As United States President George W. Bush was departing Slovenia after his June 2001 meeting with Russian President Vladimir Putin, I was packing for my own departure from Slovenia, the country where I spent five months teaching legal ethics. In reflecting on President Bush's visit in Slovenia and my own stay, I am struck by the value of both visits in forging relationships and fostering understanding. Now, I appreciate the opportunity to comment on my own experience, answering a number of questions related to teaching legal ethics. After reading this essay, readers can consider their own answer to the question as to whether it is "educational malpractice" not to teach a comparative legal ethics class.¹

What Brought a Texas Law Professor to Slovenia

The logical starting point is to explain my presence at the Law Faculty at the University of Ljubljana in Slovenia. My journey to Slovenia started two years ago when I explored the Fulbright Program, an exchange program sponsored by the U. S. government and supported by participating countries. The Fulbright Program aims "to foster mutual understanding among nations through educational and cultural exchanges."² Annually, the program publishes a listing of teaching and research positions around the world. In reading the descriptions, I was thrilled to learn that the preferred specializations in Slovenia included legal ethics, a course I love to teach.

Why Teach Legal Ethics

For decades the commonly held belief was that legal ethics training in law schools was unnecessary. This view appeared to be based on various assumptions. One assumption was that legal ethics effectively amounts to making morally right or wrong choices. Essentially, the belief is that students' moral fiber is established before they begin their legal education. As sarcastically stated by one critic of legal ethics training, "What do you do... teach them not to steal."³ As suggested by this comment, the criticism is that legal ethics cannot be "taught" in law faculties. A different assumption is that law graduates will learn ethics and applicable codes of conduct once they enter their period of practical training. Basically, the expectation is that in practice senior attorneys will impart to their subordinates ethical principles and standards. I believe that both of these assumptions do not fully appreciate the current realities of law practice and ethical decision-making.

First, the formal study of ethics gives students an opportunity to be intentional in approaching ethical decision-making as a skill that can be developed. "We need to help students develop a vocabulary that will help them analyze the difficult moral choices they will face in practice, and to develop the interpersonal and organizational skills to deal with difficult situations in the workplace."⁴ By tackling difficult ethical dilemmas during law school, graduates hopefully will enter law practice with the ability to identify the ethical issues, to know what questions to ask, and possibly where to go for guidance.

Second, ethics instruction recognizes that law graduates may receive limited formal guidance on ethics issues during their practical training period. When training on ethics matters does occur in legal practice, it tends to be random and non-systematic. Generally, attorneys tend to handle only those problems that arise in the course of representing specific clients. Moreover, supervising attorneys may not have the time nor opportunity to effectively mentor legal trainees as protégés. In the U. S., increased pressure on supervising attorneys to generate revenue has led to a serious decline in mentoring of junior attorneys. Reports from practitioners in European countries suggest a similar decline in mentoring. With the decline of mentoring in practice settings, a legal ethics class may be the only opportunity for law graduates to obtain structured and comprehensive legal ethics training. Given the complexities of modern day law practice, such training provides the necessary background for law graduates to handle the array of ethical dilemmas that attorneys now encounter.

A final reason for providing legal ethics training in law faculties is that it sends a powerful message. Requiring the formal study of legal ethics communicates to students, practitioners, and the community that ethical decision-making is at the heart of practicing law as a public profession. Over twenty-five years ago, the American Bar Association (ABA) attempted to communicate this message when it man-

¹ See Mary C. Daly, The Ethical Implications of the Globalization of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the Twenty-First Century, 25 FORDHAM INTERNATIONAL LAW JOURNAL 1239, 1251 (1998) boldly asserting that it is "educational malpractice to ignore the present and ever growing impact of globalization on the delivery of legal services.
² Fulbright Grant Program Fact Sheet, United States Department of State.
⁴ Kathleen Clark, Legacy of Watergate for Legal Ethics Instruction, 51 HASTINGS LAW JOURNAL 673, 676 (2000). To illustrate her point that legal ethics training enables students to develop skills for practice, Professor Clark argues that such training may have assisted junior lawyers involved in Watergate by helping them develop professional skills to deal with difficult situations where clients and supervisors want assistance in illegal matters. Id. at 674.
deted ethics instruction in the professional responsibility of attorneys. Largely, in response to the number of attorneys involved in the Watergate scandal, the ABA in 1974 adopted an accreditation standard for law schools. Under this standard, a law school can only earn accreditation if the school "requires of all students . . . instruction in the history, goals, structure, duties, values and responsibilities of the legal profession and its members, including instruction in the Model Rules of Professional Conduct of the American Bar Association." 6

