

# What Does Internationalisation of Legal Education Mean in Australian Law Schools?

A paper to be presented at the 4<sup>th</sup> Sino-Australian Law Deans' Meeting  
Zhejiang University Guanghua Law School, Hangzhou, China  
28-29 September 2014

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## 1. Multidimensional internationalisation

- 1.1. Internationalisation means different things to different people, different disciplines, and different law schools in Australia. This 'diversity' of understanding and practice is summarised by the International Legal Services Advisory Council (Attorney-General, Commonwealth of Australia) thus:

'A strategy to internationalise legal education conjures different images. For some, the implication is that courses will include more substantive materials on public and private international law and comparative law. For others, internationalisation requires a wider political, social and cultural context for understanding law. Some argue for the development of transportable legal and technical skills of critical analysis, dispute resolution, drafting and negotiation. Other consider that internationalisation should facilitate the recognition of degrees and qualifications to practice in more than one jurisdiction, thus endorsing the principle of free trade in delivery of legal services, ...'<sup>1</sup>

- 1.2. There is hardly, however, an Australian law school that is not engaged in internationalisation, be it the study of international and comparative law, international teaching cooperation, international research collaboration, or international student exchange. I am sure the same can be said about Chinese law schools.

## 2. The nature of law and the regulation of legal education

- 2.1. Contrary to certain (mis)perceptions, neither law (be it statutory law or common law) nor legal education is conservative insofar as internationalisation is concerned.

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<sup>1</sup> International Legal Education and Training Committee, the International Legal Services Advisory Council, Attorney-General, Commonwealth of Australia, *Internationalisation of the Australia Law Degree: A report analysing the need to promote an internationalised legal education in Australia that prepares graduates for the provision of legal services in a global market*, June 2004, at 4. Note that the International Legal Services Advisory Council has recently been closed down as part of the federal government decision to simplify and streamline the business of government, announced in November 2013.

- 2.2. Indeed, an early study of comparative law in Australian courts indicates a long historical process of internationalisation in Australian Common law;<sup>2</sup> and a comprehensive study of the modern Chinese law has suggested that modern legal history in China is, in one sense, an on-going process of internationalisation.<sup>3</sup>
- 2.3. As legal educators we are part of the forces that propel globalisation/internationalisation, as well as responding to the needs of the increasingly globalised world. Here, an obvious example is the emergence of the JD alongside the LLB as a legal qualification and the SJD alongside the PhD as an academic qualification in Australia.
- 2.4. On the other hand, however, and unlike many other academic disciplines, law is necessarily local (some would say provincial) in nature, constrained by the notion and traditional understanding of sovereign boundaries. Legal education too is, for a significant part of its existence, provincial, constrained by external and professional regulation.
- 2.5. Put crudely, the first and foremost task of an Australian law school is to produce lawyers qualified for practice in a local (state) jurisdiction. Despite all the rage against WTO's GATS, mutual recognition of legal qualifications between countries remains an unfulfilled ideal to this date.<sup>4</sup>
- 2.6. In order to train lawyers qualified for local practice, we must comply with external and professional regulations. As a result, law schools (but especially their curricula) are subject, to a varying degree, to regulation and/or influence by:
- the Commonwealth Tertiary Education Quality and Standards Agency (TEQSA) (Higher Education Standards Framework: Provider Standards, Qualification Standards, Teaching and Learning Standards, Information Standards and Research Standards);
  - the AQF Council (The Australian Qualifications Framework: Quality of Australian Qualifications);<sup>5</sup>
  - (State) Legal Education Council and Admission Authorities (Common Core of Compulsory Areas of Study (the 'Priestley 11') of the law curriculum, and competency standards for the Practical Legal Training);<sup>6</sup>

<sup>2</sup> See Jianfu Chen, 'The Use of Comparative Law by Courts: Australian Courts at the Crossroads', in U. Drobnig & J.H.M van Erp (eds.), *The Use of Comparative Law by Courts*, The Hague/London/Boston: Kluwer Law International (1999), at 25-57.

<sup>3</sup> See the 'Preface' in He Qinghua & Li Xiuqing, *Foreign Law and Chinese Law – An Examination of the Transplanting of Foreign Law into China in the 20th Century (Zhongguofa Yu Waiguofa – Ershishiji Zhongguo Yizhi Waiguofa Fansi)* (Beijing: Press of China University of Political Science and Law, 2003).

<sup>4</sup> In fact, even within Australia we are yet to achieve a national system of recognition: the National Legal Profession Reform (which would establish a single national system of legal profession), initially started in 1992 but essentially re-launched in 2009, remains an unfinished business and, at this moment, looks like to end up with only Victoria and NSW implementing the reform in 2015.

<sup>5</sup> The AQF Council has recently been absorbed into the Commonwealth Department of Education.

