

A Tale of Two *Compadres*: Teaching International Trade and Development Across Cultures

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I. INTRODUCTION

There is little about the airport in Guatemala City to alert you that you have entered new territory. Like many airports the world over, it has an impersonal—even antiseptic—look and feel meant to shepherd you past the gatekeepers as quickly and efficiently as possible. It is not like the barely restrained chaos of Dakar’s airport with its mass of warm bodies pushing and shoving to the head of the line; it bears little resemblance to the confusing maze of warrens in Port-au-Prince or Yaounde’s airport; and, it shares none of the charm of the airport in Kingston where visitors are greeted with the unmistakable tinkle of steel drums and exhortations to “*Enjoy Jamaica, mon!*” In this, as in so many things, Guatemala strives to imitate the developed world.

It is not until I am riding on Antigua’s centuries-old cobblestone streets—feeling the rise and fall of our car’s suspension reverberate in my body—that the

* Professor of Law, University of the Pacific, McGeorge School of Law. I want to thank Associate Dean Julie Davies for asking me to participate in this fantastic pedagogical experiment, Raquel Aldana for her tireless efforts in organizing a program we can all be proud of, and for insightful comments on an earlier draft of this article, and to Luis Mogollon for his incredible attention to the details of the program—going so far as to interview the students individually to make sure they would be a good fit—which contributed significantly to our success. I am also grateful to Katie Golsan, Jennifer Gibson, Anne Bloom, and Ruth Jones, and for research assistance from librarian Paul Howard and students Kristal McCain and Sara Sacson. Most importantly, I offer many thanks to the wonderful group of students, Guatemalan and American alike, who undertook this journey with me.

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reality of my latest adventure sinks in: I am about to teach international trade and development law in the heart of the developing world. The experience of teaching the course is not novel. I have taught international trade law in some form for several years at my home institution in California; before that, I was an international trade lawyer in private practice and later in government service where I organized and taught numerous short courses on trade law in Africa and the Caribbean. But somehow, this experience was different. My students this time would be Guatemalan law students in their third or fourth year of study and a handful of American students in their second or third year.¹

While my Guatemalan students were set to receive their first introduction to American-style pedagogy, I would experience the novelty of teaching trade and development in an environment where the issues are starkly laid out in a very practical way. Whether these students had already formally studied trade law or not (and some of them had), they had already confronted first-hand one of international trade's greatest contradictions: if international trade is wealth-producing, why does it produce, or at least fail to alleviate, poverty in the developing world? These students had already experienced the shadow side of international trade, which includes problems in the unequal distribution of wealth, corruption, food insecurity, and import floods that crowd out local producers in favor of cheap foreign goods.² The challenge with these students would not be in identifying the problem. Rather, the challenge would be in providing a theoretical and academic context in which Guatemalan students could examine and reframe their everyday experience. In short, I wanted to add the theoretical background to complement my students' anecdotal experience of trade.

Conversely, when I teach trade law in the United States, I am confronted with students who have a general suspicion and uneasiness with trade but very little practical experience with its shadow side. They often begin the course without a clear understanding of how trade has impacted their lives (and the lives of other Americans), and we usually spend at least the first few class hours teasing out their direct and experiential contact with trade. The challenge I find in my North American classroom is to elicit the anecdotal experience my students have already had with trade so as to bring alive the theoretical and academic context in which international trade operates.

The melding of these two disparate vantage points—the Guatemalan and the American—in the same classroom in the middle of a developing country was a unique and exciting social experiment. It was part of a broader, groundbreaking

1. Eleven of the fifteen students in my class were Guatemalan law students, and the rest were Americans.

2. See Ben Chiagra, *Trade Liberalization and the Potential of Sub-Saharan African States to Realize the United Nations' Millennium Development Goals by the Target Date 2015*, 16 *CURRENTS: INT'L TRADE L.J.* 3 (2007).

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program designed and run by Pacific McGeorge Law School (my home institution). The Inter-American Summer Program in Guatemala seeks to educate bilingual and bicultural American lawyers who can practice effectively in the United States and abroad; the program's second objective is to support legal education in Guatemala.³ In recent years, the Guatemalan university system has undergone a radical reorientation; access to education,⁴ previously reserved for the elite, is now seen as a social entitlement.⁵ While this shift has led to a number of successes, including increased literacy⁶ and more educational opportunity for the country's economically depressed Mayan majority,⁷ it has also placed tremendous stress on the nation's educational infrastructure.⁸ For legal education, this has translated into overcrowded classrooms and low bar passage rates, among other challenges.⁹ The Inter-American Program seeks to alleviate these burdens by recruiting some of Guatemala's best and brightest law students to learn alongside their American counterparts.¹⁰ In this way, all student participants would benefit from a bilingual and bicultural environment.

The program's course offerings and faculty themselves reflected this bilingual and bicultural orientation.¹¹ Students were expected to take two out of the three course offered; one course, taught in Spanish by a professor from one of Guatemala's law schools, focused on the Dominican Republic-Central American Free Trade Agreement ("CAFTA"); the second course on Guatemala's social and economic history was also taught in Spanish by a Guatemalan-American law professor (and the program's director).¹² Finally, my own course on international trade and development law was taught in English by a Haitian-American.

3. *Inter-American Program*, MCGEORGE SCH. OF LAW, http://www.mcgeorge.edu/Future_Students/JD_Program/Global_Impact/Inter-American_Program.htm (last visited Nov. 10, 2012).

4. See Steven E. Hendrix, *Restructuring Legal Education in Guatemala: A Model For Law School Reform In Latin America?*, 54 J. LEGAL EDUC. 597, 600 (2010); see also *Education*, USAID, <http://www.usaid.gov/guatemala/education> (last visited Nov. 12, 2012) (noting that "Guatemala has made significant progress in improving education coverage for children and youth since the end of the civil war in December 1996.").

5. POLITICAL CONSTITUTION OF THE REPUBLIC OF GUATEMALA May 31, 1985, art. 73, available at <http://www.constitutionnet.org/files/Guatemala%20Constitution.pdf> (amended by Legislative Decree No. 18-93 on Nov. 17, 1993); see also *State of the World's Minorities and Indigenous Peoples 2009 – Guatemala, Legal Framework*, UNHCR, <http://www.unhcr.org/refworld/topic,463af2212,469f2e812,4a66d9b550,0.html> (last updated Nov. 19, 2012) (noting that "The Guatemalan Constitution guarantees the right to free compulsory primary education to all without discrimination.").

6. See UNESCO Inst. for Statistics, *Literacy Rate, Youth Total (% of People Ages 15-24)*, THE WORLD BANK, <http://data.worldbank.org/indicator/SE.ADT.1524.LT.ZS?page=3> (last visited Nov. 12, 2012) (showing literacy rates for Guatemala in 1994 at 76%, in 2002 at 82% and in 2009 at 87%).

7. *Education*, *supra* note 4.

8. Hendrix, *supra* note 4, at 601.

9. *Id.*

10. *Inter-American Program*, *supra* note 3.

11. *Id.*

12. *Id.*

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This Article explores the lessons I learned participating in this unique program. While some of those lessons are particular to that experience and do not easily translate (pun intended!), much of what my bilingual and bicultural students taught me has a great deal to tell us about how to effectively teach trade concepts to students across cultures and around the world.

Part II begins with a brief introduction to Guatemalan society, economy, and educational system. As professors, we recognize our students do not walk into the classroom as a blank slate ready to be written upon; they come with their own experiences shaped in the social context in which they live. Particularly because I was coming into the experience as an “outsider,” it was imperative that I had at least a basic understanding of that context. This section also outlines the course itself, including my teaching objectives and methods, and highlights some of the teaching techniques that were successful across cultures, as well as those that seemed to fall flat. Conducting this post-mortem, I believe, will better enable me (and others) to adapt these teaching methods to future circumstances.

In Part III, I explore how the lessons of my Guatemala experience can be transplanted to a North American classroom. International Economic Law courses are becoming standard fare in U.S. law schools, but such courses are often undersubscribed because students perceive them as overly technical or irrelevant to their future law practice.¹³ In this section, I reflect on how to bring greater context and meaning to these courses in a way that addresses student concerns.

II. THE GUATEMALAN EXPERIENCE: SUCCESS AND FAILURE ABROAD

I am a storyteller. My earliest memories are of sitting in the courtyard of my grandmother’s house in St. Marc, Haiti, on warm summer evenings listening to friends and neighbors share a story.¹⁴ For me, these tales were vastly

13. Karen E. Bravo, *International Economic Law in US Law Schools: Evaluating Its Pedagogy and Identifying Future Challenges*, in INTERNATIONAL ECONOMIC LAW: THE STATE AND FUTURE OF THE DISCIPLINE 135, 151 (Colin Pickler et al. eds., 2008), available at <http://ssrn.com/abstract=1001520>.

