Enhancing Cooperation in Teaching Programs in Areas of International, Comparative, and National Laws

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Introduction

Australian and Chinese law schools share several goals that provide strong underpinnings for forging links: a pursuit for excellence in legal research and teaching, commitment to developing the next generation of legal professionals, a shared ethos and common professional values, aspiration to enable social well-being, and a desire to be at the forefront of legal education as a major export market in order to contribute to the economy. Booth countries are witnessing, albeit to different degrees, a broader internationalisation of all arms of the legal profession, driven by globalisation of legal services, improvements in technology, and changes in the nature of legal work and education.[3] In the Australian context, a report prepared for the Office of Learning and Teaching notes, 'there is no question that internationalisation is having an increasingly significant impact on legal practice in Australia.'[4] Similarly, in a recent speech, the Chief Justice of Australia, the Hon. Justice Robert French opined, "(m)any fields of legal practice and important elements of the Australian legal profession today have international dimensions. There is a significant number of Australian law firms with international offices. In recent years, international law firms have established themselves in Australia. Many subject areas have, in one way or another, an inescapable international dimension. They include competition law, intellectual property law, environmental law, human rights law, criminal law, family law and taxation law. A most prominent example in Australia is in the field of administrative law and particularly judicial review relating to asylum seekers."[5] Therefore, cooperation between Chinese and Australian law schools is no longer merely a hortative hope to achieve vaguely cosmopolitan goals, but rather a practical imperative in order to develop legal professionals capable of meeting the needs of this global market for legal services.

Frameworks for Collaboration and Challenges

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[3] For an excellent and accessible analysis of these changes, See: R. Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (2013, Oxford University Press: UK).

[4] See, *Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice*, 2013.

[5] www.hcourt.gov.au/assets/publications/speeches/.../frenchcj16mar12.pdf

The following factors must be borne in mind in conceptualising cooperation between Australian and Chinese law schools in teaching law generally and transnational commercial law[6] in particular:

(1) relevant socio-economic and politico-legal drivers of such developments in each country and university sector;
(2) global changes in technology, regulation, and legal practice that shape orientations of education, research, and engagement in transnational commercial law and the participants in that field of law;
(3) respective and shared challenges across both countries for legal education generally and commercial legal education in particular;
(4) frameworks, models, and options in university-to-university partnering and collaboration in educational matters; and
(5) shared learning, innovations, and practices in pedagogy surrounding transnational commercial law.

For example, two recent commentators on international trends in higher education make the following observation about socio-economic drivers of higher education collaboration between Chinese and western universities:[7]

- by 2020, China aims to double its inbound international students to more than 500,000, in direct competition with Australia, the US, Canada, and UK
- between 2007 and 2020, McKinsey projects that 30% of the world's global growth will occur in 242 Chinese cities, compared with only 3% generated in India's cities
- China could have a deficit of up to 23 million tertiary-educated workers by 2020, owing to slow growth in the supply of secondary students
- within 15 years, China's population will begin to decline; its labour force has already peaked (both the product of rapid development and the one child policy). To avoid the 'middle income trap', China will need an ever more highly educated workforce to drive productivity.

Western and Chinese legal systems and law schools still have much to learn from each other, especially as the world of global commercial law changes around each of them and presents new shared challenges of regulation, education, and practice too. A first obstacle for internationalised legal education arises from inadequate appreciation of the evolution and

[6] For ease of reference, 'transnational commercial law' covers international, comparative, and national (including sub-national) 'hard' and 'soft' law relating to commercial matters in the broadest sense (eg corporate law, contract law, competition and consumer law, banking and finance law, taxation law, trade and investment law, intellectual property law, etc.). See, Sandeep Gopalan, *A Demandeur-Centric Approach to Regime Design in Transnational Commercial Law*, 39 GEORGETOWN J. INT'L LAW (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1105225

[7] G. Garrett and S. Gallagher, *From University Exports to the Multinational University: The Internationalisation of Higher Education in Australia and the United States*, 2012, The United States Studies Centre at the University of Sydney, at pp 34-35.

features of different phases of the internationalisation of universities and the place of law schools in that enterprise. In other words, it is difficult to jump straight into discussions about cooperation between universities in globalised commercial legal education without grounding such discussions in how internationalisation is evolving and affects universities more generally. One model for understanding the evolving phases of internationalisation of higher education is canvassed later in this section of the paper, in terms of what can be described as Internationalisation 1.0 to 2.0.

A second obstacle to effective transnationalisation of legal education lies in the entrenched academic perspective of analysing in terms of law as a subject (i.e. analysis by strict areas of law) instead of law as an object (i.e. law as a means of regulating areas of human activity). Reconceived in that way, global commercial legal education is a grand project in which discrete areas of international, transnational, and national (including sub-national) law (e.g. conflicts of laws, corporate law, contract, etc.) relate to major objects of regulation, especially:

(1) the role of business in society;
(2) global economic and market regulation (including regional regulation for innovative and competitive economies);
(3) the status, governance, powers, obligations, liabilities and responsibilities of multi-national corporations (MNCs);
(4) wealth-creating investment, banking, and finance;
(5) borderless commerce and trade (including consumer goods and services); and
(6) the legal protection of property and freedom of contract;

One recent commentator on internationalised legal education neatly distils trends in 21st century transnational commercial legal practice, and their correlative implications for legal education, as follows:[8]

> (G)lobalisation … deeply affects the content and process of legal education in different countries, mainly because of the greater demand for lawyers capable of handling new types of legal matters and complicated transnational legal affairs arising from these global interactions, aided by the development of new technology.
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> … Because of … close relations [across economic and financial areas], there are more complicated legal matters and apparently increasing demands in many fields for legal practitioners, such as: the greater demand for trade lawyers to deal with trade remedy cases (for example anti-dumping cases); other trade disputes under multilateral and bilateral trading systems, and international negotiations; the increasing demand for investment

[8] Chang-fa Lo, 'Legal Education in a Globalised World: Micro/macro Reforms and International Outsourcing for Developing Countries', in W. van Caenegem and M. Hiscock (eds), *Internationalisation of Legal Education: The Future Practice of Law* (2014, Edward Elgar Online), at pp 193-195.