<sup>6</sup> In a sense, the state admission authorities are coordinated by the Law Admissions Consultative Committee (LACC), which performs the function of forging consensus among States on matters relating to the academic and Practical Legal Training requirements for admission to practice, the accreditation and appraisal of academic and PLT institutions and courses, and other matters concerning admission to practice.

- the Australian Research Council (research quality: ERA – Excellence in Research for Australia);
- the Commonwealth Office for Learning and Teaching (previously Australian Learning and Teaching Council (skills, innovation, capacities));
- the Council of Australian Law Deans (Law School Standards & Certification).

And, of course, each university has its own academic policies, processes and rules to which a law school must comply with in developing and structuring its law degrees.

2.7. While external and professional regulation may impose certain constraints on internationalisation efforts, it is important to note that such regulation places more emphasis on quality and standards, skills and competency, best practice and innovation, than on contents or any particular approach. In other words, law schools are largely free to pursue their internationalisation efforts within the general regulatory framework of legal education in Australia.

### **3. Australian law schools and internationalisation**

3.1. Since the first and foremost task for a law school is to produce lawyers qualified for local practice, much of the effort on internationalisation has been in the area of internationalising the law curriculum. In fact the most comprehensive efforts towards a coherent approach to and a common understanding of the internationalisation of legal education have been made in this area.

3.2. Initially (in 2004), the International Legal Services Advisory Council within the Commonwealth Attorney-General's Department made a major effort to forge a 'common' understanding of the internationalisation of legal education by undertaking a comprehensive study of the impact of globalisation on legal education.<sup>7</sup> It provided a working definition of internationalisation, stating that the internationalisation of legal education means:

- 'the curriculum and pedagogy should prepare students to apply legal skills in trans-national and international transactions;
- students should be able to understand and apply fundamental principles of law and legal reasoning in all international, regional and trans-national contexts. With these skills students can act as facilitators in international transactions, liaising between differing legal systems and practices;
- international materials should be integrated into the whole legal curriculum, fundamentally extending the reach of legal study and analysis; and
- students from other countries with different legal systems and cultures should be able to gain a law degree from an Australian University that is genuinely internationally focussed, rather than parochial or domestic in approach.'<sup>8</sup>

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<sup>7</sup> The International Legal Services Advisory Council, Attorney-General, Commonwealth of Australia, *Internationalisation of the Australia Law Degree: A report analysing the need to promote an internationalised legal education in Australia that prepares graduates for the provision of legal services in a global market*, June 2004 (Hereinafter '2004 ILSAC Report').

<sup>8</sup> 2004 ILSAC Report, at 5.

3.3. It then identified the following strategies for internationalisation:

- “internationalising” core subjects by integrating international and comparative materials;
- encouraging an inter-disciplinary approach, such as the introduction of new combined degrees;
- negotiating international exchange agreements and internships;
- arranging study tours;
- developing Asian law studies through the establishment of specialist centres;
- fostering visits and lectures by international academics, esp. from Asia;
- increasing the number of international and comparative law options available to undergraduates;
- including international law in the core subjects required for the LLB;
- cultivating an international network of alumni;
- marketing the law school’s program overseas to attract a large number of international students;
- offering LLM programs that specialise in international and comparative law (footnotes & examples omitted).<sup>9</sup>

3.4. A more recent and large scale examination on internationalising the Australian law curriculum, in association with the International Legal Services Advisory Council, was completed in 2012.<sup>10</sup> In its final report, it was pointed out that:

‘Internationally there is broad consensus among legal academics and practitioners that law schools need to deliver law programs that take cognisance of global developments and the increasing emphasis on internationalisation. The proposition is that ‘in a globalising world, lawyers will need to be educated in such a way as to make it easy to move across jurisdictions, across specialisations, and to move across employment opportunities’. Law graduates need to be ‘comfortable in multiple jurisdictions, often simultaneously’ and ‘almost every lawyer must be prepared to face some transnational issues, regardless of that lawyer’s field of practice’ (footnotes omitted).<sup>11</sup>

3.5. On the basis of a literature review, surveys and a national symposium, authors of the 2012 Report attempted to establish a framework for internationalising the Australian law curriculum. Their efforts have been to develop a curriculum which

- ‘enables subjects to have a strong international focus and element, *and*

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<sup>9</sup> 2004 ILSAC Report, at 11-12.

<sup>10</sup> *Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice*, Final Report, Office of Learning and Teaching, Department of Industry, Innovation, Science, Research and Tertiary Education, Sydney, 2012 (hereinafter ‘2012 Report’). It should be noted that between 2004 (the ILSAC report) and the 2012 Report there have been a number of other studies on internationalisation of legal education by the Australian Learning and Teaching Council and the Council of Australian Law Deans, and, of course, many individual studies.

<sup>11</sup> 2012 Report, at 13.