14. As a child, I loved hearing about the exploits of Bouki and Malice, two of Haiti’s most beloved folktale characters; Bouki (whose name means “donkey”) is a lovable but slightly addled individual, while Malice is sharp and mischievous. Many of these stories are retold in translation in *The Magic Orange Tree*, authored by Diane Wolkstein, an American mythologist (and storyteller). Although Haitian tales are meant to be told orally, I am compelled to share at least one in writing so that the reader can have at least a glimpse of the Haitian sense of humor and aesthetic. DIANE WOLKSTEIN, *THE MAGIC ORANGE TREE AND OTHER FOLK TALES* (1997).

All good Haitian stories begin with the storyteller asking for permission to share the tale. Thus, the storyteller will open with a single word “kric?” to which the crowd must respond with an enthusiastic “krak!” Without the crowd’s enthusiasm, the story is not told . . .

Bouki and Little Malice: Those Guys are Rich!

Bouki and Little Malice won a packet of money in the lottery. Those guys were rich! They were rich! So they bought a beautiful house. When I tell you that house was beautiful? It was as beautiful as it was big. This was a house for the elite.

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entertaining—particularly because I got to see adults sing, dance, and be silly as they acted out their roles. It was only when I got older that I realized these stories were about more than entertainment: these were teaching stories. In Haiti, as in many countries across the world, stories are told to preserve culture and to train the younger generation in the values and vision of the society.¹⁵ When I began researching Guatemala in preparation for my trip, I immediately gravitated towards its stories—in addition to economic reports, human rights profiles, and academic articles—in hopes of better understanding its culture and people.¹⁶

Bouki and Little Malice renovated the house, and they repainted the (outdoor) walls white. It was a beautiful thing all the way around. Bouki and Little Malice were living the good life.

But now, there were people who began spraying graffiti on their walls – some vagabonds they say. Ah, Bouki and Little Malice were angry, they had a beautiful little wall and now people were coming to dirty it with graffiti. So Bouki said “My friend, I have an idea!” Little Malice trusted him.

One day, Bouki called Little Malice to tell him to come see the idea. Malice went outside and saw that the whole wall was now covered in graffiti. Bouki did it, he wrote “Ne pas ecrure ici” on the whole wall.

Little Malice was frustrated, he went to hit Bouki. He said to Bouki “How could you do this? It is not ‘ecrure’ but ‘ecrire’! [“to write”] Now people will never understand what you were trying to say!”

Bouki Ak Ti Malice: Neg Yo Rich! (Creole Version)

Se Bouki ak Ti Malice ki genyen on paket lajan nan lotterie, neg yo rich, neg yo rich! Kounya yo achte on bel kay, leum di nou kay la bel! Tank li bel tank li gro. Sa se kay gro boujoi.

Bouki ak Ti Malice renove tout kay la, yo repentire mur yo blanch. Bel bagay net. Bouki ak Ti Malice ap viv bien. Men kounya, gen moun ki komanse ap fe graffiti ak spray sou mur yo, kek vagabon neg yo di. Ah, yo fache, bel ti mur yo, epi moun yo ap vinn sal yo ak graffiti. Kounya Bouki di: “Mon ami, j’ai une idée!” Ti Malice fel confians.

On jou Bouki rele Malice, dil vinn we ide li a. Malice soti, li we ke tout mur autour kay la gen graffiti. Bouki ki fe sa, li te ecri: “Ne pas ecrure ici” sou tout mur yo. Ti Malice contraire, li pare pou kale Bouki. Li di Bouki: “Kijan ou ka fe sa? Se pa “ecrure” se “ecrire”! Kounya moun yo pap janm konprann sa ou tap eseye di!”

Bouki Ak Ti Malice: Neg Yo Rich!, MAPREKE, <http://www.mapreke.com> (last visited Jan. 3, 2012) (translated by author).

* * *

Although Haitian folktales are never “interpreted,” I feel compelled to offer a bit of explanation as most people reading this Article likely are not Haitian and may well have missed the joke. In trying to dissuade vagabonds from writing on their wall, Bouki wrote on it himself, thus destroying his pristine white wall. Moreover, he was trying to be “fancy” by writing in French rather than in the Haitian-Creole the majority of the population speaks and understands and got his comeuppance in the bargain. Bouki intended to write “Ne pas ecrire ici,” which is French for “Do not write here.” Instead, he wrote “Ne pas ecrure ici,” which has no meaning. While Malice was able to correct Bouki’s spelling, he fails to see the irony in writing on the wall in order to dissuade others from doing so. The moral of the story is that when Bouki and Malice get “too big for their britches,” bad things inevitably happen.

15. Edwidge Danticat, the well known Haitian-American author, writes extensively on the role of storytelling in Haitian society. *See, e.g., EDWIDGE DANTICAT, CREATE DANGEROUSLY: THE IMMIGRANT ARTIST AT WORK* (2011).

16. Indeed storytelling is a rich and important tradition—particularly among the Guatemala’s Mayan population. *See, e.g., Leah Alexandra Huff, Sacred Sustenance: Maize, Storytelling, and a Maya Sense of Place,*

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Almost immediately, I came across a *Tale of Two Compadres*, a teaching story that introduced me to Guatemalan culture while hinting at some of the endemic conflicts in this society. Conveniently enough, this story is set against the backdrop of an international trade transaction.

***Tale of Two Compadres:
A Mayan Folktale from the Lake Atitlán Region of Guatemala***

Once, there was a poor *compadre* and a rich one. The rich *compadre* had lots of wealth, but he was a stingy and envious man. When the poor *compadre* came to him seeking work for himself and his son to support his family, the rich man agreed, saying “I will pay you twenty-five centavos daily. My godson also can work, and I will pay him ten centavos daily.”

The poor *compadre*, because he was very much in need, had to accept even though the pay would be just enough to buy a few pounds of corn.

The poor man and his son worked hard and saved their money until one day they were able to buy a bull. The poor man went to his rich *compadre* and said “I have only this one bull, but I am tired from working day after day in the fields underneath the strong sun. *Compadre* give me just an idea how to gain something in this life.”

But the rich *compadre* was full of envy and he looked for a trick he could use to make the poor *compadre* lose his only bull. So he said to the poor man: “*compadre*, if you want to have money and one day be rich like me, well then, you can kill the bull that you have and go to a foreign land to sell the penis and the two testicles to the president of the nation. If they ask you if you are poor, say yes; then, they will give you a lot of money. And with this money you can buy what you want.”

Thinking this was real advice, the poor *compadre* butchered his bull and set off on foot to a foreign land to sell the penis and the two testicles. But one night, when he was sleeping in the corridor of a building, the poor *compadre* became careless and did not realize that some dogs were eating his package. When he saw what had happened, he became like a crazy person.

Now what could he do?

Much later, the poor *compadre* came across a sympathetic policeman and recounted the story. The policeman had compassion for him, and they went to a bar together for a drink. But as the policeman had already been drinking, he became quite drunk and stayed that way. The poor *compadre* got up the courage to remove the policeman’s uniform and put it on himself. Dressed as a policeman, he set off for home.

5(1) J. LATIN AM. GEOGRAPHY 79, 79 (2006) (noting the invaluable role of storytelling in crafting the Mayan people’s sense of place and identity).

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On the road, he came upon two thieves who were guiding along two mules packed with money. When the thieves saw a policeman coming they became frightened. They ran away, leaving the mules abandoned. The man was happy to become the owner of the two mules packed with money, and he eagerly walked them home where he became the richest man in town, much richer than the rich *compadre*.

Now the rich *compadre* was really jealous. He went to the man who was once poor seeking *his* advice. The man answered him “*Compadre*, your advice served me well. It’s a shame that I only had one bull because if not, they could have given me even more money. *Compadre*, if you want, you can go now that you have many bulls, and you can earn more than they gave me.”

So one day, the rich *compadre* butchered three very fat bulls and set off for a foreign land. He thought that with six testicles and three penises he could earn more money than his *compadre*. But when he offered his package, the people thought he was loco. The things that he had brought now had a bad odor, and the people of the town complained to the police because of the stench.

When the police came to interrogate him, the rich *compadre* answered that the six testicles and three penises were to sell to the president. The police became full of ire upon hearing these things, and so they ordered the man flogged. Then they put him in jail where he stayed until he died.

And this story is finished.¹⁷

* * *

This age-old story of rich versus poor perfectly encapsulates the Guatemalan sense of humor, which is irreverent, sly and a bit ribald. But just as important, the story highlights the pervasive suspicion across the developing world, not just about the wealthy, but also about the notion that commerce and international trade is the way out of poverty. The principles espoused by free traders—minimum government intervention and maximum openness to the free exchange of goods and services—to many of those living in poverty must seem like a “package” of spoiled bull testicles and penises masquerading as sound advice.

It is inevitable that these issues would arise in a course on trade and development—particularly when that course was being taught in a developing country. Rather than ignoring these issues or relegating them to the purely domestic, I wanted to devise a course that placed these concerns at the center of the discussion. *A Tale of Two Compadres*, for me, provided a lens to explore international trade and development issues specifically as they pertained to Guatemala.

17. MAYAN FOLKTALES: FOLKLORE FROM LAKE ATITLAN, GUATEMALA 217-22 (James D. Sexton ed. & trans., Univ. of New Mexico Press 1999).