> lawyers to deal with negotiations of numerous bilateral investment treaties and with the rapidly increasing number of investor-to-state arbitration disputes; the constantly high demand for corporate lawyers to cope with multinational corporations' practices, and their international mergers and acquisitions; and the sharply increasing demand for financial lawyers to deal with complicated legal issues arising from financial crisis or currency fluctuations.

A third obstacle is revealed by attempts to 'pigeon-hole' globalised commercial legal education through a mono-dimensional approach, as if only one framework of analysis is possible. Multiple frameworks of analysis from multiple standpoints are possible as conceptual tools in the orientation, design, and delivery of globalised commercial legal education. This paper outlines one framework for the internationalisation of the legal curriculum that has been developed for Australian law schools, illustrated by reference to the internationalisation of teaching and studying contract law.

Of course, internationalisation of legal education and training is not mono-dimensional. It has at least four dimensions. One recent commentator describes three of those dimensions as follows: 'There are three aspects of broader knowledge in legal education, namely, knowledge of different fields of law, knowledge of other disciplines and knowledge of other jurisdictions.'[9] For clarity and completeness, we would add knowledge of transnational legal practice as a fourth key dimension of 21st century legal education across jurisdictions.

A fourth obstacle stems from taking an ad hoc, fragmented, and mono-stakeholder approach to globalised commercial legal education and training initiatives, instead of a holistic, integrated, and multi-stakeholder one. This obstacle highlights a challenge facing Australian and Chinese law schools alike – namely, how to develop enduring institutional relationships with a select number of world-class partners that operate on multiple levels of academic endeavour and also provide genuine two-way benefits for each institution and its staff, student, and alumni networks.

If any law school is to develop critical mass and scale in this direction, as well as profile and impact, a few benchmarks are readily apparent from current good practice. It cannot be done by any single institution alone. It transcends individual international educational initiatives such as student and staff exchanges. It takes a holistic view of globalised institutional relationships and partnerships across the range of core academic endeavours. It is integrated with the institution's core mission, together with its competitive strategy and advantage. It can involve multiple institutions and stakeholders across sectoral and geographical boundaries. It takes a selective approach to the nature, range, and profile of institutions as suitable partners. It requires a careful mix of pedagogical innovation,

[9] Chang-fa Lo, 'Legal Education in a Globalised World: Micro/macro Reforms and International Outsourcing for Developing Countries', in W. van Caenegem and M. Hiscock (eds), *Internationalisation of Legal Education: The Future Practice of Law* (2014, Edward Elgar Online), at p 200.

institutional capacity-building, staff training and development, institutional resourcing, and relationship-development. Finally, in these ways and others, it evidences a nuanced approach to globalised commercial legal education and training.

In outlining its future approach, for example, the University of Melbourne offers one way of combining educational and research endeavours with international engagement, together with a focus upon China and other countries:[10]

> International engagement is pivotal to the University's research, and learning and teaching goals … To build scale, profile, and impact, one option is to consolidate academic activities into a small number of focused offshore initiatives [and] the University is exploring the model of an international joint research centre (IJRC). Many elite universities in the United States have established impressive IJRCs in Asia and the Middle East.

While many such IJRCs might be more attractive to STEM disciplines (i.e. science, technology, engineering, and medicine) than to HASS disciplines (i.e. humanities, arts, and social sciences, including law), they represent a holistic cross-institutional approach to education and research in university-to-university alliances that has implications for relationships between law schools across national borders.

At both institutional and individual levels, the core components of academic work now number at least five: (i) education (including teaching, learning, supervision, and training); (ii) research (including both income-generating research and research associated with public goods); (iii) administration (including university committees and portfolios, organisational management, project leadership, and administration that is ancillary to teaching and research (eg administration of a course or centre); (iv) engagement (including internal capacity-building, external partnership-building, and alumni relationship-development); and (v) service (on multiple levels – namely, service to a team/centre, department/faculty, university, profession, and community).[11]

So, in their integration and reinforcement of expertise cutting across the different dimensions of academic endeavour, a legal academic might do a number or all of the following: (a) teach commercial law subjects, for their own law school and others (teaching

[10] *Growing Esteem 2014: A Discussion Paper*, University of Melbourne, at pp 26-27. The paper also notes: '… Assuming the University can foster over time IJRCs in its five focus countries – China, India, Germany, Brazil, and Chile – there is an interesting question about integration. Though the IJRCs are centred on research and research training, the partnerships established might also support joint academic programs such as joint subjects, online or blended learning, and joint degrees. They might help to build linkages with government and industry partners, and generate opportunities for student recruitment, alumni and advancement.'

[11] For clarity, our list simply distils different components of academic work for analytical purposes. The components are all inter-related in terms of the internal and external dimensions of education and research and external engagement through them for any law school and legal academic. We are not claiming here that every legal academic must do all of these things on all of the levels on which a law school needs them.

and learning); (b) coach or judge commercial law mooting teams (teaching and service); (c) coordinate between students and a commercial law firm or commercial regulator in a commercially relevant clinic, internship, or externship; (d) research and write about commercial law (research); (e) supervise students and design research projects in commercial law, alone or in collaboration with academic and institutional partners (research); (f) head a research centre in commercial law (research and management/service); (g) consult to a commercial law firm or otherwise engage in contracted research and training (research and engagement); (h) serve on policy-making and advisory bodies (service and engagement); and (i) make public submissions in commercially relevant areas of law reform (research and engagement).

