin, but very different in nature. By putting into question traditional legal thinking, the study of transnational legal phenomena unmasks the assumptions behind the Westphalian model that has been dominant in the world of law, politics and international relations since the eighteenth century. The consideration of the Westphalian model as a 'myth', often considered in the literature and overtly suggested by the instructors, opened the door to many debates with strong normative implications.⁵⁴ These included whether orthodox understandings of international law based on the

⁵¹Menkel-Meadow (n 16) 122.

⁵²WH Reinicke, 'Global Public Policy' (1997) 76 *Foreign Affairs* 120.

⁵³M Somarajah, 'Why "No" To Transnational Legal Studies', in D Cole (ed), *Essays in Transnational Law* (2010) 22.

⁵⁴See Osiander (n 50); Slaughter (n 17) 284: 'Westphalian sovereignty ... often seems compounded of equal parts myth and rhetoric'. Paradoxically, in the creation of the myth of the nation state transnational elements were at play. P Zumbansen, 'Transnational Law, Evolving', in J Smits (ed), *Elgar Encyclopaedia of Comparative Law* (Edward Elgar Publishing, 2012) 898–925.

centrality of the nation state are a vehicle for the imposition of Western values and hegemonic power;⁵⁵ the universality of human rights;⁵⁶ the desirability of legal transplants;⁵⁷ the normative attraction of legal pluralism;⁵⁸ and even the aspiration to legitimacy of some criminal organisations.⁵⁹

This created a significant challenge in the teaching of the core course which is likely to present itself in any other similar exercise. Class debates, designed to explore whether transnational legal relations should be accepted as an objective social fact (i.e. whether various non-state norms should be seen, by virtue of their widespread acceptance and routine compliance on the international stage, as legal in nature), readily transformed into discussions about the normative value at play. Ultimately the key points turned around considerations of legitimacy, efficiency and justice, all of which traditional positivistic thinking had meant to block or prevent.

The course was not designed to indoctrinate the students and the teachers involved were working under the assumption that the fact-value divide holds true; namely, that by describing a fact one is not endorsing it, and it is always worthwhile to try to find the best and most precise description of world realities without actually implying a positive or negative normative conclusion. In educational terms, it is important and significant that the study of transnational law reflects all these ideological components that are constitutive of debates about law and policy at the global level. The different ways in which the normative or ideological element played during the course gave evidence of the complexities involved in this exercise, which are no less than the real-life complexities of transnational law and governance.

4.4 Pedagogical problems

What are the goals that transnational legal education aims to achieve? The novel and open-ended scope of transnational legal studies can result in uncertainty about

⁵⁵See Sornarajah (n 53); P Glenn, *Legal Traditions of the World* 237 (Oxford University Press, 4th ed, 2010) 237.

⁵⁶See E Grande, 'Hegemonic Issues of Human Rights and African Resistance: The Issue of Female Circumcision in a Broader Comparative Perspective', in U Mattei, T Ruskola and A Gidi (eds), *Schlesinger's Comparative Law* (Foundation Press, 7th ed, 2009); J Pirjola, 'Culture, Western Origin and the Universality of Human Rights' (2005) 23 *Nordic Journal of Human Rights* 1; R Panikkar, 'Is the Notion of Human Rights a Western Concept?' (1982) 120 *Diogenes* 75.

⁵⁷See P Legrand, 'The Impossibility of Legal Transplants' (1997) 4 *Maastricht Journal of European Comparative Law* 111; A Watson, 'Legal Transplants and European Private Law' (2000) 4.4 *Electronic Journal of Comparative Law*.

⁵⁸See B de Sousa Santos, *Towards a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (Cambridge University Press, 2nd ed, 2002) 89, 91; S Douglas-Scott, *Law After Modernity* (Hart Publishing, 2013) 23; Twining (n 39) 33.