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The following section explores the social context within which I taught the course. It introduces the reader to Guatemalan society—including its history and economic structure as well as its system for educating lawyers—before turning to the question of trade.

A. Exploring the Social Context

One of the key objectives for my course was to teach trade and development law *in context*.¹⁸ By that I mean it was important to identify the applicable rules of international trade law and understand how those rules affect development and developing countries. But it was equally important for my students to develop a framework within which to explore the economic challenges confronting Latin America and Guatemala. Thus, it was imperative to identify in the classroom the social context we were operating under, including issues of race and class, political conflict, and inequality.

In this section, I identify three aspects of Guatemala's social system that were relevant to the classroom experience. First, I briefly explore Guatemala's history and social structure, including its civil war and post-war reconstruction efforts as well as its economic system. Next, I examine Guatemala's legal education system and its massive transformation in the post-war era as well as the challenges it currently faces to educate lawyers as leaders in the nation's reform efforts. Finally, I introduce the students who enrolled in my course and explore some of the challenges that arose in the classroom; specifically, I examine questions of race, class, and privilege and look at how those issues shaped—or did not shape—their views of the law.

1. History and Economy

For thirty-six years Guatemala fought a civil war that tore a hole so wide in the country's social structure that it remains under repair to this day. The war was so brutal and traumatic that Guatemalans refer to their country as a “wounded body.”¹⁹ From 1960 to 1996, the government adopted a repressive and genocidal policy “against the excluded, the poor and above all, the Mayan people, as well as against those who fought for justice and greater social equality.”²⁰ The roots of the conflict can be found in an economic system, shaped in the colonial era, which concentrated wealth and political power in the hands of the few while

18. *Inter-American Program*, *supra* note 3.

19. DIANE M. NELSON, A FINGER IN THE WOUND: BODY POLITICS IN QUINCENTENNIAL GUATAMALA 1 (1999).

20. CHRISTIAN TOMUSCHAT ET AL., GUATEMALA: MEMORY OF SILENCE: TZ'INIL NA'TAB'AL: REPORT OF THE COMMISSION FOR HISTORICAL CLARIFICATION: CONCLUSIONS AND RECOMMENDATIONS (2000), available at <http://s3.documentcloud.org/documents/357870/guatemala-memory-of-silence-the-commission-for.pdf>.

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excluding the Mayan majority.²¹ Over 200,000 people were killed or disappeared as a result of the conflict, and fully eighty-three percent of the human rights claims investigated by the nation's truth and reconciliation commission—the Commission for Historical Clarification—were perpetrated against the Mayans.²² The country has for decades adopted a policy of reconstruction and reconciliation, but the deep fissures brought on by the war are merely buried and not forgotten.²³

Even while grappling with reconciliation, Guatemala faces significant development challenges. Guatemala is classified as a middle income developing country,²⁴ but while the country does produce wealth for some it also “has remarkably unequal distributions of income, resources and opportunities.”²⁵ Poverty is “high and deep,” affecting more than fifty percent of the country and upwards of seventy-six percent of the indigenous Mayan majority.²⁶ In short, wealth is concentrated in the hands of the few, and poverty is distributed among the masses. The average Guatemalan adult received just 5.4 years of formal schooling or just 1.9 years for the indigenous population.²⁷ Figures on life expectancy, infant and maternal mortality, and malnutrition rates among children are all worrisome, and they are significantly weaker than those of other middle-income countries.²⁸

Nearly two decades after peace was restored, the country is striving to create a more prosperous and inclusive society. At the core of Guatemala's development strategy is an effort to improve the business climate and to attract more private investment and financing for public expenditures such as health, education and rural infrastructure.²⁹ For Guatemala, international trade represents a way out of poverty, and the country does have some advantages. The largest

21. *Id.*

22. *Id.*

23. I was surprised at how easily the war and the government's actions against the indigenous population came up in casual conversation. Although I made no effort to raise the issue myself, several conversations I had with taxi drivers as well as my Spanish teacher addressed these matters head on.

24. *Country and Lending Groups*, THE WORLD BANK, <http://data.worldbank.org/about/country-classifications/country-and-lending-groups> (last visited Nov. 25, 2012).

25. *Guatemala Country Report*, THE WORLD BANK (2007), <http://www.worldbank.org/en/country/guatemala> (last visited Nov. 25, 2012) (part of reading materials for Day 10).

26. *Id.*

27. *Id.*; *Education*, *supra* note 4 (finding that four out of ten children graduate from primary school, but only one completes lower secondary school. Only 8.5 percent go on to higher education).

28. *Guatemala Country Report*, *supra* note 25.

29. Trade Policy Review Body Secretariat, *Trade Policy Review: Guatemala*, WT/TPR/S/210/Rev.1 (Apr. 20, 2009), available at http://docsonline.wto.org/gen_searchResult.asp?searchmode=advanced&c2=%40meta_Symbol&c4=%40Doc_Date&o4=%3E%3D&c5=%40Doc_Date&o5=%3C%3D&c6=%40meta_Serial_Num&c3=%40meta_Title&c8=%40Derestriction_Date&o8=%3E%3D&c9=%40Derestriction_Date&o9=%3C%3D&q0=&q4=&q5=&q8=&q9=&search=Search&collections=&q2=WT%2FTPR%2FS%2F210%2FR ev.1&ddeday=&dreday=&q6=&restriction_type=&q3=&subjects=&q1=&ct=DDFEnglish&ct=DDFFrench&ct=DDFSpanish&countries=&organizations=&products=&articles=&bodies=&types=&drsdeday=&dreday=&meet_date=&dpsday=&dpeday=&mh=&advresult=off&multipartson&sendformat=off&searchtype=advanced.

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economy in Central America,³⁰ Guatemala has a strong trade relationship with the United States—its leading trading partner—as well as the rest of Central America and European Communities.³¹ Key exports include clothing, coffee, sugar and bananas.³² In Guatemala’s estimation, trade liberalization represents the best path to achieving its development objectives, and the country has engaged in such liberalization unilaterally, as well as at the multilateral and regional level.³³

Thus, for a country like Guatemala, international trade is more than mere theory. Trade is an opportunity for greater prosperity, peace and stability if economic growth is used to address the deep, entrenched poverty of the Mayan majority.

2. *Race and Class*

It is impossible to spend even a bit of time in Guatemala without running into questions of identity and inequality. A simple walk through the narrow streets of Antigua’s town square brings these issues into sharp relief. In the *parque central*, or within the doorways of the chic restaurants and stores that line the main avenue, stands the ubiquitous Mayan merchant. Often, she will have a child strapped to her back as she greets you with arms laden with homemade jewelry or colorful textiles. “Would you like to buy this necklace? No? Well how about this one? No jewelry? How about this beautiful scarf, it would look so pretty on you?” She will speak to you in a smattering of Spanish and English, even as she exchanges words with surrounding merchants in a Mayan dialect incomprehensible to you. The dance will continue until you break down and agree to buy something or you make good your escape. In that short span of time, crowds of laughing women and men will stream out of those chic restaurants and the fashionable stores speaking rapid-fire Spanish as they walk briskly down the street. What seems clear from that one brief encounter is this: the face of poverty in Guatemala is primarily indigenous while the face of wealth is *Ladino*.³⁴

Guatemalan race relations are complex. Indeed, since its founding in 1871, the state has proved incapable of forging a national identity and instead has used racial and economic exploitation as a means of social control.³⁵ The racial divisions existed as early as the colonial period.³⁶ The Spanish conquerors established a social hierarchy with Spaniards at the top and Indians on the

30. *Id.* at vii.

31. *See id.*

32. *Id.* at viii.

33. *Id.* at vii.

34. As noted above, while fifty-six percent of all Guatemalans lived in poverty, fully seventy-six percent of the Mayan population is classified as poor. *Guatemala Country Report*, *supra* note 25.

35. GREG GRANDIN, *THE BLOOD OF GUATEMALA: A HISTORY OF RACE AND NATION* 8 (2000).

36. *Guatemala History: Colonial Period*, LONELY PLANET, <http://www.lonelyplanet.com/guatemala/history#160726> (last visited Oct. 16, 2012).

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bottom.³⁷ The two groups were divided based on culture, class, and race.³⁸ The Indian spoke an indigenous dialect, wore native dress, and was usually a rural peasant or farmhand.³⁹ The Spaniard spoke Spanish, wore Western-style clothing, and was usually an administrator of some kind.⁴⁰ As Guatemala moved into independence, these distinctions have become blurred.

Despite the emphasis on race, the “race problem” in Guatemala is not primarily based on biological difference. The term *Ladino*, for example, may refer to non-Indians or whites, but it is also applied to Indians who adopt the Spanish language and cultural norms.⁴¹ The distinction between Indians and *Ladinos* is thus cultural rather than biological.⁴² There is no question the indigenous Mayan population suffered a genocidal civil war and continues to face some of the worse levels of discrimination in Latin America.⁴³ But race in Guatemala is a mutable characteristic. There is a presumption, if unspoken, that the indigenous population can “pass” or migrate to *Ladino* status.⁴⁴ By contrast, distinctions based on class are more entrenched.