How Legal Ethics Training Occurs in U. S. Law Schools

To satisfy the accreditation requirement, schools generally provide legal ethics training in one of two ways. Ideally, the most effective method is to use a pervasive method of teaching ethics, integrating legal ethics throughout the curriculum. The clear advantage of this approach is that it addresses legal ethics problems in the context in which they arise. Unfortunately, the difficulty with the pervasive method is that many professors may not be interested or prepared to weave ethics into their courses. Because of the difficulty and resistance to including ethics throughout the curriculum most U. S. law schools opt to provide the ethics training in separate courses, typically called professional responsibility or legal ethics.

When such courses are taught the professor must decide on the subject matter and approach. U. S. law professors tend to use two pedagogical approaches to teaching legal ethics. One approach considers the subject matter from the perspective of moral philosophers, exploring issues related to the role and moral responsibility of attorneys.

Although most ethics professors I know love to discuss such issues, they tend to use a more practical approach to teaching their students. Largely due to the limited time and the concern that students need exposure to ethics codes and problems that they will face in practice, many ethics professors rely on a regulatory approach. This approach focuses on applicable ethics rules and other applicable law.

Persons within the academy and the practice bar have criticized such emphasis on rules, believing that it has contributed to the legal profession losing its moral compass and aspirational goals. They believe that the rule-based approach has resulted in many U. S. attorneys equating ethical conduct with compliance with the minimum rules necessary to avoid disciplinary action. Therefore, the critics urge legal ethics professors to explore with students the precepts of law as a public profession and issues related to moral responsibility of attorneys.

Regardless of the pedagogical approach, one popular teaching tool is to rely on problems. Typically, such problems require that students answer questions by applying ethics codes and other law governing the conduct of attorneys. Personally, I modify the problem-solving approach so that students do not answer questions in abstract terms. Rather I ask the students to actually stand in the shoes of the attorneys in the problems by conducting role-plays based on the hypothetical situations posed. These kind of role-plays force students to appreciate the fact that many dilemmas that attorneys must deal with may not be resolved simply by referring to applicable rules or statutes, but that they require counseling skills and various judgment calls. In order to make those judgment calls, aspiring attorneys need to examine their own moral compass. Thus, role-plays can be effective tools for discussing questions related to professionalism and moral responsibility of attorneys.

Why Teach Comparative Legal Ethics

Legal ethics professors have begun to incorporate the study of comparative legal ethics, considering transnational law practice issues. By exposing students to ethics issues related to cross-border law practice, ethics professors fulfill their own professional responsibility in helping train global lawyers for the twenty-first century. As stated by legal ethics expert, Professor Mary C. Daly, "law schools owe an ethical obligation to their present students, the first generation of global lawyers, to educate them to meet professional responsibility challenges they are likely to encounter in providing cross-border legal services." 7

With globalization of capital and financial markets linking even the remotest parts of the world, cross-border practice is no longer limited to attorneys who handle private and public international law matters. Rather, attorneys on Main Street in cities around the world, as well as attorneys on Wall Street in New York City and in financial centres throughout the world, need to fulfill their own professional responsibilities.

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6 According to John W. Dean, iii, the former White House counsel who blew the whistle in Watergate, "not less than 21 lawyers found themselves on the wrong side of the law." John W. Dean, iii, Watergate: What Was At? 53 HASTINGS LAW JOURNAL 1585 (2002). At. Dean offers "three underlying rationales that help explain the malfeasance by attorneys: an arrogant belief that the law did not apply to them or that they could cheat and get away with it; incompetence; and loyalty." Id. at 1585.


8 See supra note 2, at 1537-52 (questioning the two goals of professional responsibility teachers as follows: "to familiarize the students with the specific codes that govern the conduct of lawyers ... and to explore a broad range of professionalism issues, often against the backdrop of philosophical reasoning [e.g., the role of lawyers in society, the nature of the search for truth in an adversarial system of justice, the delivery of legal services, etc].")


