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Unsafe Haven: Could Article 3 of the U.N. Convention Against Torture Prevent the Extradition of Terrorist Suspects to U.S. Custody

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Teaching Constitutional Law in Malaysia: The Universiti Kebangsaan Malaysia's Experience

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INTRODUCTION

The purpose of this paper is to share the experience of teaching constitutional law at the Universiti Kebangsaan Malaysia and to highlight how the manner of, or approach to, teaching this subject is shaped, to a certain extent, by the peculiarity of Malaysian society, in general, and of the Malaysian students, in particular. Teaching constitutional law in this university takes place at two levels: namely the undergraduate and the postgraduate. At the undergraduate level, students are required to spend four years that will finally lead them to the conferment of the LL.B. degree. At the postgraduate level, students who

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have graduated from their LL.B. degree may further their studies for a maximum period of two years or a minimum period of one year before they can be awarded the LL.M. degree. Constitutional law is one of those classes offered by the Law Faculty at the LL.M. level; and students may opt to take up this subject, which will be conducted for the duration of one semester only. As with other universities, the approach to teaching constitutional law at this level significantly differs from the one employed at the LL.B. level, and this will be shortly discussed in the other section of this paper.

THE NATURE OF A CONSTITUTIONAL LAW COURSE

Constitutional Law is relatively interesting (depending of course on the teacher and the teaching method) compared to other law classes that are more technical in nature. However, teaching the subject is not easy. Constitutional law is abstract in nature and its scope is almost unbounded as it embraces within it multifarious subjects which are non-legal, like, for instance, history, politics, economics, and other social sciences. More often than not, students are required to cross the boundary that delineates the legal from the non-legal domains in order to be more comprehensive in their knowledge. This in turn will enable them to make an informed evaluation of the multitude of issues relating to the constitution and constitutional law. Another challenge that constantly haunts constitutional law teachers is the persistent demand by students for the so-called “right answer” to certain questions or issues raised in lectures and tutorial classes. The quest for “the right answer” seems to have formed part of the “Mission Impossible” that characterizes the study and teaching of constitutional law at any law faculty around the globe. There are not many options left for constitutional law teachers other than persuading and convincing their students to keep searching for “the right answer,” if they believe there is one—an exercise which sometimes prove to be futile as students will usually find themselves falling into the pit of what Hart describes as a “penumbra of uncertainty”¹ or what Dworkin calls the “hard cases.”²

The indefiniteness of this subject is partly attributable to the fact that, *inter alia*, most of the constitutional texts are products of past eras. Thus, it is difficult for the present society to grasp and appreciate the underlying principles and ideas. The wide and ambiguous constitutional provisions do not always provide any clue to the meaning intended by the framers. As such, most issues pertaining to the constitution are so

1. H.L.A. HART, *THE CONCEPT OF LAW* 12 (Oxford Univ. Press 1961) (1997).

2. See RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 81 (Harvard Univ. Press 1978).

much heavily laden with values that they attract multiple interpretations both inside and outside the court rooms.

BACHELOR OF LAW

Students Background

Malaysia, like other countries that inherited the British style of legal education, allows people to enroll as a law student once they have completed secondary education; the age range is between 18 to 20 years old. Law school admissions reflect the multiracial composition of Malaysian society. The diversity of religion, culture and practices are thus reflected in the course. In addition to that, students who enroll in the law faculty come from various educational backgrounds—some of whom are formerly from vernacular schools such as the Tamil and Chinese schools. Besides that, they also have different social status and come from different residential areas, all of which are reflective of the way in which they perceive things, including those matters covered by the constitutional law subject.

Dealing with students who harbour preconceived ideas about the systems of government is very taxing and also testing. These ideas are nurtured and developed in line with what they have experienced in life. Thus, the contents of the course would have to be properly designed in order to cater for such diversities that are uniquely Malaysian to enable these students to engage themselves in properly balanced intellectual discourses on constitutional issues.