Historically, Latin America has had some of the most unequal distribution of wealth and income in the world.⁴⁵ International trade has merely served to exacerbate the region’s wealth inequality.⁴⁶ In Guatemala, the class system took shape during the golden age of coffee when nineteenth century landowners, who controlled vast swaths of land, harnessed Indian labor to cultivate and export the then highly profitable crop.⁴⁷ Plantation owners increased their wealth while the

37. MAYAN FOLKTALES: FOLKLORE FROM LAKE ATITLAN, GUATEMALA, *supra* note 17, at xvi.

38. *Id.*

39. *Id.*

40. *Id.*

41. Sol Tax, *Ethnic Relations in Guatemala*, in AMERICAN INDIGENA 43, 45 (1942) available at http://www.nd.edu/~cmendoza1/inst_indigenista_11.pdf.

42. *Id.*; see also John D. Early, *Revision of Ladino and Maya Census Populations of Guatemala, 1950 and 1964*, 11 DEMOGRAPHY 105, 106 (1974) (noting that an “[e]xact definition of Ladino is lacking, but cultural characteristics are more important than skin color.”).

43. *Guatemala Mayans Still ‘Wronged’*, BBC NEWS (Sept. 12, 2002, 11:40 AM), <http://news.bbc.co.uk/2/hi/americas/2253273.stm>.

44. See Pierre L. Van Den Berghe, *Ethnic Membership and Cultural Change in Guatemala*, 46 SOC. FORCES 514 (1968) available at <http://sf.oxfordjournals.org/content/46/4/514.full.pdf> (noting that the steady decline in population of Indians in Guatemala must be attributed to migration of the population to new towns where they are assimilated into *Ladino* culture).

45. See, e.g., Alejandro Portes & Kelly Hoffman, *Latin American Class Structures: Their Composition and Change During the Neoliberal Era*, 38 LATIN AM. RES. REV. 41 (2003); see also, A. Leticia Arroyo Abad, *Inequality in Republican Latin America: Assessing the Effects of Factor Endowments and Trade* (Global Prices & Income History Grp., Working Paper No. 12, 2008) (presenting new evidence of Latin American inequality by tracing evolution of trade flows, among other factors).

46. International trade has had significant impact on the class structure of Latin America as a whole. Traditionally, Latin America has had some of the most unequal distribution of wealth and income in the world. The trade liberalization efforts encouraged by the “Washington Consensus” has merely exacerbated that wealth inequality. See, e.g., Portes & Hoffman, *supra* note 45, at 41.

47. See generally David J. McCreery, *Coffee and Class: The Structure of Development in Liberal Guatemala*, 56 HISP. AM. HIST. REV. 438 (1976).

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Indian laborers were forced to exist on subsistence wages.⁴⁸ To add further insult to injury, the Guatemalan government sought to improve the circumstance of the indigenous population by luring European working-class whites to Guatemala in hopes that they would serve as a “civilizing” influence.⁴⁹

As one government official noted:

[t]he only method of improving the situation of the Indians, of taking them out of the state of misery and abjection in which they exist, is to create in them the needs they will acquire by contact with the ladino class, accustoming themselves to work by which they can fill them, thus becoming useful to national agriculture, commerce and industry.⁵⁰

In the modern era, the microfinance community has sought to increase Guatemalan class mobility by providing micro loans to small-scale entrepreneurs.⁵¹ The results have been heartening, but it will take a long time to dismantle Guatemala’s current class system, and microfinance initiatives likely will not be sufficient to the task.

Given the pervasiveness of race and class in Guatemalan society, it was inevitable that these issues would play themselves out in the classroom. My assumption, as I prepared to teach in the program, was that most of my Guatemalan students would likely be white and economically well-off. Despite significant reforms in Guatemalan higher education, it remains for the most part an opportunity reserved for the elite. Moreover, the Pacific McGeorge Inter-American Program had partnered with a private university, which is far more costly than Guatemala’s public institutions.⁵² Finally, my class was to be taught in English, which meant students would have had extensive exposure to English language classes—a luxury only the well-off could afford. My experience walking into the classroom seemed to bear out my assumptions. The students would be termed *Ladinos* under Guatemala’s racial classification system; and if the number of cell phones, computers and other high-tech gadgets were any indication, these students were part of Guatemala’s upper class—or at the very least, they were economically better off than the vast majority of Guatemalans. In

48. *Id.*

49. *Id.*

50. *Id.* at 456 (quoting Recopilación de las leyes emitidas por el gobierno democrático de la República de Guatemala por la Asamblea Nacional Legislativa, 88 vols. to date, (Guatemala, 1881-), I, 457-58).

51. See W. Bruce Wydick, *Credit Access, Human Capital, and Class Structure Mobility*, 35 J. DEV. S. 131 (1999), available at http://www.usfca.edu/fac_staff/wydick/clstrjds.pdf (discussing the impact of microenterprise credit programs on class structure mobility using the data collected in Guatemala).

52. See JOSÉ FRANCISCO DE MATA VELA, UNIVERSITY OF SAN CARLOS IN GUATEMALA (2000) (on file with author) (stating that students at San Carlos, Guatemala’s sole public university, pay for tuition “a token fee more or less, inasmuch as each student pays five quetzals (Q.5.00) a month, which is equivalent to about \$0.80”).

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Part II(B), *infra*, I explore how these race and class distinctions played out in the classroom.

3. *Educational System*

Observers of Latin American legal education charge that students are not being prepared adequately to address the challenges facing their societies.⁵³ Traditional pedagogy is excessively formalist—relying on lectures, rote memorization, and a passive, non-critical approach to the study of law that fails to prepare students to practice effectively.⁵⁴ Perhaps the most damning critique of Latin American legal education is that it “promotes the ideal of an autonomous, self-contained legal thinking isolated from social contexts.”⁵⁵

Guatemalan higher education was once the exclusive preserve of the upper class.⁵⁶ As late as the 1970s, the country had fewer than 300 law students,⁵⁷ and it was not until the end of Guatemala’s debilitating civil war that significant structural reform of legal education occurred.⁵⁸ In the post-war period, Guatemala committed itself to a radical reorientation in legal education.⁵⁹ All stakeholders agreed on the critical need to improve legal education in order to provide access to previously marginalized groups, prepare law students for the modern practice of law, and to promote the rule of law. Led by the efforts of the Guatemalan National Justice Commission and a United Nations special adviser on justice—and with funding from international agencies and institutions—Guatemala’s law schools began to re-conceptualize legal education.⁶⁰ The peace accords of 1994⁶¹ called for a major expansion of access to education for the masses, including access to legal education, student law clinics, and upgrades in the quality of service at the law schools.⁶² The country adopted an open enrollment system,

53. Juny Montoya, *The Current State of Legal Education Reform in Latin America: A Critical Appraisal*, 59 J. LEGAL EDUC. 545 (2010), available at <http://swlaw.edu/pdfs/jle/jle594montoya.pdf>.

54. *See id.* (critiquing Latin American law schools, noting that “legal education has earned regional notoriety for its absence of serious reflection about the limits of legal adjudication, the scope of a professional’s social responsibility, and the real aims and goals of greatest value.”); *see also* Luis Fernando Pérez Hurtado, *Content, Structure, and Growth of Mexican Legal Education*, 59 J. LEGAL EDUC. 567, 571 (2010) (finding that “faculty, deans, and practitioners generally agree that the problems and challenges of legal education and legal practice must be addressed urgently.”).

55. Montoya, *supra* note 53, at 549.

56. *See Poverty in Guatemala*, AVIVARA, <http://www.avivara.org/aboutguatemala/povertyinguatemala.html> (last visited Oct. 17, 2012).

57. Hendrix, *supra* note 4, at 600.

58. Jose Marques & Ian Bannon, *Central America: Education Reform in a Post-Conflict Setting, Opportunities and Challenges* (Soc. Dev. Dep’t., Working Paper No. 4, 2003), available at <http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/214578-1111661180807/20488027/CPRWPN4.pdf>.