10 At the ABA's 23rd Annual National Conference on Professional Responsibility held in 1997, the moderator of the panel discussion on The Model Rules of Professional Conduct: Have We Lost Our Professional Values called for "broadened devotion to ethics" that is "deeply attended to by the moral duties of the ABA." ABA Speaker's Debate Proposals for Reshaping Ethics Rules, 13 LAWYERS' MANUAL ON PROFESSIONAL CONDUCT (ABA/BNA) 158 (June 11, 1997).

11 For example, Anthony Kronman, Dean of Yale Law School, has called for the rethinking of the concept of lawyer as statesman. ANTHONY KRONMAN, THE LOST LAWYER 14-15 (1993).

12 As stated by the authors of the text I used for the Louisiana ethics class, "if rules of lawyer discipline and malpractice are the only limit on what lawyers and clients do [and we fear that this is increasingly the case] - then we are in trouble." THOMAS L. SHAEFFER & ROBERT F. COCHRAN, JR, LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY, Preface (1994). According to Professors Shaffer and Cochran, the purpose of the book was "to seek out and examine the moral standards clients and their lawyers bring to the law office, to hold those standards up as better than the minimum lawyer standards, and to identify a way that lawyers and clients can talk about and apply their standards in the law office on ordinary Wednesday afternoon." Id.

13 Daly, supra note 2, at 1549.

14 Mary C. Daly, Thinking Globally, Will National Borders Matter to Lawyers a Century from Now? 1 JOURNAL OF THE INSTITUTE FOR THE STUDY OF LEGAL ETHICS 297 (1996) (noting that telecommunication and technology advances that have increasingly linked the remotest parts of the world are "here and improving every day.

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the world, it find it necessary to consider cross-border and eth-
ics issues in representing clients. Increasingly, lawyers repres-
ent diverse populations, including immigrants who maintain
connections to their homelands. For example, a family law-
yer in Vienna may need to understand the property and do-
mestic relations issues of the client-immigrant’s homeland.

Even if clients are not mobile, the Internet has connected
people around the world, resulting in legal entailments. This
is illustrated by the custody dispute over the twins adopted by
the couples in Great Britain and the U.S. Although the only
connection the couples shared was an internet “adoption broker,
the couples became embroiled in a cross-border custody dis-
pate. As a result, the attorneys for the couples, like the securi-
ties lawyers handling international business transactions, must
understand the role and ethics of attorneys in other legal cul-
tures, as well as applicable substantive and procedural law.
This suggests that the primary motivation for studying comparative
ethics is client service and competence.**

At the same time, the study of comparative ethics helps
bridge cultural gaps. A study of the European Institute in
Florence on the state of legal ethics in five European countries
has recognized the importance of legal ethics in providing a
particular view of law and lawyers, as well as the legal market
and the culture of the law.** Comparative study en-
able lawyers and law students to consider the extent to
which they agree on core values and to appreciate that differ-
ences often turn on cultural differences. This is illustrated by
different perspectives on professional independence. While
the ABA Model Rules of Professional Conduct (ABA Model
Rules) and various European ethics codes recognize the profes-
sional independence of attorneys as a core value, the con-
ceptualization of independence varies. Under the ABA Model
Rules the term “independence” is generally used to refer
to the attorney’s duty to exercise independent professional
judgment on behalf of clients, free from the control of the
state or third parties. On the other hand, under French profes-
sional standards, for example, “independence” includes inde-
pendence from clients.** By examining such differences attor-
neys and law students around the world can learn from one
another while exploring the adoption of an international code
of ethics for cross-border practice around the world.**

The adoption of the Code of Conduct for Lawyers in the
European Economic Community (CCBE Code) clearly dem-
strates that lawyers from different civil and common law legal
systems and backgrounds can reach some agreement on ethi-
cal principles applicable to lawyers.** In European Union
member states and various associate states the professional
authorities responsible for lawyer regulation have adopted
the CCBE Code, specifying that it will apply to cross-border
practice. This move is in stark contrast to the territorial trend
in lawyer regulation in the U.S. As Europe moves toward trans-
scending national borders, states within the U.S. continue to
be exclusively, largely prohibiting lawyers licensed in one
state from practicing in another state where they are not li-
censed to practice. Now regulators in the U.S. are watching
the European experience with an eye toward eliminating in-
terrase barriers to law practice within the U.S.** Because it
now affects their pocket books, practitioners in the U.S. are
joining academics who are interested in easing restrictions
on cross-border practice and studying comparative legal ethics.