⁵⁹P Leeson, 'An-arrrgh-chy: The Law and Economics of Pirate Organization' (2007) 115 *Journal of Political Economy* 1049.

the appropriate objectives of the course. Potential goals could include developing marketable skills for future employment in the private sector; acquiring an understanding of how the contemporary world works; or searching for meaning and justice in world affairs that may result in training for public-interest related jobs. All three, and indeed others as well, are legitimate aims to be pursued, and the institutional context in this case did not provide for any specific guidance in this respect. The CTLS does not privilege any one of these goals, and the entry survey showed how the students themselves were quite evenly distributed among them, which made the perfect satisfaction of all groups virtually impossible.⁶⁰

In the case of the core course at the CTLS, the teachers leaned towards the more theoretical aspects of transnational law, based on the position of the course within the program. As described in section 3, students at the CTLS have a wide choice of courses to choose from, most of which are practice-oriented in relation to different areas of transnational legal practice. The core course is the only compulsory regular course of study that students must follow during their time at the Center, and for that reason it has the mission of offering a general framework to equip students for their approach to the specific areas of their choice. The use of examples and illustrations in the core course was not devised with the goal of offering the students specific expertise in those areas, but rather with the aim of inducing general conclusions that may permit the construction of a general theory (if such a thing is possible) of a field that at the moment is lacking one.

Although one of the criticisms that theoretically-minded professors fear is that their class is useless for the practice of law, this comment did not have a major incidence, if any, in the students' feedback. It seems reasonable to suppose that the goal of the course was properly transmitted and understood and that students generally accepted its role within the context of the program.⁶¹

The way in which the teaching was actually conducted in class was at the center of many more comments, however. This issue relates to another educational challenge that the course had to confront, namely, that the class was transnational itself, and composed of students coming not only from different countries, but also with different educational backgrounds, levels of expertise, and diverse expectations about what legal education is generally about.

Different levels of linguistic ability in English (that was for approximately half of the class a second language) was only the most obvious of these problems.

⁶⁰The Mission Statement of the CTLS is ecumenical in this regard by stating one of the objectives of the Center as 'to equip students to be effective global lawyers in a wide variety of settings with deeper understanding of the role that they will play in the development of transnational law'. The Center for Transnational Legal Studies (n 24). As for the students surveys, see above section 3.2.

⁶¹This seems to support the idea that when deciding where to study abroad, students are scarcely influenced about their prospects of future job and income. See D Messer and S Wolter, 'Are Student Exchange Programs Worth It?' (2007) 54 *Higher Education* 647.

Legal language constituted a more substantial handicap, which became obvious from the very beginning when one of the professors casually referenced the concept of a ‘tort’, creating confusion among some students not familiar with the private law terminology of common law systems.⁶² In one way or another, disjointed communication arose between students and professors, and among students themselves, when legal concepts or terminology simply did not translate. Sometimes only imperfect translations are possible: this is a classic problem of comparative law, and we turned the problem itself into an object of class discussion during the small-group session devoted to legal transplants. Besides making them explicit, it is very difficult to combat these foreseeable problems in a course that is generalist in its own nature and that touches upon so many different areas of the law. All that can be done is to put things in relative terms and accept that this may lead occasionally to educational results that are suboptimal from the point of view of one single jurisdiction. This may just be the price to pay for playing the game of languages.⁶³

In terms of class experience, the combination of different methods described above (section 3.5), including among others lecturing, the Socratic method and class discussion, had the interesting effect of not placing any single group of students in a dominant position. Besides other differences, the instructors had to deal with the palpable distinction between civil law and common law systems of legal education. In broad terms, student feedback made it clear that common law lawyers were surprised by the amount of lecturing involved—sometimes quite abstract in content—whereas civil law lawyers felt that the class evolved too often into a discussion that lacked in solid conclusions and hard substantive matter. In a few words, it became clear that as much as it did on methodological and ideological levels, this experience in transnational legal education also had the effect of taking us all out of our ‘educational comfort zones’.

⁶²The problem is more subtle when terms that are easy to translate have nonetheless different nuances in different jurisdictions. An American student required clarification from one of the instructors who had used the term ‘sources of the law’ during his lecture. This is a fundamental term in civil law countries, which describes the formal ways of creating law that the system officially recognises as such. However, the student, who was used to a much more practice-oriented style of legal education, intuitively conceived of ‘the sources of the law’ as the set of materials that a practising lawyer can resort to when litigating a case. The two are not necessarily the same. Interestingly, this distinction would settle the debate in many civil law jurisdictions on whether the body of judicial precedents is a valid legal source, since legal precedents are massively used in litigation independently of whether they have or not formal status as sources of the law.

⁶³In the words of a former CTLS co-director and core course teacher, Franz Werro, ‘we should teach the students how to limit the damage of translation and make them aware that translating legal language is in some sense a betrayal’. F Werro, ‘Comparative Studies in a Center for Transnational Legal Studies: Why and How?’ (2011) *Why Transnational Education* 28.