59. *Id.*

60. Hendrix, *supra* note 4, at 599.

61. Agreement on a Firm and Lasting Peace, Guat.-U.R.N.G.-U.N., Dec. 29, 1996, 36 I.L.M. 274.

62. Hendrix, *supra* note 4, at 600.

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which facilitated access but produced its own challenges.⁶³ By 1998, law school enrollment had risen from a low of just 300 in the 1970s to nearly 18,000.⁶⁴ Physical plants, faculty numbers, and budgets did not increase to reflect the change.⁶⁵ The results were catastrophic. The open enrollment system might have increased students' access to education, but the physical limitations and other deficiencies meant that fewer than 300 of them managed to graduate every year.⁶⁶

Guatemala's legal education system is markedly different from that of the United States. For one, legal training takes place at the undergraduate level, and upon graduation, students receive an academic degree in legal and social sciences as well professional certification as a lawyer and notary.⁶⁷ The academic coursework consists of a minimum of fifty courses in a fixed curriculum as well as practical training and certification for practice in criminal, civil, and labor law at the People's Law Firm—a legal clinic representing low-income people on a pro bono basis.⁶⁸ After their legal training, students must pass a Professional Technical Examination, which tests both theoretical practical competency in three areas each of private law and public law.⁶⁹ After successfully completing all of those requirements, a student must prepare and defend a Professional Graduation Thesis, which generally consists of a research monograph on a single topic in an area of their choice.⁷⁰ While the curriculum is structured in such a way that a successful student could complete the program in five years and graduate within six or seven years of entry in the university, in practice, the high incidence of course failures means the average time to graduation is over twelve years.⁷¹

Despite the challenges facing Guatemala's legal education system, there are some successes. The University of San Carlos, which at over 300 years old is one of the region's oldest educational institutions, is the nation's sole public university and has graduated many of its leaders.⁷² The University is quite large with over 100,000 students and an average of 7,000 professors; and the law school, the oldest department within the University, is equally large with 15,000 students attending in three shifts—morning, afternoon, and evening—and an average of 200 professors.⁷³ To put these figures in some perspective, the five other law schools in the country, all of which are private, educate *a total* of 5,000

63. *Id.* at 597.

64. *Id.*

65. *Id.* at 600-01.

66. *Id.* at 600.

67. *See* FRANCISCO DE MATA VELA, *supra* note 52.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

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students.⁷⁴ As a public institution, the University of San Carlos charges no tuition; students pay a nominal yearly fee of approximately \$300,⁷⁵ which translates into a campus facility that is completely run down, with crowded classrooms, a heavy reliance on adjuncts to teach core courses, and little faculty governance.⁷⁶ Moreover students are admitted on an open enrollment basis with few barriers or obstacles to entry: there are minimal entry requirements, no entrance exams, “nor is the entry profile determined on the basis of abilities and knowledge.”⁷⁷ In short, under the schools admissions policy almost anyone “who wishes to enroll may do so.”⁷⁸ In spite of these formidable obstacles, the law school has a reputation for social reform and innovation,⁷⁹ and it has graduated such luminaries as “presidents of the country and heads of other branches of government, and even writers like Miguel Angel Asturias, the pride of [the] nation, who won the Nobel Prize for Literature in 1967.”⁸⁰

As the country shifts its focus away from a system to educate elites to a more inclusive model of legal education, the need for a contextual approach to the teaching and learning of law becomes paramount. If law students are to become lawyers who will address the critical challenges facing the country, they must be given the tools and experiential opportunities within the classroom to be successful. But how would these issues play out in a course on international trade and development? In the next section, I explore how Guatemala’s social and educational system as well as issues of race and class have impacted teaching and learning in the classroom.

B. The Course: Objectives, Logistics and Challenges

There is a visible division in the international trade law literature. On the one hand, there are those scholars engaged in deep analytical thinking on the rules with less focus and attention paid to the social issues that accompany trade; on the other hand, another group of scholars predominantly focus on fairness and equity issues almost to the exclusion of the rules. But my experience as a trade lawyer and technical assistance provider in the developing world convinced me of the importance of bridging the divide between “hard” law and “soft” social issues. Given the challenges facing Guatemala, it was imperative that my students grappled with both aspects. If the course was to be effective, it had to

74. *Id.*

75. Interview with Raquel Aldana, Professor at the University of the Pacific, McGeorge School of Law (June 7, 2011).

76. *Id.*

77. FRANCISCO DE MATA VELA, *supra* note 52.

78. *Id.*

79. *See* Interview with Raquel Aldana, *supra* note 75.

80. FRANCISCO DE MATA VELA, *supra* note 52.

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provide a framework for analyzing the problems of trade and development—both at the global level and within Guatemala itself; moreover, it had to establish a mechanism to at least begin imagining potential solutions. Finally, I wanted to alert students at the outset that more would be required of them than mere regurgitation of rules. Designing and implementing such a course presented both procedural and substantive issues, which I describe below. I end this section with some reflections on the successes and failures of the project.

1. Substantive and Procedural Aspects

In light of the course objectives, rather than organizing the class around some general rules of international trade, I adopted two core themes that would provide the structural framework for studying the rules. The first core theme explored the question whether developing countries *should* trade, while the second asked *how* they should trade. In that context, we explored the current rules, identified advantages and disadvantages for developing countries and further envisioned how the rules could be altered to better take development needs into account.

Putting these broad objectives into practice required some creativity. Almost immediately, I had to confront the reality of teaching a highly technical and difficult course to students with varying levels of proficiency in English. As if that were not sufficiently daunting, most of my Guatemalan students faced the added challenge of taking four hours of course work per day⁸¹ in the Pacific McGeorge program in addition to their regular coursework at their home institutions; moreover, these students had to be bused from Guatemala City to Antigua every day, a roundtrip journey that took upwards of two hours. These logistical challenges also presented opportunities to organize the course in a way that engaged and required maximum student participation. By necessity, the course was a highly visual experience with lots of PowerPoint presentations, graphs, drawings and handouts, and the take-home reading materials I settled upon were culled and edited in an effort to make them as clear and accessible as possible. To support active learning and encourage deep interaction with the issues, I adopted a problem-based approach to teaching. In each class, students had to address a problem and *do something*—whether a negotiation, presentation of a case, or a group exercise—to grapple with the rules and the social issues surrounding those rules.

In keeping with the first core theme of the course—*should* countries trade?—one of the earliest exercises students had to complete in class was a problem from Guzman & Pauwlyn, *International Trade Law*.⁸² The exercise asked students to imagine themselves as a solo practitioner with a secretary who is out sick for the

81. My class was only two hours per day, but students were required to take an additional two hour class in the Pacific McGeorge offerings.

82. ANDREW T. GUZMAN & JOOST H.B. PAUWELYN, *INTERNATIONAL TRADE LAW* (1st ed. 2009).

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day.⁸³ Forced to do the work of her secretary as well as her own work, the lawyer discovers she is actually *better* at the secretarial tasks than her assistant.⁸⁴ The problem then asks students to assess whether the lawyer should fire her assistant and take on both roles herself, thereby saving the cost of a secretary's salary.⁸⁵ Uniformly, the students decided that would be a terrible idea. There were many suggestions for retraining the secretary or hiring a new one, but everyone agreed that the lawyer should focus on her "comparative advantage," which would allow her to charge more for her time and better use her specialized skills, and let someone else handle the secretarial work.

In the next group classroom exercise, I developed my own hypothetical that asked students to move beyond merely asking *should* we trade to the more complex question that served as our second core theme—namely, *how* should it be done? In this hypothetical, I had students break up into four groups representing Mars, Venus, Jupiter and Mercury.⁸⁶ Each planet had its own resources, advantages and disadvantages. Mars had the least available wealth, although it was blessed with an abundance of natural resources, representing a least developed country. Mercury had the most wealth and available resources, representing a developed country. Venus and Jupiter both represented middle-income developing countries with some available resources but with lots of demands on those resources. Students were then asked to consider the position of each planet. Should they trade? If so, what might the terms of trade look like?

83. *Id.* at 27.

84. *Id.*

85. *Id.*

86. *Should They Trade? A Hypothetical:*

Imagine we have colonized four new planets: Mars, Venus, Mercury, Jupiter, each of which have the products described below. Would these planets trade with each other? If so, what would the rules of trade between new planets look like?

Mars has an abundance of grass and low skilled labor, but little else. Unemployment is roughly thirty percent.

Venus has an abundance of cows, which they use to produce milk and other dairy products, but grass to feed the cows is in short supply. It also has highly skilled laborers, and a ten percent unemployment rate.

Jupiter has an abundance of cows, but grass is in short supply. They have highly skilled labor, most of which is focused in the tanning industry turning cow skins into raw leather. Unemployment is about five percent. They also have high-tech machinery to help laborers produce raw leather.

Mercury has an abundance of cows, grass, skilled labor, and high-tech machinery. Their laborers focus on producing leather purses, and unemployment is about three percent. Mercury is quite rich and has plenty of money for investment.

Questions to Consider:

1. What are the main trade objectives of each country?
2. Assume for a moment that Mars must trade with Mercury *only* and Venus with Jupiter *only*. Should they trade? Why or Why not?
3. If you could pair up *only* two countries to trade, which ones would they be? Why?
4. What additional rules might you put in place to "protect" the economic and social interests of each country?
5. Anything else?

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For example, would the middle income developing planets be better off trading with each other? Would it make most sense to trade with rich Mercury or poor Mars? We also conducted elaborated simulated negotiations where students had the opportunity to play out some of their scenarios. By using planets as stand-ins for states within the international trading system, we were able to have deep discussion on some of the inequities in the trading system in a way that depersonalized the issues. Students could explore the benefits and potential detriments of a North-South versus a South-South alliance without necessarily delving into the actual geopolitics of such alliances. Unlike the lawyer-secretary hypothetical, the students were deeply divided as to whether the planet they represented should engage in the trading system. The broad range of opinions highlighted the complexity of the issues and presented an excellent opportunity to distinguish between the theory and practice of trade. In short, the students quickly came to realize that *should* we trade is an easier question to answer than *how* should we trade.