Increasingly, the development of university-to-university linkages across borders leverages as many of the core areas of institutional academic endeavour as possible. In its forward-looking vision for the next decade, for example, the University of Melbourne has publicly linked what it calls ' the "Triple Helix" of research, learning and teaching, and engagement' to a three-dimensional approach to university engagement that highlights and integrates 'industry engagement', 'international engagement', and 'public engagement'.[12]

In their ground-breaking 2012 report, *From University Exports to the Multinational University: The Internationalisation of Higher Education in Australia and the United States*, Geoff Garrett (now head of the Wharton Business School) and Sean Gallagher describe the evolution of the internationalisation of higher education in terms of three successive waves of development. The first wave witnessed national universities engaging in 'study abroad' programs, primarily for their own domestic students. The second wave saw national universities actively recruit foreign students and open branch campuses overseas, especially in developing countries, under an 'export' model. The third and current wave brings moves towards what they term 'multinational universities' (i.e. MNUs), with some parallels to multinational corporations (MNCs).

For ease of reference here, we characterise the first two of these waves of internationalisation of higher education as 'Internationalisation 1.0' (i.e. 'study abroad' and 'export'). The third wave, via the establishment of MNUs, or through a greater emphasis on multi-institutional networks regardless of MNU involvement, we term 'Internationalisation 2.0'.

In their report, Garrett and Gallagher make the following observation about emerging MNUs and their Chinese and Western connections, as follows:[13]

[12] *Growing Esteem 2014: A Discussion Paper*, University of Melbourne, at pp 3 and 24-28.
[13] G. Garrett and S. Gallagher, *From University Exports to the Multinational University: The Internationalisation of Higher Education in Australia and the United States*, 2012, The United States Studies Centre at the University of Sydney, at pp 6-7.

> (S)ome universities are now thinking about transforming the branch campus model into fully fledged MNUs, slicing up the global value chain in ways akin to multinational corporations … (T)he move from branch campuses to 'MNUs' promises to be more than a mere evolution of the export model and more akin to a higher education revolution at the global quality frontier …
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> (T)he goal of MNUs is to 'slice up the value chain' around the world through complex systems of supply, production and distribution of higher education and research. This may mean using a developing country to do research, because it is cheaper to build better infrastructure and hire researchers at similar quality to those at home. Or it might mean designing degrees in-country that are tailored to precisely what the market demands, in contrast with the largely one size fits all of the branch campus system. It might also mean developing whole new brands that leverage the home institution but that can develop independently of it.
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> Not surprisingly, China and Singapore again loom large. Singapore is attractive to MNUs for the same reason it is attractive as a branch campus host. China is attractive for several reasons: its world leading ability quickly to roll out first class infrastructure; central, provincial and local governments are willing to make large financial commitments to MNU partnerships; Chinese research talent is high quality and relatively cheap; and Chinese demand for quality higher education will continue to mushroom as China transforms its economy from a low quality producer into by far the world's biggest middle class consumer.

To be sure, these predictions at the whole-of-university level need further scrutiny and might not be fully applicable to law as a global discipline and profession. Equally, MNUs are not the only way forward in institution-to-institution engagement at faculty level, across all dimensions of academic endeavour (especially education in its own right and as part of an integrated approach to cooperation and partnering), and for the discipline and profession of law in particular.

However, the point of such analysis is to highlight the evolving global landscape for universities that both shapes and drives options for cross-institutional educational cooperation between Chinese and Australian law schools. Once the changes due to the globalised legal profession, transnational commercial law, disruptive educational technologies, multi-sectoral and multi-stakeholder standard-setting and regulation-ordering, and institutional partnering innovations are all added into the equation, globalised legal education and training in the commercial domain becomes a discrete and grand project on its own. Here, individual initiatives such as offshore programs, joint degrees, joint programs, joint online collaborative projects and moots, fast-track pathways between institutions, joint academic appointments, and staff and student exchanges become the start and not the end of possibilities to pursue cooperatively in the legal education and training space.

Networks that straddle jurisdictions, sectors, institutions, *and* fields of academic endeavour are the underlying thread of another emerging wave of internationalisation of higher education of particular relevance to globalised commercial legal education and training – what might be termed Internationalisation 2.0. A detailed outline and analysis of Internationalisation 2.0 is worth a paper on its own, and only a glimpse of its features can be sketched and illustrated here, and then applied to globalised commercial legal education and practice.

Asian and western universities and their law schools are forging relationships of multiple kinds, across a wide range of academic activities, ranging from individual MOUs between two law schools focused primarily upon student and staff involvement in particular course and units to enduring multi-institutional relationships with genuine multiple benefits across education, research, engagement, and other areas of institutional need and academic endeavour. For example, Monash University's involvement in Prato and Malaysia provides campus locations for groups of law schools from northern and southern hemispheres and their staff and students to come together for teaching, conferences, work-situated experiences, and other shared activities. Another example is the development of formal educational partnerships between select Chinese and Australian law schools for their students and staff in law courses and units across locations.

Groups of high-ranking universities are joining together in various educational enterprises, including collaborations of sufficient critical mass and scale for the transnational viability of massive open online courses (MOOCs). Engagement between a law school and its alumni and the broader legal profession now potentially extends to all of the locations in which a law school, its alumni, and the legal profession do business, particularly in a 21st century context for globalised commercial legal practice in which multiple law firms have offices in capital cities across Australia and Asia. Once the tipping point is reached where employees and partners of law firms with offices in different countries are graduates or otherwise the beneficiaries of experiences at more than one law school from the same countries, another network of law schools and their alumni and professional links emerges, which opens up possibilities that are yet to be fully explored by many universities and law schools as part of their engagement, alumni development, and contribution to global public goods and networks.