5. Conclusions and lessons learned

Contrarily to what seems to be a widely accepted view, we do not believe there is anything essentially obscure or intrinsically confusing about the concept of transnational law. The often quoted definition offered by Philip Jessup in his Storrs Lectures provides for a starting point that is clear enough, and we have used it in our course to a reasonable degree of success. By success we mean that the definition has been useful: first, to identify different phenomena of transnational law; secondly, to understand the conceptual, methodological, ideological and pedagogical problems involved; and finally, to create a space for discussion in which different views about these problems were confronted.

It is clear then that by saying that we have found a useful definition we do not imply that it is devoid of conceptual problems. Quite the opposite, understanding what these problems are has been one of the main educational goals in the course. However, we believe these problems are not intrinsic to the concept itself, but they result from its extensional ambiguity and vastness, the reformulation of well-established legal academic categories (such as international law), and its implications in terms of defining the very concept of law and the limits of legality. Moreover, dealing with transnational law presents special methodological, ideological and pedagogical problems that were very present during the course (both inside and outside the classroom) and that we have reviewed in the previous pages.

In this final section, we want to present as a list of conclusions a set of lessons learned, which we arrived at in our distinct positions as students and professor in this course. We believe that much of what we say here may also hold true in a traditional domestic environment. However, we find these conclusions especially relevant in transnational legal education, as we try to make clear by introducing illustrations and reflections based on our own transnational experience at the CTLS core course.

5.1 Although the definition of (transnational) law is important, we do not need to achieve complete agreement on the limits of legality in order to provide constructive transnational legal education

Defining law is important. Of course, it is important in order to undertake serious study on the discipline, but it also has direct real-life consequences beyond academia. As Menski notes, '[t]he claim that something is legal rather than just cultural grants power not only to the rule, but also to the rule-maker'.⁶⁴ From the viewpoint of power and legitimacy what is—or what is not—law does matter.

This means that the definitional problem is important and must be considered. It does not mean, however, that in order to be successful a course of study needs to work from a definitional starting point that is definitely fixed and agreed by each and every participant. If Herbert Hart wrote a whole book (allegedly, one of the

⁶⁴Menski (n 11) 78.

most important and widely discussed books of jurisprudence in the twentieth century) addressing the problem of the lack of agreement on a definition of law, it would be preposterous to believe that any legal instructor can solve the problem in a few minutes during the first session of any single course.⁶⁵ This is even more the case in a course in transnational law, for reasons that have been offered in the previous section.

In consonance with this, we gave great importance to the definitional problem by making it explicit, and going back to it any time that was needed during the term. However, the course consciously chose to avoid the endorsement of any *a priori* particular position regarding how transnational law should be interpreted, or its value. Starting from the very broad definition that Jessup provided us, an implicit goal of the course was for the students to evaluate for themselves the meaning and interpretation of the concept.

This opened the course to the recognition of legal pluralism as a valid paradigm to confront the phenomena of transnational law, in open contrast with the traditional Westphalian model that is at the foundation of state-centered positivism. Although legal pluralism as a methodology can be applied to domestic environments as well, its appeal is more evident in the global arena, as it becomes increasingly problematic to look at legal phenomena exclusively through the eyes of the nation-state.⁶⁶ Consistently with the spirit of this educational project, this did not imply an explicit normative endorsement of legal pluralism, and in fact the normative value of legal pluralism was made the object of debate during the course both in the abstract and through the discussion of specific cases.

5.2 The value of interaction in a transnational environment is immeasurable

Given the different nation-based traditions of legal education, teaching law in a transnational environment is a challenge in itself. There are many reasons that account for that, and that were described in the previous section (see especially 4.4), where we acknowledged that at times there was a need to accept that only sub-optimal educational results would be achieved due to inherent limitations. However, there is an invaluable positive element in this, that may be impossible to reproduce in any other educational environment, and that is related to the importance of person to person engagement in real conversation.

When making an effort to understand other legal systems, or the complexity of interaction between different legal systems, or the intricacies of different cultural interpretations of the same rules, and so on, reading an argument in a book or a paper or even listening to a lecture by a foreign professor cannot compare with

⁶⁵Hart (n 41).