These two simple exercises framed the course, and we were able to refer back to them in the exploration of specific trade rules. For example, when discussing how the General Agreement on Tariffs and Trade (“GATT”) handles regional or preferential trading arrangements, we could analyze the text and case law of GATT Article XXIV, while also exploring why these regional groupings were outpacing progress in the multilateral trading system. Students could refer back to their own experience negotiating among the planets to examine these questions.

Beyond the “hard” rules of trade, the course was also designed to address the social issues that come in the wake of trade. In my Guatemala classroom, issues of race and class were inevitable; it came initially from a simple introductory exercise having little to do with international trade itself. In our first session, I had each student interview a colleague and present his or her results to the class at large. Students were asked to gather basic information, including name,⁸⁷ place of birth, and a “significant fact” about their interviewee.⁸⁸ There were no direct questions concerning race or class, although I believed these issues would arise organically in the interview process. And they did. One of the first indications of class came when the students discussed their place of birth. It turned out almost all of them were born and raised in Guatemala City, the nation’s capital. While

87. This turned out to be quite a fun experience—for me and the students alike! They enjoyed watching me stumble over their *very* long and difficult (for me) to pronounce Spanish names. A few of them kindly offered me either shortened or anglicized versions of their names, but I always insisted on calling them by their regular names. In part, it was an exercise in turning the tables; these students were asked to think and speak in a language not their own. The least I could do was emulate the experience of struggling and persevering that they would have to go through for the next three weeks.

88. Each interviewer was asked a series of questions: What’s your name? Where were you born? What’s your connection to international trade? Why are you interested in this class? What is one memorable or interesting fact about you? As an exercise in building trust, I also introduced myself.

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the city can be a dangerous and overcrowded place to live, it also has the highest concentration of wealth and resources in Guatemala.⁸⁹ Thus, my students had a standard of living very different from rural Guatemalans. As urban dwellers, they had access to schools, government services, and the latest technologies—including cell phones and computer access.

In addition to issues of class, the introductions also revealed questions of race and the role racial identity plays in Guatemalan society. In particular, I was intrigued by the way my students chose to describe themselves. While they all saw themselves as “Guatemalan,” they did not shy away from owning other parts of their ancestry. One student drew out an elaborate family tree detailing her Chinese ancestry, while another talked about her parents’ Honduran nationality, and several mentioned Spanish ancestry. But no one mentioned any indigenous ancestry. At first, I assumed they simply did not have any. The incidence of intermixing and interracial relationships is quite high in Guatemala, but my own pool of only eleven students may not have been big enough to reflect that reality. During a class break however, one of my students managed to dispel this theory. In an informal discussion with me, the student casually mentioned a member of his immediate family was indigenous Mayan; I found it intriguing that he had not mentioned this in the classroom, although I did not question him about it. It would not be the last time when students raised race and class issues to me directly that they did not address in the classroom.

Perhaps not surprisingly, this resistance to exploring race and class within the room extended into the substantive discussions on trade—even when the subject matter appeared to lend itself to that analysis. In one module, the discussion centered on the difficulties of distributing the wealth trade generates to all segments of society within a country. We examined how systemic corruption and war created distribution bottlenecks that kept wealth in the hands of the few. We also explored Amy Chua’s provocative book *World on Fire*, which argues that U.S. global economic assistance has exacerbated existing inequalities in the countries we serve; the end result is that in many such countries, a small sector of the population—what Chua terms “market dominant minorities”—capture a disproportionate share of the wealth.⁹⁰ Chua’s observations seemed at least relevant to a discussion of Guatemala’s own circumstance given the economic disparities between the Mayan majority and the country’s minority white population. But while the students thoroughly debated the role of corruption and

89. See e.g., Kedron Thomas, Kevin Lewis O’Neill, and Thomas Offit, *Introduction to SECURING THE CITY: NEOLIBERALISM, SPACE, AND INSECURITY IN POSTWAR 2* (Kevin Lewis O’Neill & Kedron Thomas eds., Duke Univ. Press 2011) (noting that “Guatemala City is now one of the most dangerous cities on the planet”); see also CARLOS ENRIQUE VALLADARES CEREZO, BARTLETT DEV. PLANNING UNIT, URBAN SLUMS REPORTS: THE CASE OF GUATEMALA CITY, GUATEMALA 5, 12 (2003), available at http://www.ucl.ac.uk/dpu-projects/Global_Report/pdfs/Guatemala.pdf.

90. AMY CHUA, *WORLD ON FIRE* (Anchor Books 2004) (2003).

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war in Guatemala's wealth inequalities, little was made of the class and race differentials.

What accounted for this hesitation to bring class and race into the classroom? I wondered if the students refrained from raising these issues because I was an "outsider." It was inevitable that the students and I would bump up against our respective differences. At one point during a class on tariff negotiations, I created a hypothetical setting the U.S. tariff level on coffee at a certain rate and the students, representing different Latin American countries, were supposed to offer up their own concessions in return for that rate. In their group exercise, the students inexplicably kept changing the U.S. tariff rate. Without thinking about it, I offhandedly commented "let's just assume the U.S. government is not lying." After a brief silence, we all broke out in ironic laughter. It was impossible not to acknowledge the traumatic history of U.S. intervention in Guatemala.⁹¹ I recognized the sensitivities under the circumstances, but as a Haitian-American (and thus, nominally, a Latin American myself) who had worked in a variety of countries, I had some experience navigating those choppy waters. Besides, while my outsider status might have accounted for some of the resistance, it was an incomplete explanation given that a number of students were comfortable enough to discuss these issues with me in one-on-one conversations. Guatemala's recent history of conflict and civil war also may have accounted for some of their hesitance, but not all of it given that the country had undergone a catharsis of sorts through its reconciliation process.⁹² Moreover, these students were young enough not to have lived through, and been shaped by, the worst years of the war.

Likely, a full explanation for students' unwillingness to engage on questions of race and class lies in part on the issues identified above and in part on the Latin American educational system, which traditionally has not focused on confronting these real world concerns in the classroom.⁹³ To the extent that legal education stresses the understanding of formal rules divorced from social context,⁹⁴ it would be difficult for students to see how the concerns of their everyday existence are reflected back to them in the law.

91. CHRISTIAN TOMUSCHAT ET AL., *supra* note 20. In 1954 the Central Intelligence Agency worked with sectors of country's elite to beat back reformists:

Whilst anti-communism, promoted by the United States within the framework of its foreign policy, received firm support from right-wing political parties and from various other powerful actors in Guatemala, the United States demonstrated that it was willing to provide support for strong military regimes in its strategic backyard. In the case of Guatemala, military assistance was directed towards reinforcing the national intelligence apparatus and for training the officer corps in counterinsurgency techniques, key factors which had significant bearing on human rights violations during the armed confrontation.

Id.

92. *Id.*

93. Hendrix, *supra* note 4, at 600.

94. *Id.*

*Global Business & Development Law Journal / Vol. 26*2. *Reflections*

In *A Tale of Two Compadres*, the poor *compadre* seeks advice on becoming rich from his employer, but as the story unfolds it is apparent the rich *compadre*'s advice is designed to keep him embroiled in a never-ending cycle of poverty.⁹⁵ Then the tables turn. Now it is the rich *compadre* who reaches out to the (formerly) poor one for wealth-building advice, and once again what is proffered is only designed to impoverish the seeker.⁹⁶ The moral of the story seems to be to never trust the advice of a rich man!

For those of us who work and teach in the field of international trade and development, this distrust of advice and advice-givers has a direct impact on our work. In my previous life as a technical assistance provider, I experienced first-hand the suspicion developing countries exhibit towards donors' advice.⁹⁷ Poor countries fear that such advice is not necessarily tailored to their specific needs.⁹⁸ For example, one African official has publically stated a U.S.-sponsored training program on specialized rules on the importation of poultry was merely a ruse to increase U.S. exports: "They want us to understand SPS [the WTO Agreement on Sanitary and Phytosanitary Measures] so that we will import more chickens."⁹⁹ Another maintains that the World Trade Organization's ("WTO") own flagship technical assistance program, funded directly by rich and powerful countries, is "ideological;"¹⁰⁰ in his view, assistance providers "come to tell us what to think, what our positions should be."¹⁰¹ Indeed scholars from rich and poor countries alike also question the relevance and efficacy of technical assistance providers' advice.¹⁰² But this is not to suggest that developing countries are *not* in need of sound advice. Given the tattered history of technical assistance programs in the

95. See MAYAN FOLKTALES: FOLKLORE FROM LAKE ATITLAN, GUATEMALA, *supra* note 17.

96. *Id.*

97. Marjorie Florestal, *Technical Assistance Post-Doha: Is There Any Hope of Integrating Developing Countries Into the Global Trading System?*, 24 *Ariz. I. J. Int'l & Comp. L.* 121 (2007) (I write about my own experience as a technical assistance provider as well as the experience of others).

98. *Id.*

99. J. Michael Finger, *Implementing the Uruguay Round Agreements: Problems for Developing Countries*, 24 *WORLD ECON.* 1097, 1103 (2001).