How Did I Structure the Comparative Ethics Class
Once the practicing attorneys and academics recognize the
value of studying comparative legal ethics, the next question
is how do you undertake the study. In organizing the Com-
parative Ethics course that I taught at the Ljubljana Law Fac-
ulty, I articulated a number of course objectives designed to
expose students to moral responsibility questions, as well as
regulatory issues.** With different regulatory topics, such as
confidentiality, we used a comparative approach, examining

15. For a discussion of how globalization has
"trickled down from 'Wall Street to Main Street" see id. at 29. For examples of how solo practitio-
ners and small firm attorneys provide cross-border
services, see Mary C. Daly, Practicing Across Bor-
ders: Ethical Reflections for Small Firm and Solo
Practitioners, 159 THE PROFESSIONAL LAWYER 133.
16. "Immigrants, even those who eventually be-
come citizens, are retaining financial, cultural and
personal ties to their countries of origin." Daly,
supra note 2, at 150-51.
17. Serfaty Lyali,usive to a Couples "adopting U.S.
Twins Moves to Britain, New York Times, January
world/n18adoption.html (noting that the couples
paid the same adoption broker, resulting in an "ex-
temple international tug of war" revealing the vast
difference between adoption laws.)
18. As stated by Professor Daly, "lawyers who en-
gage in cross-border practice cannot competently
represent clients unless they have a thorough
understanding of the legal ethics applicable to
foreign lawyers who are also providing legal serv-
ices in the same transaction, arbitration, or litigation
are subject to different or even conflicting ethical
norms." Mary C. Daly, TRANSNATIONAL LEGAL
19. See Roger J. Goebele, Lawyers in the Euro-
pean Community, Progress Towards Community Wide
Rights of Practice, 95 FORDHAM INTERNATIONAL LAW JOURNAL 556, 646 (1990-91) (arguing that
cross-border legal practice be fostered because it
"benefits clients, facilitates U.S. - E. C. trade, and
helps to bridge the cultural gap between diverse
legal traditions.")
20. Daly, supra note 19, Chapter 5, at 1-3 (quoting
the justifications for studying legal ethics ad-
vanced in the European Institute study set forth in
Avrom Sherr, Dinners, library seats, visas and rela-
tions, A INTERNATIONAL JOURNAL LEGAL PROFE-
sION (1992).
21. John Leubsdorf, The Independence of the Bar in
France: Learning from Comparative Legal Ethics, in
LAWYERS' PRACTICE & IDEALS: A COMPARATIVE
VIEW, John J. Bardo III & Roger C. Carmen, eds.,
tors at 275, 280 (1999) (hereinafter A COMPARA-
TIVE VIEW). Similarly under the Code of Conduct for
Lawyers in the European Economic Community
(CCBE Code), the attorney's identity is not collapsed
into the client's, Lauret S. Terry. An Introduction to
the European Community's Legal Ethics Code Part 5:
An Analysis of the CCBE Code Conduct, 7 GEORGE-
TOWN JOURNAL OF LEGAL ETHICS 48 (1993). Rath-
er, the attorney's identity is "not independent, having certain
rights that do not necessarily derive from clients." Id. at 57.
22. An English Barrister who served as the First Vice
President of the Council of the Bars and Law Societ-
es of the European Community asserts that if
it will exist that a common international code can
be agreed upon based on the ABA Model Rules, the
Japanese Code, and the CCBE Code, John Toulinin,
Ethical Rules and Professional Ideologies, in A COM-
PARATIVE VIEW, supra note 22, at 377, 378-79.
23. On October 28, 1988 the twelve member states
of the European Economic Community adopted
the CCBE Code, John Toulinin, A World-wide Com-
mon Code of Professional Ethics? 15 FORDHAM IN-
the "title CCBE represents a compromise" because
the initials "CCBE" were kept even after the name
of the organization was later changed to Council of
the Bars and Law Council of the Bars and Law
Societies of the European Community. Id. at note 1.
24. As stated by John B. Harris, Chairman of the
Association of the Bar of the City of New York
Committee on Professional Responsibility, "You
look at the experience in Europe and say, 'Why
can't that happen in the U.S.?" Debra Baker, New
Path for Going Mobile, European-style cross-border
practices may be the next big wave here, A. B. A.
25. The following are the course objectives I
communicated to the students: (1) to examine the eth-
ical concerns raised by the attorney-client rela-
tionship and "separating" who is in control, (2) to pro-
vide each student with an opportunity to study
and analyze scholarship, commentary and in-
ter-disciplinary literature related to legal ethics,
(3) to analyze ethical disputes, making theories and
approaches, (4) to provide students an opportuni-
ty to examine his or her own beliefs and perspec-
tives and those held by other class members, as
well as those held by law students and attorneys
in the U.S., and (5) to give students the basic
framework so that they know what questions to
ask in approaching ethical dilemmas.
different provisions in the Code of Professional Conduct of the Law Society of Slovenia, the CCBE Code, and the ABA Model Rules. I was impressed on how the students appreciated that different approaches reflect economics, as well as the cultural and political context in which professionals practice law and make decisions.