Contents

The subject is taught in two semesters and covers such fundamental concepts underlying the constitution as enumerated in the table below:

First Semester	Second Semester
• Rule of Law	• Federalism
• Separation of Powers	• Public Servants
• Constitutional Interpretation	• Administrative Law
• Human Rights	
• Independence of Judiciary	

Table 1

These topics are commonly taught at other international law schools. However, following the British tradition, Administrative Law is

also treated as part of the Constitutional Law subject. Normally, special emphasis is placed on topics such as judicial review and the remedies available therein. In view of the breadth of the issues involved under the subject and the time constraints within which the lecturers have to teach, the contents must be carefully and wisely selected by the lecturers; bearing in mind the significance of discussing not only contemporary but also perennial constitutional issues, such as positive discrimination. This is nowhere clearly reflected other than in the 2008/2009 syllabus, which saw the topic of federalism being given a special attention so as to enable the students to relate it to the then political developments in Malaysia, namely the unprecedented loss of a considerable number of states to the alternative political parties. The results of the 12th Malaysian General Election provided an opportunity for interesting intellectual discourses among the students of Constitutional Law in this faculty, while at the same time enabled them to reflect and ponder on the workability of the idea of “true” federalism within the framework of a given society. The contents so devised were thus meant to meet the need for this exercise, namely, rationalizing ideals and justifying realities against the sometimes perplexing situations. To enable the students to cope with the intricacy of the course, two texts have been recommended and used as references: they are Andrew Harding’s book entitled *Law, Government and the Constitution of Malaysia*³ and Shad Saleem Faruqi’s book *Document of Destiny, The Constitution of the Federation of Malaysia*.⁴

Although this is an undergraduate course, some comparative elements were injected, especially when dealing with such topics as Constitutional Supremacy and Separation of Powers. Thus, it is not uncommon to find *Marbury v. Madison* as a compulsory case for discussions in tutorials and lectures.⁵ Texts from other jurisdiction, especially from the United Kingdom, are also used. Colin Munro’s “Textbooks on Studies in Constitutional Law” is commonly used.⁶ Reference to United Kingdom texts is important in understanding the Westminster system of government as adopted and adapted by the Malaysian authorities. However, since the objectives of the course are to explain the constitutional framework of the country and the mechanism for controlling the exercise of powers of Malaysian government, comparative elements, though included, are relatively minimal.

3. ANDREW HARDING, *LAW, GOVERNMENT, AND THE CONSTITUTION IN MALAYSIA* (Kluwer Law Int’l 1996).

4. SHAD SALEEM FARUQI, *DOCUMENT OF DESTINY: THE CONSTITUTION OF THE FEDERATION OF MALAYSIA* (Stars Publications: Petaling Jaya 2008).

5. *Marbury v. Madison*, 5 U.S. 137 (1803).

6. COLIN MUNRO, *STUDIES ON CONSTITUTIONAL LAW* (Butterworths: London 1999).

Method of Teaching

Formerly, legal education in Malaysia stressed imparting knowledge to the students through conventional lectures. Students' understanding of the topics taught was assessed during tutorials, which were normally conducted in a small group comprising nine to twelve students. While lectures were teacher-centered, the tutorials were more interactive. At times, prior to the discussions, students were asked to give a presentation on sets of questions. However, recently the method has changed. Learning has become more student-centered and is mostly problem based. In this way, lectures have become more interactive and students are asked to moot on the problems given after attending 10 hours of lectures.⁷ The method of teaching employed is designed to develop the students' ability to analyze cases and problems (real and hypothetical). The method improves students' issue-spotting and problem-solving skills as well as developing in the student the ability to synthesize the law for purposes of class discussion of cases, problem-solving activities, and answering exams.