Cooperation between law schools in different countries in commercial legal education and training can embrace these alumni and professional settings as well as academic ones. Law firms with offices in multiple countries seek graduates with a suitably international outlook as well as relevant knowledge, accreditation, and training as legal practitioners. These firms also have the need for academic expertise and contact in facilitating access to high-performing law graduates as potential employees, providing ongoing specialised legal education for employees and partners, partnering in research projects and multi-

stakeholder standard-setting initiatives (especially in areas of law and regulation affecting a law firm's client base), and supervising and mentoring students who might travel between locations for the purpose of international internships and sponsored student competitions.

Consider for illustrative purposes the simple example of an Asian law school in a relationship with an Australian law school, involvement of both of their students and academics in an international student competition in the region on a commercial law topic (e.g. the Hong Kong Vis Moot on international commercial arbitration), the presence in Australia and the near region of a commercial law firm with branch offices in multiple countries (e.g. Europe, Australia, China, and elsewhere in Asia), and alumni of both law schools as employees and partners of such a law firm. Immediate possibilities for engagement that leverage these multi-institutional arrangements include the following initiatives:

(1) academic visits and teaching across both countries (in semesterised and intensive mode, as well as joint degrees and other collaborative arrangements);
(2) in-house academic presentations for lawyers and clients on commercially relevant topics;
(3) commercial practice group presentations and discussion involving lawyers, academics, and students from each location;
(4) academic and professional collaboration on cross-jurisdictional research projects and transnational standard-setting initiatives (e.g. Asian Principles of Contract Law, Asian approaches to the UN standards on business and human rights, etc.);
(5) sponsored and joint academic positions with consultancy features (e.g. joint chair/fellow and consultant in areas of existing or emerging international legal practice) in commercially relevant areas;
(6) university-funded and alumni-supported travel scholarships and coaching for student mooters;
(7) internship, externship, clinical, mentoring, and recruitment opportunities for student mooters with professional services firms and courts as activities ancillary to involvement in an international moot;
(8) pre-moot online interaction between students from each law school;
(9) international alumni advisory boards in each location comprising law school alumni; and
(10) customised institution-to-institution pathways involving student progression through undergraduate, graduate, and other degrees involving each law school.

Reframing the Conditions for Cross-Sectoral Institutional Cooperation in Commercial Law

To state the obvious, the conditions under which the next wave of internationalising legal education and training is occurring are not completely the same as the conditions under which earlier waves of such internationalisation occurred. So, the drivers, possibilities, and measures of success differ too.

Considered from an Australian perspective looking outwards towards Asia, the internationalisation of legal education in commercial areas cuts across legal education and training, globalisation of commercial legal practice, transnational educational markets, and the significance of higher education for national and international socio-economic well-being. A former Australian law school dean now holding public office has highlighted these elements and the connections between them in the following terms:[14]

> It might be said that one of the lasting legacies of the twentieth century has been the internationalisation of law. Stimulated by the ideals of the *Charter of the United Nations* of 1945 and the need to solve problems globally, the international community embarked on an unprecedented and ambitious program over several decades to negotiate an almost entirely new international legal order.

As a result of this legal order, inevitably, professional firms adapted their business models to provide advisory services to their clients.[15] For countries with significant international trade footprints, legal services became a valuable contributor to revenues within the larger professional services sector. As Triggs recognises: 'For Australia, the export of legal services has become a major contributor to the economy … The Department of Foreign Affairs and Trade (DFAT) reported that Australia's trade-in-services were generally worth $50.1 billion in 2011, with legal services totalling $590 million.'[16]

Indeed, the increasing internationalisation of commercial legal practice represents a paradigmatic shift for inter-institutional collaboration between Australian and Chinese law schools collectively and individually. International law firm mergers and alliances have resulted in many multi-national firms ('MNFs') having branch offices in the UK/USA, Australia, China, and the rest of Asia. Law schools are now part of the business value chain for MNFs, and MNFs are part of the business value chain for law schools, not least because law schools play an important part in a firm's future (in the form of graduate lawyers who might ultimately become partners) and revenue base (in the form of legally educated alumni within business, government, and NGOs who are the source of work as clients of MNFs).

Some areas for exploration are arrangements between two universities and their law schools (eg joint programs and degrees). Others include multi-institutional educational

[14] G. Triggs, 'The Internationalisation of Legal Education: An Opportunity for Human Rights?', in W. van Caenegem and M. Hiscock (eds), *Internationalisation of Legal Education: The Future Practice of Law* (2014, Edward Elgar Online), at pp 210-211.

[15] Triggs, above, noting: 'These global firms now operate in a borderless legal environment. Local Australian firms have been part of this process with partnerships established (including those of Ashurst, DLA piper, King & Wood Mallesons, Norton Rose Fulbright, Clifford Chance, Allen & Overy, Allens Linklaters and Herbert Smith Freehills). Many of these new groups outsource their legal research and document management to respond efficiently to cross-border issues.'

[16] Id.

partnerships, as are emerging with MOOCs. However, the discussion above illustrates how cross-sectoral relationships between universities, the legal profession, and others (eg the business sector, NGOs, and even governments) are also possible. Examples of activities here include: technology-enabled student interaction and collaboration inside and outside the classroom, including with external audiences; transnational moots and other student competitions and clinical programs in commercial areas of law; alignment of cross-border studies and student competitions with overseas internships/externships/clinics, organised through professional and alumni networks; and cross-border engagement opportunities for academics under multi-stakeholder arrangements with an integrated focus on research, education, and training.