⁶⁶Berman (n 11).

the importance of actual dialogue among real people. Indeed, educational behavioral research suggests that diversity in the classroom fosters ‘empathy, flexibility, respect, tolerance and willingness’ amongst the student body.⁶⁷ The diversity at CTLS enabled students from different legal backgrounds to impart their own differing ideas and understandings of the law upon the group. In doing so, student’ preconceptions were challenged in a way not possible through discussions and information imparted in the abstract. For it is far harder to dismiss aspects of a different legal tradition as incorrect or misguided when faced with an advocate in the flesh. In short, transnational legal education teaches ‘legal *humility*’ and ‘human *interdependence*’.⁶⁸

In the student surveys, the small discussion group system received overwhelmingly positive reviews. As described above, in these sessions the class was broken up in four smaller groups, each one representative of the huge national and cultural diversity of the student body. In this context, real discussion from genuinely different socio-legal points of view took place with intensity, as much as it did in informal dialogue and discussion outside the classroom. In the words of one student: ‘what is most important about the work we engaged in was to grow an understanding of each other’. This feedback was often repeated at the end of the term, and is consistent with feedback obtained at the Center throughout the years.

5.3 Finding a balance between openness and structure is difficult, but both elements are essential

Every course of legal studies must find its own balance between openness and structure. Due to the special circumstances of transnational law as an object of study, added to the transnational nature of the class, achieving that balance was especially crucial and challenging in this course.

On the one hand, the course had to contend with the overtly categorical training and conceptions that the students had upon arriving at the Center and to open their minds to new ways of contemplating how the global legal world works. This was met with reactions ranging from enthusiasm to resistance.

But on the other hand, the instructors had to avoid being carried away by the paradigmatic revolution implied in the concept and had to contain the new concepts in a framework that translated into an educational outcome that could be assessed and evaluated at the end of term. Helping students to open their minds was an important aim of the course, but too vague as a final educational goal. Rather than an open mind, the goal was a full mind. But of course, a mind full

⁶⁷B Genç İltir, ‘How Do Mobility Programs Change Students’ Point of View?’ (2013) 44 *Hacettepe University Journal of Education* 181; D Kealey, *Cross-Cultural Effectiveness: A Study of Canadian Technical Advisors Overseas* (Canadian International Development Agency, 1990) 5.

⁶⁸Menkel-Meadow (n 16) 112 (emphasis in original).

of concepts that involve a high degree of uncertainty, complexity and ambiguity, required the teachers to overcompensate in the other direction by providing a high level of structure and guidance to the classroom discussions and the course as a whole. We found this was necessary to ensure that the focus remained upon the critical questions at hand rather than devolving into inherently subjective debates about political preference and ideology, a terrain in which a course such as this one may easily fall. As it has been described, the professors tried to achieve this by employing multiple teaching methods, ranging from lectures to small-size discussion groups (see section 3.5). We find it impossible to offer a rule of thumb on what the perfect combination is, but we are certain that some sort of combination is needed, especially when the student body is transnational in itself.

5.4 *A pluralism of educational goals must be considered*

A globalised world poses a serious challenge to the traditional goals of legal education, whether these are oriented towards learning the rules that make up particular systems of law, or towards developing professional skills in lawyering. The study of transnational law becomes fundamental to better understand the world we live in, and, in this sense, transnational legal education can be seen as ‘a distinct cosmopolitanization in a world of still-too-often-parochial legal education’.⁶⁹

If it is clear that we want to escape parochialism through transnational legal education, it is much less clear what we want to achieve with it. As discussed above, students at the Center came with very different goals in mind. All of these different goals were reasonable and legitimate, and all of them deserved to be satisfied, although it is difficult if not impossible to do that in a single course of study.

In any case, a good starting point is a strong focus on analytical skills, legal reasoning and interdisciplinarity. We very much agree with the idea that ‘studying transnational law ... is a more sophisticated form of the old saw “learning to think like a lawyer”’.⁷⁰ In other terms, a lawyer today must think transnationally, and transnational legal education is about teaching her how to do so. As we were reviewing different institutions and transnational legal phenomena during the course, we barely applied, if at all, what in the civil law style of legal education is called the dogmatic method. The intrinsic value of this particular method must be assessed in a different place, but it is not too daring to affirm its inadequacy in confronting the inherent complexity of the global legal world. Quite the opposite, it seems rather incompatible with the openness to policy arguments and discussions about efficiency, legitimacy and justice that were common-place during the course.

Education in transnational law, focused on analysis and reasoning with an emphasis on interdisciplinarity, is useful in terms of developing marketable

⁶⁹Scott (n 6) 876.