Malaysian universities, at least the University Kebangsaan Malaysia, traditionally do not adopt the casebook method. Instead, students are encouraged to read the original reports from law journals and to discuss the assigned cases during tutorials. Class discussion focuses on the application of the statutory and case laws. The methodology used in the course fulfills the six levels of intellectual development, known as Bloom's Taxonomy: Level 1, Knowledge; Level 2, Comprehension; Level 3, Application; Level 4, Analysis; Level 5, Synthesis; and Level 6, Evaluation.⁸ The undergraduate level, however, does not emphasize levels 5 and 6. However, some students undeniably have demonstrated their ability to reach level 6 prescribed in Bloom's Taxonomy.

POSTGRADUATE LEVEL

Students Background

Postgraduate students have a stronger international background as compared to undergraduates. Unfortunately, however, enrollment does

7. This is similar to the American style of Moot Court, where the students are given a problem and present their argument in a court setting. The students take the role either as an Applicant, Respondent or a judge. Students are assessed on their ability to identify the issue, analyzing the problem and presentation skills but not procedural aspect.

8. See BENJAMIN S. BLOOM, *TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS: HANDBOOK I: COGNITIVE DOMAIN* (Longmans 1956).

not paint a strictly international picture of the academic society within the law faculty at this university. The majority of international students come from Indonesia, but there is also substantial participation from the Middle East, the African countries and China; however, Indonesian students are in the majority. Postgraduate students are mature, even though some are fresh graduates. However, most have at least 5 years of working experience in the legal field either as a practitioner or as academicians. Having students from various jurisdictions poses a challenge of selecting the proper contents and method of teaching.

Contents

The contents of the courses are nearly one hundred percent comparative: comparison is drawn mainly from Australia. The subject concentrates on the theories and applications of constitutional provisions in two jurisdictions, namely Malaysia and Australia. One of the objectives of comparing these two countries is to enable students to evaluate the functions and importance of a constitution within the legal and governmental frameworks of a country from a comparative perspective. Thus the topic selections correspond with the problems confronted by the two jurisdictions, which are, among others: equality before the law, affirmative action and positive discrimination, freedom of speech, right of detainees, freedom of religion, constitutional interpretation, independence of the judiciary and federalism.

The coverage of the course is more widely spread; besides dealing with the constitutional provisions in both the constitutions of Malaysia and Australia, students are required to analyze the logic of the legal doctrines and the role of constitutional law as a mediator between the realities of modern societies in light of the moral, cultural, religious and political attitudes, assertions and expectations of those societies.

Method of Teaching

The subject is known as Comparative Constitutional Law. The curriculum adopts the country-by-country approach; two main jurisdictions are selected, namely Malaysia and Australia as the focus of comparison. Each jurisdiction is covered one by one, and the same theme is discussed for each of them. Students will learn and evaluate the values underpinning the constitutions of each jurisdiction and identify differences and similarities found in the constitutional system of the two countries. But this does not mean that the course is not using the thematic approach; this is visible in the course outline prepared for this subject. Postgraduate students are encouraged to develop a critical and analytical approach to studying the subject. For this purpose, the course

is conducted interactively. Continuous presentations and a seminar style of discussions characterize the whole method of teaching constitutional law at this level.

CHALLENGES

Teaching constitutional law to international students is a tough job. The competing values and norms are prominent among the students who will now have to endure the pain of learning about a constitutional system and values that are altogether alien to them. The Indonesian students, for example, often share many of the same difficulties in understanding the material. Indonesia, being a civil law country with a presidential system of government, possesses and practices a considerably different style of governance. Though some principles (such as constitutionalism) are quite common to Indonesian students, the way in which this concept is articulated and implemented may be rather different for them. The most common problem shared by students who follow this course lies in their difficulty or ambivalence in comprehending and accepting the Western concept of rights and liberties—especially when juxtaposed with the Asian perceptions of this idea, which is more cultural relativistic in nature.

CONCLUSION

There is still a long way to go in the manner of how constitutional law should be taught at the University Kebangsaan Malaysia. Continuous improvements are, no doubt, necessary. All these will not only require commitment from the lecturers and students, but also from those who hold the purse strings of this institution. Politics also plays an important part in materializing the ambitions and visions of the faculty of turning itself into one of the most reputable and sought after law schools, both at the national and international stages.