100. Gregory Shaffer, *Can WTO Technical Assistance and Capacity-Building Serve Developing Countries?*, 23 *WIS. INT'L L. J.* 634, 650 (2005).

101. *Id.*

102. See, e.g., JOSEPH STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* (2002) (charging that the policies of the World Bank, International Monetary Fund and WTO are fundamentally unsound, particularly for developing countries, because they negate the legitimate role of the state in directing markets); see also CHUA, *supra* note 90 (maintaining that U.S. technical assistance advice exacerbates wealth inequality in the developing world and privileges "market-dominant minorities"); see also, DAMBISA MOYO, *DEAD AID: WHY AID IS NOT WORKING AND HOW THERE IS A BETTER WAY FOR AFRICA* (2009) (asserting that Western assistance undermines democracy in the developing world because Western aid links bureaucrats in the donor country with elites in the recipient country. This link insulates elites from their own people and encourages them to satisfy the grant conditions laid out by the donor country rather than the needs and demands of their own citizens.).

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developing world, however, it is no longer feasible to rely on a one-way exchange of advice from rich countries to poor ones.¹⁰³

Developing countries want to create their own brain trust of educated citizens who can respond to the needs of their country. The technical assistance of the future is one that helps them to implement that objective.¹⁰⁴ The Pacific McGeorge Inter-American Program is a model for alternative approaches to technical assistance work. My experience in Guatemala reinforced my sense that this type of training holds a much greater chance for success in helping developing countries craft their own map out of poverty. But law professors who step into the abyss must confront the challenges that come from teaching across the cultural divide. The journey presents both successes and failures in equal measure.

In asking the students to move beyond a basic understanding of the rules of international trade to the impact of those rules on society, I came right up to the edge of the cultural divide. I would surely have fallen into the deep hole that separates my experience from theirs if I had attempted to teach the Guatemalan social context of trade. Under the circumstances, I could not hope to present the country's economic or social conflicts with any degree of expertise. Rather, I created an atmosphere where students were willing to make those connections themselves. The course was successful in meeting many of its objectives because it was highly interactive. Students could use the rules as a building block to resolve the larger issues that arose. This strategy would not have worked without trust—trust among the students themselves, and trust between the students and me.

The basic ingredients for building trust in the classroom are similar across cultures: create clear expectations, establish an environment where everyone treats each other with respect, and be willing to do yourself what you ask of others. From the beginning, the students understood that we would be undertaking this journey together. The syllabus clearly laid out my expectations for the course, and the reading assignments set the tone for the next day's discussion by focusing in on the rules as well as the social concerns rising from those rules. The atmosphere in the classroom was collegial and highly collaborative. In large part, the students created that atmosphere themselves. Many of them knew each other either from classes taken at their home institutions or from friendships forged on the long bus ride to McGeorge's program in Antigua. The Guatemalan and American students bonded very quickly, in part because the program provided a number of extracurricular outings in which both sides could participate. Their shared experience brought benefits to the classroom. The Guatemalan students were willing to open up about aspects of their culture in the classroom, and the American students were

103. Florestal, *supra* note 97.

104. *Id.*

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helpful and encouraging to those students whose halting English sometimes presented a barrier to understanding. I managed the classroom experience by ensuring no single student (or camp) dominated the conversation, and in the group exercises everyone was given an opportunity to serve as rapporteur to the class at large. Students came to understand that each of them had a role to play in ensuring a successful classroom experience.

One of my greatest concerns in preparing for my teaching stint in Guatemala was that the American Socratic-style teaching method would not translate well. Would Guatemalan students resist having the spotlight shined on them while we dissected a particular problem with question after question? I need not have worried. For the most part, Guatemalan students embraced the Socratic method; of course, I adopted some “safety valves,” just as I do in my U.S. classroom. Thus, for example, when a student exhausted his or her understanding of a particular question, I called in “co-counsel” to help complete the analysis. It is a delicate game, however, as students often know more than they think they do but pushing past their comfort level can be disconcerting. In that respect, perhaps the best trust-building exercise was my willingness to share my own learning process with my students. Although I taught the course in English, I was taking Spanish classes on my own and would often practice my skills in the classroom. The students delighted in correcting my vocabulary or pronunciation, and it underscored that perfection or absolute mastery of the material was not necessary.

Not every aspect of the experiment was a success. In designing the course, I worried that I was sacrificing breadth in favor of depth—and I was. It was impossible to cover the full terrain of WTO legal issues I traditionally covered in my American classroom. At least part of the explanation had to do with me having to make allowances for non-native English speakers. I simply could not assign as much reading as I did at my home institution if I hoped to have students actively engaged in the day’s discussion—particularly because they had a significant nightly commute ahead of them before they could tackle the readings. But some of the loss of coverage was the result of a deliberate trade-off. It was impossible to both study all of the significant WTO rules in depth and also include the readings on development theory or exploration of the regional agreements so significant to Latin America. I opted for covering the core rules of the GATT, including rules on non-discrimination, tariffs and quantitative restrictions,¹⁰⁵ then focused on special and differential rules relevant to developing countries,¹⁰⁶ and completed the WTO portion of the class by exploring

105. General Agreement on Tariffs and Trade, Apr. 15, 1994, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (article I on MFN, article II on tariffs, article III on non-discrimination, and article XI on quantitative restrictions).

106. *Id.* at art. IV.

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how the multilateral system deals with bilateral or regional trade agreements.¹⁰⁷ Additionally, I lectured on services and intellectual property issues, although I assigned no reading on those subjects. The rest of the course focused on specific regional agreements in Latin America, including the North American Free Trade Agreement (“NAFTA”)¹⁰⁸ and CAFTA.¹⁰⁹ The course was much more of a survey than I have traditionally taught it, which meant students were exposed to many issues without necessarily gaining mastery on all of them. Was that the proper approach? Would these students have been better off with a more focused approach designed to build mastery in a more limited area? It is impossible for me to say, but I have to imagine that given the diversity of trade agreements Guatemala has signed on to,¹¹⁰ students should be exposed to more, rather than fewer, treaties.

Another challenge I confronted in designing and implementing the course was ensuring that Latin America’s South-South trading arrangements—agreements between developing countries (in which the United States is not a party)—received significant attention. United States legal assistance in the developing world is often termed “legal imperialism” because we typically imagine that our system is better than other legal models; rather than working with what a recipient country has adopted for itself, we often seek to “convert” that country to our own model.¹¹¹ I wanted the course to look beyond agreements Guatemala has formed with the United States to reflect on those between Guatemala and its neighboring developing countries. Do those agreements raise alternative approaches to trade? Are those approaches more or less beneficial to Guatemala? Teaching in this area forced me to move beyond my comfort zone because my own focus has been on multilateral agreements and bilateral agreements involving the United States; both the students and I benefited enormously from this multidimensional perspective. Many of these agreements were in Spanish without an English translation, however. My limited Spanish required that I use translated documents regardless of whether those agreements in fact were the most relevant or significant.

Indeed, the language barrier was not insignificant. I felt it on my end when I needed to adopt Latin American agreements that provided translation, and I felt them again in choosing the materials to include in the reading assignments. My primary criterion was that the documents be accessible to non-native English speakers; and often, I would have to wade in and heavily edit in order to ensure

107. *Id.* at art. XXIV.

108. North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289.

109. Dominican Republic-Central America-United States Free Trade Agreement, Aug. 5, 2004, 119 Stat. 462, 43 I.L.M. 514.

110. *Information on Guatemala*, ORG. OF THE AM. STATE’S FOREIGN TRADE INFO. SYS., http://www.sice.oas.org/ctyindex/GTM/GTMagreements_e.asp (last visited Nov. 10, 2012).

111. Jon Mills & Timothy McLendon, *Law Schools as Agents of Change and Justice Reform in the Americas*, 20 FLA. J. INT’L L. 5, 7 (2008).

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accessibility. While I believe the materials we used provided a firm grounding in the issues, it was a time consuming process putting them together taking significantly longer than preparing materials for a more traditional class. Moreover, in adopting the bilingual requirement for students, we effectively eliminated a significant number of students from consideration. In particular, we did not enroll a single Mayan student, and the program's director believed at least part of the reason was the language requirement.¹¹²

Ultimately, I regretted my limited Spanish did not allow me to teach the course in the students' native tongue. Beyond providing me with access to more documents, I wonder how the experience would have differed. Would we have enrolled more Mayan students? How would that have changed the class discussion? Would students be more willing to address some of the socially sensitive issues in a language more comfortable to them? These are all unanswerable questions at this point. Although I sometimes contemplate learning Spanish at a level sufficient to teach the course, that is admittedly a significant undertaking. As I consider how I might improve upon the course should I teach it again, a more likely short-term solution would be to invite a Guatemalan law professor as a co-teacher. A cross-cultural co-teaching experience would undoubtedly bring its own challenges, but it would also produce significantly more opportunities to address Guatemala's social history. At the very least, I would allow time in the syllabus to bring in some Guatemalan speakers and activists who could address some of these issues.