Globalised Curriculum Development in Commercial Law and Regulation

Commercial law, by its very nature, assumes greater importance as cross-border trade increases in value, as it underpins relationships between business actors *inter se* and with national governments. Most Western legal systems have modernised commercial law areas in order to reduce transaction costs, provide certainty, and create an enabling legal regime for business. Given the degree of synchronicity between such modernisation efforts in many countries – driven primarily by the development of international conventions and other instruments at a multilateral level – it might be expected that legal education focusing on commercial law would be particularly ripe for cross-border collaboration. However, this has not actuated in practice, perhaps because the commercial law academy has lagged peer areas within the broader legal academy. Therefore, in the first instance, it might be necessary for commercial law educators to engage with the broader landscape of legal education reform with a focus on internationalisation.

Within that wider landscape, many opportunities exist for increased collaboration. One scholar of legal education in Western and Chinese systems presents the following snapshot of possible directions in Chinese legal education and training:[17]

> (T)he expansion of international workshops, exchanges, 'train the trainers' programmes and other efforts to integrate more international faculty into Chinese clinical programmes will help adapt, strengthen and incorporate into Chinese legal pedagogy the experiential learning methods developed abroad … To pursue a more widely available globalised law curriculum, law schools should consider incorporating comparative elements and perspectives into traditional Chinese law courses, in addition to instituting more English-language or bilingual law classes and courses such as STL's [ie Peking University School of Transnational Law's]Transnational Legal Practice. Professionalism training would also be enhanced by the institution of a mandatory comparative legal ethics course for law students. The creation of more interdisciplinary courses, as well as training faculty to use the Socratic

[17] C. Baskir, 'Legal Education in China: Globalising with Chinese Characteristics', in S. Sarker (ed), *Legal Education in Asia* (2014, Eleven International Publishing, The Netherlands), at p 50.

> method and other non-lecture-based pedagogies outside of clinical programmes, will further strengthen student preparation for excelling in a global world. Moreover, the expansion of exchange programmes for students and faculty will aid in creating a more multicultural environment in Chinese law schools. For all these efforts to be successful, institutions must have the flexibility to experiment and develop new courses while also maintaining high standards and accountability.

All of this costs time and money of course, in design, delivery, and coordination. Occasions such as this meeting of Chinese and Australian law deans provide opportunities for dialogue and shared learning about such developments. The opportunities that result present benefits for Chinese and Australian higher education in partnering, capacity-building, and expertise-sharing.

Australian law schools have recently focused upon internationalisation of the legal curriculum generally and in a commercially relevant area (i.e. contract law) in particular. A three-pronged framework for internationalising legal education is outlined in a report published in 2013 by the Australian Government's Office for Learning and Teaching, based upon the work of the International Legal Services Advisory Council (ILSAC) and the law schools at four Australian universities (i.e. Australian National University, Curtin University, Victoria University, and University of Sydney). It is available from the website for the Council of Australian law Deans (CALD) here:

http://curriculum.cald.asn.au/

This three-pronged framework covers 'aggregation', 'integration' and 'immersion' as alternative approaches to internationalising legal education. These three prongs are explained and illustrated in the example from contract law below.

Website material for applying this three-pronged framework to contract law appears on the CALD website here:

http://curriculum.cald.asn.au/example-contract-law/

As summarised on the CALD website, the application of the aggregation-integration-immersion framework to the study and teaching of contract law has the following features:

> **An example of an internationalised curriculum in an area of law: contract law**
>
> Contract law is chosen as it is one of the most important areas of law in global practice.
>
> This illustration proposes how this might be done for if any of the aggregation, integration or immersion approaches are adopted. It is recognised that some or

many law schools may choose not to implement the immersion model. Law schools may also choose to implement the several levels in a different way.

The aggregation approach aims to have students examine contract law in an international context in elective subjects which might be, for example, Transnational Contract Law, Comparative Contract Law or Chinese Contract Law.

Such subjects would, obviously, require the core subject Contract Law as a prerequisite. Such an elective subject would help students 'acquire an appreciation of the diversity of national contract law regimes', 'sensitises students to the world beyond the system that they are currently studying' and 'provides them with a basis for understanding the challenges of dealing with transnational activity'.

The integration approach integrates into the study of contract law in the core subject/s one or more international comparative contexts based on at least one other jurisdiction.

For example students might, near the beginning of the subject, undertake a comparative study of what elements are required to establish a contract in Australia and one or more selected jurisdictions. Later in the subject they might study the effect of misrepresentation on a contract in both Australia and one other jurisdiction, possibly a non-common law jurisdiction.

The immersion approach contemplates students studying contract law in situ in another jurisdiction.

Further detail about practical ways of implementing each of these three approaches to internationalisation in legal education about contract law appears in the attachment to this paper, which for ease of reference extracts material also found on the CALD website.

In early 2014, the Council of Australian Law Deans (CALD) asked its member law schools to provide a report for discussion with the Chief Justice of the High Court of Australia about progress in each law school on implementing the *Internationalising the Law Curriculum* Report. By way of illustration, the Faculty of Law at Monash University reported in brief across the report's multi-pronged approach to internationalisation, as follows:

Monash aims to combine the aggregation, integration, and immersion approaches identified in the report, including the following key initiatives:

- providing overseas student study opportunities in partnership with overseas law schools at our campuses in Malaysia and Prato (Italy);
- creating a series of two-way student exchange programs, to enhance internationalisation in our programs locally and abroad;
- international internships through Faculty and research centre programs (eg Castan Centre for Human Rights Law);
- overseas visitors and exchange programs (eg new Monash-Warwick Visiting Scholar scheme);
- covering international/comparative perspectives in LLB and JD units where appropriate;

- designing new masters units with a comparative/international focus (eg Comparative Corporate Governance);
- bringing international law students within the organisation and activities of the Monash Law Students' Society;
- creating streamlined pathways for Monash students to undertake overseas studies at masters level;
- facilitating employer presentations about international legal career opportunities;
- supporting and resourcing Monash Law Students' Society publications about international career opportunities for students (eg Monash LSS Law Guide);
- providing institutional and sponsorship resourcing to enable greater numbers of law students to compete in international mooting etc competitions;
- recruiting staff to ensure whole-of-faculty expertise in Anglo-Australian, Asia-Pacific, and international legal systems;
- expanding our model for clinical legal education overseas through international site visits, training, and work opportunities;
- fostering appropriate supervision and support for Australian and foreign PhD students undertaking theses with a comparative/international dimensions; and
- using alumni professional networks to foster overseas internships, mooting, and career opportunities.