I was also pleased to see how engaged the students were in the second portion of the class devoted to exploring moral responsibility of attorneys. On a weekly basis the law students at the Ljubljana Law Faculty and my home law school in Texas completed readings relating to the role of attorneys and moral discourse with clients. Then they would exchange views, addressing specific questions that I posed via e-mail. In the weekly class meetings the students would explore what they learned from the exchanges. During the class meetings the students also participated in exercises and role-plays.

I also required that they interview a practitioner. The students shared their interview reports with their e-mail partners. This enabled the students to get perspectives of an attorney in their own country as well the views of an attorney from another country. The students indicated that they found the interviews to be productive and insightful. A few commented that the interview exercise gave them a reason to interview an attorney.

The attorney interviews complemented the students' on-line chat with a "holistic" attorney. After they had read an article on the attorney which included his views on "therapeutic jurisprudence" they posed questions to him on the class website. A number of students recognized the value of the exchange in giving them a perspective on how a good person can be a good lawyer.

What We Learned from the Experience
The comparative legal ethics class proved to be a very meaningful experience for me as the course leader and hopefully for the students as participants. The students on both sides of the Atlantic commented on how much they valued the opportunity to learn from law students and attorneys in a different culture and legal system, as well as those in their own country. The Slovenian law students realized that American television programs and movies do not provide a representative portrayal of law practice in the U.S. The U.S. law students who tend to know little about other legal systems learned a great deal from personal communications with future attorneys in former socialist country with a civil law system. In their final essays, many students noted on the extent to which their e-mail partners shared similar values and views.

The students also appreciated the reflection exercises and questions. Many explained that they had gone through their legal education spending little or no time seriously thinking about their role and moral responsibility as attorneys. Given that students in civil law countries tend to pursue a legal education following secondary school, they can only benefit from experiences that challenge them to consider attorneys' position as public servants. At the same time, the U.S. law students who had previously only taken regulatory ethics classes blossomed in the exchanges. Some commented that they openly expressed themselves in e-mail communications, although they seldom spoke in their other law classes. Based on my experience in teaching the comparative legal ethics class I am resolved to create more opportunities for students to reflect on moral responsibility and discourse with clients.

A Challenge for the Future
For professors who are interested in offering a comparative legal ethics class, ample course material is now available. Regardless of the emphasis of the course, the Internet will continue to be a multi-faceted tool for exploring comparative ethics. By using the Internet and other resources we can train our students as international lawyers who are grounded in their own legal system and "particularly attuned to issues that may arise in other jurisdictions."

I hope that my reflections on teaching a comparative legal ethics class provide an impetus for law faculties who are considering how to train future attorneys for the challenges they will face in the twenty-first century. As legal educators it is our responsibility to continuously re-examine our curriculum generally and the content of our courses specifically. By critically evaluating our students' needs and our teaching objectives we recognize our own professional responsibility as gatekeepers of the legal profession.

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27 The following materials provide good suggestions for structuring a comparative legal ethics course: (1) the conference materials from the American Association of Law School and American Society of International Law Workshop on Shifting Boundaries: Globalization and Its Dissenters, January 4, 2000; and (2) a Mary C. Daly article entitled, The Ethical Implications of the Globalization of the Legal Profession: A Challenge to the Teaching of Professional Responsibility in the Twenty-First Century, 21 FORDHAM INT'L L. REV. 1239, 1251 (1998). I am happy to provide copies of these items as well as my course syllabus.
28 Emmanuel Gaillard, A Comparative Look at the Roles, Functions, and Activities of U.S. Lawyers and Those in Major European Countries, in A COMPARATIVE VIEW, supra note 22, 121, 312.