

Using Foreign Authority to Teach Foreign-Trained LL.M. Students

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Curricular Context

United States Legal Research Analysis & Writing

- **PURPOSE AND OBJECTIVES:**

This course functions as a survey of the United States legal system and introduces the foreign-trained lawyer to the conventions and central texts of United States legal discourse. The United States legal system is distinguished by its unique federal structure and its method of common law argumentation. We will use the signature US legal text – the judicial opinion – as a prism to think about the US court system, sources of legal authority and forming legal argument. The student will develop intentional learning strategies to help them design, craft and evaluate their own legal documents. The main assignment will be to construct an objective legal memorandum in the context of a law firm. We will also review rhetorical theory and techniques of persuasive writing. As a skills-based class, the student should acquire some fluency in US legal research and citation. First principles of good writing will be emphasized, with special focus on the writing process and writing for a legal audience.

Curricular Context

WEEK NINE: Review & Presentation of Independent Research; the Jurisprudence, Discourse & Rhetoric of the Judicial Dissent

Assignment: Continue (and focus) Independent Research
The Value of a Comparative Perspective (J. Ginsburg)
Scalia dissent in Roper v. Simmons

WEEK TEN: Review & Presentation of Independent Research; the Role of Foreign Authority in US Courts

Assignment: Continue (and focus) Independent Research
The Strategic Content Model of Supreme Court Opinion Writing
(Fowler & Lupu)
Assessing the Supreme Court's Current Caseload (Levinson)

First Draft due November 13

Brief Description of the Problem

- Is there an accident per Article 17 of the Montreal Convention?
- A corollary question for a course on research, case selection and forming a common law argument:
 - Should the author cite to foreign authority for how the term “accident” is interpreted by other courts?

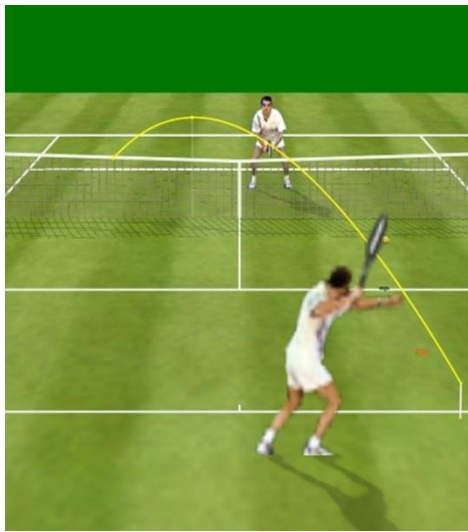
Foreign-trained LL.M. Students and Pedagogic Compass

- What ambitions do the 1L survey and the LL.M. course in research & writing share? Are there distinctive goals in course design for a foreign-trained population?
- “Traditional legal pedagogy teaches through speech but evaluates through written analysis, without attending to the significant differences between these means of communication and learning.”
 - Susan L. DeJarnett, *Law Talk: Speaking, Writing, and Entering the Discourse of Law*, 40 DUQ. L. REV. 489, 490 (2002).

Legal English and U.S. Conversation Norms

E.g., “Conversational Ballgames” (Nancy Masterson Sakamoto)

- Speaking “legal English” in diverse contexts



A Perennial Debate

- *See, e.g., Zachary D. Kaufman, From the Aztecs to the Kalahari Bushmen – Conservative Justices’ Citation of Foreign Sources: Consistency, Inconsistency or Evolution?, 41 YALE J. INT’L L. ONLINE 1 (2015).*