- requires a high level of competence in the intellectual skills and the attributes particularly applicable to global practice.’<sup>12</sup>
- 3.6. The framework addresses the ‘four elements’ of the curriculum: objectives or learning outcome; content (knowledge, skills, and attributes); pedagogy (teaching and learning methods, materials and resources, and students’ experience); and assessment. The authors of the Report advocate the incorporation of international perspectives across all these elements and specifically warn of the danger of an *ad hoc* or piecemeal approach.<sup>13</sup>
- 3.7. The authors of the Report however recognise that the internationalisation of a law curriculum will be likely to be an incremental and accumulative process, and a law school may take any of the following approaches to the internationalisation of their law curriculum:
- the *Aggregation* approach: a law school offers a number of separate ‘internationalised’ or global subjects or units, usually as electives;
  - the *Segregation* approach: a law school establishes one or more separate institutes or centres devoted to internationalised or global aspects;
  - the *Integration* approach: a law school incorporates internationalised or global elements across the whole curriculum and beyond, into research and student services; and
  - the *Immersion* approach: a law school provides opportunities for its students to go elsewhere to study in a different jurisdiction.<sup>14</sup>
- 3.8. While major efforts have been made in internationalising the law curriculum, Australian engagement in internationalisation has gone far beyond the curriculum. Discussing the various aspects of the internationalisation of legal education in Australia, Professor Michael Coper, former Dean of Law at the ANU, summarises these as ‘ten-reference points’:
- law curriculum (incorporating the study of foreign law or elements);
  - student exchanges (both knowledge and experience);
  - student programs (beyond short-term, individual student exchange);
  - student profile (diversity of students);
  - career opportunities (global opportunities);
  - faculty profile (diversity of faculty profile);
  - research collaboration (enriching research and scholarship);
  - visitors program (various kinds in teaching, research or both);
  - outreach and institutional networks (workshops, conference, networks etc); and
  - international benchmarking (assessment, ranking, etc).<sup>15</sup>

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<sup>12</sup> 2012 Report, at 76.

<sup>13</sup> 2012 Report, at 76.

<sup>14</sup> 2012 Report, 79-82.

<sup>15</sup> See Michael Coper, ‘Ten Elements of the Internationalisation of Legal Education’, ANU College of Law Research Paper No.13-18, 2012.

3.9. This effectively means that the internationalisation of legal education involves all aspects of legal education:

- people – academics and students: exchange and collaboration;
- programs – double/joint course programs;
- projects – research, benchmarking, curriculum; and
- policies – credits, quality assurance.<sup>16</sup>

3.10. At the university level we have also seen the establishment of university branch campuses and virtual campuses. While there have been no joint Sino-Australian law schools in China (*comparing* the China-EU Law School at the China University of Political Science and Law), with the rapid development of the flexible delivery of programs/courses, both domestically and internationally, there are reasons to believe that some kind of joint Sino-Australian law school may eventually emerge, either independently or out of a joint program.

3.11. An important point that needs to be highlighted here is that Australia (government, business and institutions) places great importance on engagement with Asia, and a particularly important aspect of Australia's Asian engagement is that with China.<sup>17</sup> In this context, an ambitious, \$100 million in five years, New Colombo Plan was implemented in 2014.<sup>18</sup> The New Colombo Plan is a scholarships/mobility grants program for Australian students to study - short and longer-term study, internships, mentorships, practicums and research - in selected Asian countries/regions. As from 2015 this program will include some 35 host countries/regions, including China, Hong Kong and Taiwan.

3.12. Practically every law school in Australia has some engagement or collaboration with Chinese law schools, in teaching, research, and/or staff/student exchange. This engagement forms a critical part of the internationalisation of legal education in Australia.

#### 4. Conclusion

In conclusion, we can say that there is no standard understanding of internationalisation nor any uniform practice of or approach to it. Australian law schools are, by and large, open (to ideas and criticisms), flexible (in adoption of technologies and adaptation to changes), and global (in orientation and strategic positioning). This means that each law school in Australia will continue to engage in internationalisation in its own specific way, in accordance with its own strengths, orientation, distinctive features, and

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<sup>16</sup> This is in line with, and forms part of, practices in tertiary education in general. On these elements in higher education and internationalisation generally, see Jane Knight, 'The changing landscape of higher education internationalisation – for better or worse', in *Perspectives: Policy and Practice in Higher Education*, DOI:10.1080/13603108.2012.753957, available at <http://dx.doi.org/10.1080.1363108.2012.753957> (last accessed 17/4/13), at 2.

<sup>17</sup> See *Australia in the Asian Century*, a Commonwealth Government White Paper, October 2012, and its *Implementation Plan*, April 2013; and *Engaging Asia: Challenges for Australian Business*, AsiaLink, 2014.

<sup>18</sup> There were of course many other government scholarship and grants programs for Asian engagement before 2014.

perhaps history and tradition as well as financial situation, and also collectively and collaboratively with other law schools in Australia and overseas.