Major Economic Regulation in the Asia-Pacific Region

Many areas of international, transnational, and national economic regulation in the Asia-Pacific region are worthy of study and teaching in a variety of law courses and units. For reasons relating to the necessary subject areas for admission as a lawyer that affect the accreditation of law schools, competition law and policy is not a mandatory subject in most Australian law schools, despite being a key area of contemporary commercial legal practice. Moreover, many countries in the Asia-Pacific region are at different stages of developing their own competition law and policy, with modelling possibilities derived from the UK, Australia, and neighbouring countries in the region.

In terms of investment and finance, Australia and other countries in the Asia-Pacific region represent one of the world's major regulated markets for institutional investment funds and other managed funds. In the Australian market, this development is driven in part by the Australian Government's world-leading model for compulsory employer and employee contributions towards individual superannuation for retirement. The best models of venture capital regulation include countries within the Asia-Pacific region, within a set of world-class venture capital systems that includes Singapore, Malaysia, Israel, the UK, and the USA. Countries in the Asia-Pacific region and elsewhere in the world have a stake in identifying the best regulatory conditions for attracting domestic and international investment, stimulating innovation in research and development, nurturing start-up businesses that otherwise find it difficult to obtain financial capital, and unlocking the economic potential of new sources of financial capital such as crowd-sourced funding for start-up companies,

employee share ownership schemes, and broadly conceived taxation and other regulatory incentives for research and development ('R & D').

In terms of business agreements and dispute resolution, Hong Kong and Singapore are celebrated for their world-class expertise and facilities for international commercial arbitration and mediation, with Sydney and Melbourne recently developing their own infrastructure in an attempt to position Australia as a location for international dispute resolution. The Asia-Pacific region has a mix of countries with either a common law or civil law tradition, which affects approaches to laws and contracts alike. On the important topic of good faith and related doctrines in contract, for example, courts and lawyers in Hong Kong and Singapore look to relevant common law developments in Australia, the UK, and elsewhere in the common law world.

Contract law is one of a number of areas of law where differences in Asian and Western regulatory systems and values warrant attention as part of a comprehensive approach to globalised commercial legal education and practice. Consider, for example, the following comparative assessment in a judicial passage from the Supreme Court of Singapore's Court of Appeal in a 2012 contract case:[18]

> A core term of many Asian commercial contracts, 'the "friendly negotiations" or "confer in good faith" clause' captures the essence of contractual obligation in the Asian tradition. Such clauses typically recite that, if differences or disputes arise during the course of the contractual relationship, the parties will discuss and resolve the matter amicably. The Western view of such clauses is that they impose no real obligation at all; at most, they represent a mechanism for making unenforceable requests for novation, or perhaps an initial formality in a multiple-step dispute resolution process culminating eventually in compulsory adjudication intended to enforce precise contractual terms. But these views presuppose a Western understanding of the contract itself, which is not shared in Asia.

Indeed, this illustration of the sharp differences in conceptualising various aspects of contract law is nothing new. Variations of this theme have played out at international fora during efforts at harmonising law. For instance, the drafting of the United Nations Convention on Contracts for the international Sale of Goods, 1980, witnessed arguments about good faith in negotiations, inspection of goods, interest payable, and so on. Despite these arguments between scholars on doctrinal differences, the reality is that businesses engaging in cross-border contracts require clear legal rules that provide certainty and therefore include clauses contracting for such certainty via choice of law and jurisdiction. In such a milieu, collaboration between Chinese and Australian law schools might help bridge the gap between actual contractual practices in both countries and the teaching of traditional contract doctrine. This might take the form of joint teaching of courses on international contract law, exchange of key developments in doctrine, sharing of commercial practices (and customs and usages), dialogue on standard forms and drafting techniques, and development of

[18] *HSBC Institutional Trust Services (Singapore) Ltd v Toshin Development Singapore Pte Ltd* [2012] SGCA 48 at [40].

experiential learning opportunities (including the inculcation of mooting, negotiation, and other work-related skills).

Corporate Law and Governance

While some international laws directly impact upon corporations and their activities (eg intellectual property laws, investment and trade laws, corruption and bribery laws, business and human rights norms, etc.), corporate law and governance is mainly a matter of national (and sub-national) regulation. At the same time, corporate law scholarship is increasingly comparative in its focus, not least because of governmental modelling of corporate regulation from one country to another and academic debate about global convergence and divergence concerning one model of corporate regulation. In their illustrative review of corporate law in six major countries – the USA, UK, Japan, Germany, France, and Italy – one prominent set of corporate law scholars aim towards 'an analytical framework for investigating corporate law across *all* jurisdictions', concluding that corporate law throughout the world must regulate five basic characteristics that business corporations have in common, at least in market economies – namely, 'legal personality, limited liability, transferable shares, delegated management under a board structure, and investor ownership'.[19]

Even allowing for necessary coverage of the elements of corporate law within the primary jurisdiction in which an aspiring commercial lawyer seeks to practice, corporate law still needs to be taught, at least in part, from multi-dimensional perspectives of the kind listed. This is necessary in a 21st century world of commercial legal practice with international law firms and alliances, cross-border business transactions, global mergers and acquisitions, dual-listed companies, MNCs with directors and shareholders (including institutional investors) from multiple countries, transnational finance and security arrangements for corporate groups, international capital markets that companies turn to for raising finance, international institutional investors, and an inter-locking system of international, transnational, and national (including sub-national) laws affecting corporations.