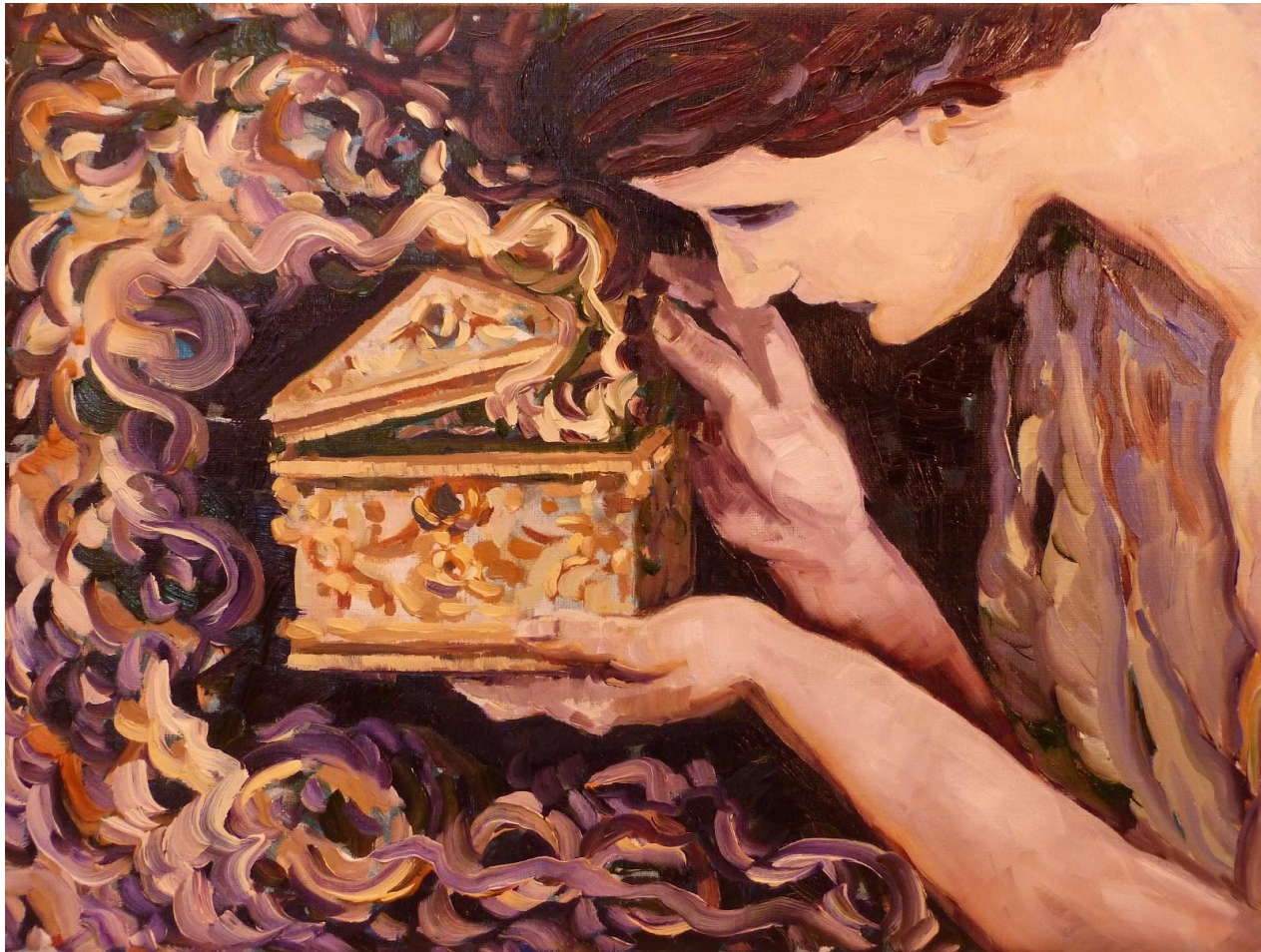
Scalia contra Scalia contra Ginsburg

- When is it okay to cite to foreign authority? Or to even *look* at foreign authority?

- A spectrum of legitimacy?

Constitutional Criminal Law → Montreal Convention → The CISG

A Pandora's Box or an Educational Opportunity?



Framing the Debate

- Distinguishing stare decisis from “good ideas ... wherever you can get them.” (J. Kagan)
- Foreign Authority, Dissents and Legal Scholarship
- *But see* forming a counter-argument in arguendo
- Creating opportunity to talk about the law and cite to prior experience

Contextualizing Course Design

- Including transnational elements to mobilize student interest and frame future work
- Marshaling student wisdom to improve sophistication and flow of class discussion

Relevance to the 1L Survey

- Hierarchy & weight of authority
- Discursive conventions in opinion writing
- Modalities of common law argument

Thanks!

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