⁷⁰Menkel-Meadow (n 16) 110.

professional skills, both in the private and in the public sector. From students interested in finding jobs in multinational commercial practice to others interested in public-interest fields such as international human rights, transnational legal education will crucially enable future lawyers to grasp ‘as early as possible the assumptions, baselines of analysis and fundamental concepts that may be animating an interlocutor from a different legal tradition’.⁷¹ In fact, in many if not most areas of legal practice, from employment law to intellectual property, from environmental to banking law, students cannot become experts in their fields without confronting the transnational aspects of the issues they will likely have to confront in practice.⁷²

At a more general level, by challenging traditional conceptions of law and shedding a new light on questions of legitimacy and legal and cultural pluralism, transnational legal education offers a new perspective on the contemporary world that is relevant from a social and political perspective, academic as well as practical. In a very direct way, this places phenomena of transnational law under the spotlight of public vigilance, thus partly compensating for the lack of traditional legitimacy and democratic control that is inherent in many such phenomena (see section 4.3).

5.5 Transnational legal education provides an opportunity to explore alternative methodologies

As a result of the importance of striking the balance (see conclusion 3), and because of the pluralism of educational goals (see conclusion 4), transnational legal education becomes the perfect playing field to experiment with alternative pedagogical methodologies and techniques.

In this course, the instructors decided to go for an inductive method inscribed in a general chronological narrative that was carried out in class through a combination of different techniques. As described above in section 3, the substance matter of the course was made up by the review of different historical and (mostly) contemporary phenomena of transnational legality, intercalated with ‘overarching’ theoretical sessions. Following this system, it became apparent that it was important to first establish fundamental principles of international law orthodoxy with the class before seeking to challenge the status quo position.⁷³ On occasions where this background was not provided, discussions tended to be less focused on the pertinent questions at hand, a problem aggravated by the different backgrounds and levels of expertise of the participants involved.

⁷¹Scott (n 6) 870.

⁷²Menkel-Meadow (n 16) 108.

⁷³For example, by outlining the customary international law principles around recognition of statehood before questioning whether this custom is a true reflection of real life or whether other non-state entities may be capable of possessing the same characteristics.

Although the instructors planned this particular course along this thread, very different plans could be deployed depending on the priority of educational goals. In her feedback, a student argued for one alternative:

a better methodology would be to directly engage with the differing approaches and understandings of transnational law in a more in-depth way. Instead of talking about different examples of what constitutes transnational law and then viewing them through a scope of what makes them so, we could look to a specific methodology and then look to find examples that fit that methodology. Using a limited number of each, we would be able to gain an understanding for a few specific ways to interpret transnational law, and we would have specific examples to illustrate each. In the end, we would be able to look to those examples and see how the methodologies result in different outcomes.

This otherwise appealing and well-oriented methodology assumes that the goal of the students is to gain a better in-depth theoretical understanding of what specifically constitutes transnational law, and how different methodologies affect that understanding. That is a refutable presumption, though. We find that a methodology such as the one just described could be highly successful in a different context, for example in a graduate course of an advanced research-oriented program.

This reinforces the need to specifically tailor different programs of study on transnational law depending on particular environments and aims, which is partly a result of the intrinsic uncertainties and complexities of the discipline. This is as much a problem as it is an opportunity. An opportunity to do deliberate, free and original work at the level of pedagogical methodology, a chance that is rarely offered in the often too traditional field of legal education.⁷⁴

We find that this opportunity, together with the forum it offers for real-life dialogue, is the single most exciting and valuable component of a project on transnational legal education such as the one described in this article. If carried out candidly, it takes both students and professors out of their comfort zones, which can be ultimately very rewarding and is in any case an honest reflection in the classroom of the complex realities of global law.

Disclosure statement

No potential conflict of interest was reported by the author.

⁷⁴Carrie Menkel-Meadow refers to the new study of transnational law as a 'new Langdellian moment' in legal education (Menkel-Meadow (n 16) 104) in reference to Christopher Columbus Langdell, who more than one hundred years ago revolutionised the way in which law was taught in the US and set the foundations of modern American legal education changing both substantive teaching and the method of instruction. Besides giving a measure of the important consequences of the paradigm shift in legal education, this point leaves open another question: are other countries, legal families or legal cultures going to meet their own Langdellian moment? Does it make sense to speak of a 'global Langdellian moment?'