Absent such international, comparative, and multi-dimensional education, our legal systems are likely to produce graduates who are ill-equipped to meet the demands of businesses. Moreover, such insularity in corporate law education is also likely to contribute to greater path-dependence in practice and a related resistance to law reform. The net result is a loss of valuable economic opportunities, as illustrated by the recent listing of Alibaba's IPO in another legal system because of dissatisfaction with the local legal regime. Another illustration is the increasing integration of international integrated reporting standards within national corporate law and governance regimes.

[19] R. Kraakman et al, *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 2nd ed (2009, Oxford University Press), at pp vii and 1.

Corporate Social Responsibility

Corporate social responsibility (CSR) is regulated by 'hard' and 'soft' forms of international, transnational, and national law.[20] In terms of legal education, it is a topic that should at least be covered in core university subjects for admission to legal practice (i.e. corporate law), subjects relating to professional practice (e.g. ethics and professional duties), and elective subjects (e.g. corporate social responsibility as a discrete subject of study in its own right, from a variety of perspectives), as follows:

(1) theoretical, legal, and practical perspectives;
(2) international, comparative, and national perspectives; and
(3) inter-disciplinary, cross-cultural, and value-based perspectives.

Viewed within the regional context, technical corporate legal knowledge cannot be compartmentalised away from engagement with deeper issues of harmonising Asian and Western values in cross-jurisdictional business and relationships and transactions. This includes reconciling state and individual interests in economic regulation, managing differences in state and business philosophy towards shareholder-based and other views of corporations, handling cross-jurisdictional differences in attitudes towards the relationship between business and society (including CSR and human rights), and ameliorating gaps in governance and the rule of law.

Regrettably, CSR is largely neglected in the corporate law curriculum in contradistinction to the business school curriculum which engages with the notion primarily in terms of CSR's connection to profit maximisation. Corporate law scholars cannot continue to ignore CSR because of a number of factors: (i) the proliferation of international legal instruments and norms on CSR (especially on business and human rights); (ii) the increasing national (eg relevant provisions in the Dodd-Frank Wall Street Financial Reform Act, the mandatory CSR spending provision in the Indian Companies Act, 2013) and supra-national interest (the EU's recent proposals on non-financial disclosure is an example) in enacting CSR legislation; (iii) the growth both in the number and size of international institutional investors and their level of activism; (iv) the transmission of international CSR norms by mobile investors and

[20] For more on European, North American, and Anglo-Australian approaches to CSR from legal and cross-disciplinary perspectives, see: *Corporate Social Responsibility in the 21st Century: Debates. Models, and Practices Across Government, Law, and Business* (2010, Edward Elgar: UK).

managers; and (v) The changing expectations of consumers who are functioning as CSR activists in a limited sense.[21]

Therefore, we posit not only that there should be greater attention to the teaching of CSR, but also that the study and teaching of CSR must also be located within different global approaches to corporate governance and responsibility. This presents challenges in studying and teaching the convergence, divergence, and uniqueness of different national ideologies surrounding corporate governance law, regulation, and practice. Different and often conflicting realms of shareholder-centric, board-focused, stakeholder-sensitive, and other corporate models across Anglo-American, European, and Asian countries have to be reconciled.

Further, conceptions of corporate governance and responsibility, within and across national jurisdictions, have to be modernised to suit the contemporary business landscape. The old Anglo-American view of corporate governance and responsibility, for example, focused mainly upon the most effective and efficient ways of regulating the triangular relations between a company, its board, and its shareholders, with CSR and related notions existing on the margins. The new view witnesses an integration of the concerns of corporate governance as conventionally conceived and the concerns of CSR, ESG, SRI, and related drivers of the new three Rs – risk, reputation, and reporting.

A recent cross-jurisdictional legal analysis of corporate social responsibility summarises the growing interest in CSR and its regulation and practice in China, under the influence of international and transnational legal norms and initiatives, as follows:[22]

> CSR is also on the rise in China, at both the national and the provincial levels of government and among Chinese businesses. Why? Chinese elites are not oblivious to the trends affecting their cosmopolitan counterparts around the globe or to the fact that markets are demanding CSR. UN SRSG John Ruggie studied this and discovered that the only predictor of whether Chinese corporations had a CSR policy embracing human rights at the time of his 2007 study was whether they were in the Fortune 500. Many Chinese leaders recognise that the growing global prevalence of CSR standards means that they may face sanctions of various sorts, such as consumer boycotts, divestment actions from SRI funds, and future trade sanctions, if they fail to progress on this front … The 'business case' for Chinese CSR includes both domestic and foreign policy aspects.
>
> … Former US Trade Representative and current World Bank President Robert Zoellick called on China to be a 'responsible stakeholder' in the global system, and China and many of its

[21] See: Sandeep Gopalan & Akshaya Kamalnath, *Mandatory CSR as a Vehicle for Tackling Inequality: An Indian Solution for Piketty and the Millennials*, NORTHWESTERN J. L. & SOC. POL. 1 (2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2492923.

[22] M. Kerr et al, *Corporate Social Responsibility: A Legal Analysis* (2009, LexisNexis: Canada), at pp 579 and 581-582.