Finally, I confronted some challenges in grading and assessment. Traditionally, when I teach this course at my home institution I require students to produce a lengthy, publishable-quality paper and to make a half-hour long presentation of their findings to the class. I have also experimented with requiring a short paper (approximately five pages) as well as a take home exam. I believe students do not have nearly enough opportunities in law school to immerse themselves in a particular area of the law and to write from that perspective. The writing requirement compels them to do so, but because I allow students to pick their own topics (with significant input from me), it also affords them an opportunity to deepen knowledge in an area of interest to them. There simply was not enough time in a three week-long summer course to require students to produce a paper. Moreover, I did not know, as I was preparing the course, exactly how proficient my Guatemalan students would be in English. Under the circumstances, I thought even a short paper would be too great a risk, thus I opted for an in-class final examination.

While the exam option is a fine alternative, it was a rather traditional approach to a non-traditional course. The nature of the classroom experience had been highly interactive requiring students to problem solve and negotiate in groups, but the examination was much more insular in its orientation.

112. Interview with Raquel Aldana, *supra* note 75.

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Additionally, while I adopted multiple assessment tools—from short quizzes to elaborate negotiating exercises—to evaluate student progress, their final grade was based primarily on the final exam with some percentage reflecting their class participation. It would have been better to incorporate more factors into the grade, including some of the negotiating exercises, which required significant prior preparation. I could also have designed some short writing exercises to assess student knowledge. While a full length paper was not an option, I could have assigned students to write short position papers on some of the negotiations we completed. Particularly because English was a second (or third) language for these students, relying on a single written exam as the primary source of their grade might not have reflected the full measure of their mastery of the course.

III. THE AMERICAN EXPERIENCE: BRINGING THE LESSONS HOME

According to a recent survey, international trade law has emerged as one of the two most widely offered courses in the American law school classroom.¹¹³ In our increasingly globalized world, it makes sense that law faculties are committed to teaching the intricacies of the world trade system—and how those rules impact our lives. But the same survey also revealed student participation in international economic law courses, of which international trade law is a subset, is relatively low.¹¹⁴ These findings force us to consider how we are teaching the course. The subject matter is one that raises deep social concerns beyond the complexity of the rules, but are we incorporating discussion of some of these “soft” issues into or analysis of the “hard” rules of trade? International economic law courses have the undeserved (and uninformed) reputation of being “boring”—in part from our own failure to marry the rules to the larger contextual problems facing our society. As a result, student perception is that these classes are overly technical or tedious—or worse yet, irrelevant to their future law practice.¹¹⁵

The experience in Guatemala affirmed my belief that students approach the course with enthusiasm when they can see how to translate classroom knowledge to the “real world.” Admittedly, my Guatemalan students came to the course with a strong predisposition to business-related matters. It certainly helped that they had been handpicked for the program based on their interest in business and commercial law. Some of them were being groomed to take over their parents’ businesses while others had already made the choice to go into business for themselves.¹¹⁶ Whatever their individual circumstance, it was clear that they expected to walk away from the course with some knowledge that they intended

113. Bravo, *supra* note 13, at 151.

114. *Id.* at 153.

115. *Id.*

116. This information came out during the introductory exercise at the beginning of the course.

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to use in their professional lives. The students who take my course in California usually do not have such a singular business focus. While some of them are pursuing a business law concentration, more typically they are drawn to the course because of a generalized interest in the subject matter.¹¹⁷ But even if students have no intention of pursuing trade law (or even business law) careers, in the global economy there is little question that trade will have an impact on their professional and personal lives. Thus, the lessons I learned in Guatemala are equally useful in designing a trade course for an American classroom.

Perhaps the single most important lesson I drew from my Guatemalan experience was that my course is more successful to the extent that it incorporates the social context in which the rules play out. The experience is a more authentic and practical one, and students are more deeply engaged and focused as a result. One of the strongest critiques of Latin American legal education—that it is non-contextual and resistant to social change—is one that could easily be levied at U.S. law schools as well. Some law schools take a more limited view that universities should simply prepare law students to become lawyers and judges without “promoting” social reform.¹¹⁸ Admittedly, most students who take an international trade law class in the United States are likely not going to be charged with fundamentally restructuring their society in the way my Guatemalan students may. But American law schools have an obligation to at least acknowledge the social issues of the day because these undoubtedly are the problems future lawyers will have to address in their legal practice.

Many of the students who walk into my California classroom have the luxury of not having battled the dark side of international trade directly. They have not grown up in communities overrun with cheap imports (and depressed domestic production) as a result of trade liberalization programs imposed by the International Monetary Fund.¹¹⁹ They do not live in countries rich from the proceeds of oil imports that never get distributed to the general population. Despite that, my American students come to our first class leery if not downright suspicious of trade. I have always addressed these concerns, but in the past I have done so primarily in the first and last class sessions as an opener and a wrap-up of the course; I would dedicate the remaining weeks for our “real” work of learning the rules. After my experience in Guatemala, I decided to incorporate my students’ distrust as part of the context for learning the trade rules. It became a theme of the course, rather than a side issue to address at the very end. I returned to this theme over and over again by bringing multiple voices into the discussion. We begin with an exploration of the agreement and relevant case law,

117. Candidly, a few of them honestly said their interest in the class begins and ends with the fact that the time period during which the course is offered fits within their schedule. Interestingly enough, some of these students become the most engaged and active learners in the classroom.

118. See Michael A. Olivas, “*Breaking the Law*” on Principle: An Essay on Lawyers’ Dilemmas Unpopular Causes, and Legal Regimes, 52 U. PITT. L. REV. 815 (1991).

119. See Sungjoon Cho, *The WTO’s Gemeinschaft*, 56 ALA. L. REV. 483 (2004).

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and I then bring in supplemental materials such as YouTube videos from various sources, including from traditional anti-trade opponents like Public Citizen.¹²⁰ and pro-trade entities like the WTO itself,¹²¹ to illustrate the controversies raised by the rules. The students thus learn the rules but also get to hear differing viewpoints, which either support or bring into question their own intuitive prejudice.

Much of the critique of the world trade system focuses on the disparity between rich and poor countries. But when I teach the course in California, I want to underscore the challenges of trade even in a developed country. The United States may be one of most active countries in the global trading system,¹²² but not every American benefits from trade in equal measure.¹²³ After my Guatemalan experience, I became much more clear on the importance of teaching to my students' experience. In California, NAFTA is an important but controversial agreement that some argue has led to significant job losses in the state.¹²⁴ Thus, I make sure to raise some of NAFTA's challenges when I explore the role of regional agreements in the multilateral system. My students are also interested in how trade rules impact local, artisanal production, so we examine the WTO-consistency of "Buy American" programs and the impact "Think Global, Buy Local" has on actors at home and abroad. In short, I want my students to recognize their own personal and direct experience to trade. Once they focus on that, their interest in the trade rules naturally follows.

IV. CONCLUSION

We live in a world of rich countries and poor ones, and globalization has merely exacerbated the inequities that come from such a division. But every country, no matter its current condition, is striving for greater prosperity in the global economy. The study of international trade and development law examines the animating rules of the global trading system with an eye to understanding their impact on economic development. Today's law students will guide their communities through these challenging economic times into a more prosperous future. Those of us who teach in the area are in a unique position to prepare

120. PUB. CITIZEN (Nov. 11, 2012), <http://www.citizen.org/Page.aspx?pid=183>.

121. The WTO has begun producing its own videos, which serve as an excellent teaching tool. *WTO Videos*, WTO, http://www.wto.org/english/res_e/webcas_e/webcas_e.htm (last visited Nov. 11, 2012).

122. It may be surprising to some, but the United States is not the most actively engaged in the trading system relative to its size. *See* GUZMAN & PAUWELYN, *supra* note 82, at 5. (see figure 1-5 laying out active users per capita).

123. Andrew Kohut, *Assessing Globalization: Benefits and Drawbacks of Trade and Integration*, 30 HARV. INT'L REV. 70, 72 (2008), available at <http://pewresearch.org/pubs/879/assessing-globalization-benefits> (stating "growth will not benefit everyone equally.").

124. *See, e.g.*, JOBS WITH JUSTICE, NAFTA'S IMPACT ON CALIFORNIA: JOB LOSS HAS LED TO DOWNWARD PRESSURE ON WAGES AND LIVING STANDARDS (2001) (maintaining that 80,000 jobs lost in California; 766,000 jobs lost nationwide).

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students not just to know the rules but to understand how those rules operate in the social context in which they live. To be successful, however, we must ourselves confront the social context in which we teach—whether it is within our own backyard or half way across the world.

In the Guatemalan teaching story *A Tale of Two Compadres*, a poor man reaches out to a rich one for guidance and training. “*Compadre*, give me just an idea of how to gain something in this life,” says the poor man.¹²⁵ But the rich *compadre* is not a worthy teacher, and as a result he goes on to live a circumscribed and impoverished life.¹²⁶

Let that be a lesson to those of us who would teach.

125. MAYAN FOLKTALES: FOLKLORE FROM LAKE ATITLAN, GUATEMALA, *supra* note 17, at 219.

126. *Id.*