> companies – including some that remain state-owned – have taken notable steps in that direction (although the horrendous environmental problems, the continuing sweatshop abuses, discrimination against migrant workers, recurring crackdowns on Tibetan protestors and other dissenters, entrenched censorship, and support for genocide abroad demonstrate the long path ahead.) Just as successful global businesses today must have a Chinese strategy, so it can be hoped that China will embrace CSR principles, and CSR will embrace China.

China's recognition of the need to embrace CSR norms offers opportunities for collaboration between law schools because legal education in this area is at a similarly underdeveloped stage in both countries. In Australia, despite the modernisation of corporate law, the increasing requirements for public disclosure from companies, and the growth and influence of investor activism, corporate law education continues to have a doctrinal focus. Therefore, engaging with Chinese law schools in developing a transnational curriculum in CSR could offer a win-win situation for both systems. It could also offer a distinct, third path (the other two being Anglo-US shareholder primacy, and the EU's employee and community focused regulation) that is an optimal hybrid balancing CSR norms with autonomy for business actors from intrusive and expensive regulation.

To be sure, the development of such a model would require rigorous research and sustained work by scholars from both jurisdictions, *inter alia*, on identifying common CSR norms, relevant legal rules, applicable listing standards issued by stock exchanges with significant number of foreign company listings, consumer expectations, governance expectations of institutional investors, disclosure practices, board practices, and judicial opinions. The task could be undertaken under the aegis of the Sino-Australian Deans' network with the mandate to explore the development of a truly transnational CSR elective course. We believe that this is more feasible than courses in doctrinal areas because CSR is relatively denationalised and derives its force both from transnational norms (such as the UN Global Compact, and the OECD Guidelines), and from the actual practices of multinational businesses who are less likely to be parochial in orientation. In an ideal world, the transnational CSR elective would be taught by scholars from both countries and offered to students across law schools via the internet. Such wide access, in turn, has the potential to generate new norms as new generations of lawyers are socialised to think of the role of the corporation as being more than an entity designed to maximise profits. The result would be a net increase in social welfare for both countries from the reduction of risk and the enhancement of socially responsible corporate behaviour.

Conclusion

This paper represents a modest effort in sketching the landscape for collaboration between law schools in China and Australia generally, and for commercial law areas in particular. We note the growing internationalisation of the legal profession in both countries as a result of globalisation and increased use of technology, and the imperative for legal education to participate in that process. Our review showed various challenges for legal education as it wrestles with wider changes in the university environment for cross-border collaboration. Despite these challenges, we believe that viable collaboration and deeper engagement is possible in a number of areas, most notably in commercial law because it underpins business relationships that are driving convergence at the broader systemic level. Specifically, contract law, corporate law, and corporate social responsibility offer particularly opportune areas for significant engagement between Chinese and Australian law schools in teaching, research, and curriculum development.

A curriculum framework for each of the three options open to law schools – aggregation, integration and immersion, is as follows:

	Level 1: Aggregation International Awareness	**Level 2:** Integration International Competence	**Level 3:** Immersion International Expertise
Outcomes	• Students will understand the contract law of another jurisdiction, or aspects of contract law from an international perspective.	• Students will be able to investigate, analyse and compare Australian contract law with at least one international jurisdiction.	• Students will be able to investigate, analyse and apply fundamental principles of contract law governing international commerce.
Knowledge	• General knowledge of principles, legislation and cases in contract law within selected specialist area.	• Comparative knowledge of relevant contract law concepts, principles, legislation and cases relating to contract law in Australia and at least one other jurisdiction.	• Advanced knowledge of the principles, legislation and cases relating to contract law in another jurisdiction, either alone or comparatively.
Skills	• Basic awareness of the need for cross-cultural communication.	• Good written communication skills to advise persons from	• Advanced skills in cross cultural communication.

	Level 1: Aggregation International Awareness	**Level 2:** Integration International Competence	**Level 3:** Immersion International Expertise
	• Basic research skills in relation to contract law. • Basic analytical, interpretive and problem solving skills in the context of contract law.	another jurisdiction in relation to contract law. • Good research skills to research contract law and legal issues and transactions in different jurisdictions. • Good analytical, interpretive and problem solving skills to resolve contract problems involving a degree of complexity.	• Advanced skills to research contract problems in their context. • Advanced analytical, interpretive and problem solving skills to resolve complex contract problems. • Ability to communicate in a second language, where applicable.
Attributes	• Appreciation of cultural diversity and the contributions to the law of different cultures, values and belief systems.	• Capacity to build relationships and adapt to different contexts to address contract law issues across cultures and jurisdictions.	• Expertise in building relationships across cultures in the context of international contracts.
Teaching/learning methods	• Inclusion of seminal contract	• Comparative integration	• Immersion in

	Level 1: Aggregation International Awareness	**Level 2:** Integration International Competence	**Level 3:** Immersion International Expertise
	law cases from selected other jurisdiction/s.	of contract law content from selected other jurisdiction/s. • Consideration of materials and cases from selected other jurisdiction/s.	contract law content and perspectives of other country. • Inclusion of detailed and complex case studies from several jurisdictions.
Materials & resources	• Contract law materials and other resources from other jurisdiction/s.	• Contract law materials and other resources from other jurisdiction/s.	• Contract law materials and resources in the jurisdiction in which students are studying.
Student experience	• Engagement with overseas students studying in the law school. • Engagement for those students studying overseas with international student peers.	• Engagement with international student peers in solving contract law problems together. • Students exposed to visiting international guest speakers.	• Students engaged in immersion programs experience interaction with other students in their home environment, with

	Level 1: Aggregation International Awareness	**Level 2:** Integration International Competence	**Level 3:** Immersion International Expertise
			law teachers, and legal institutions.
Assessment	• Assessments in specialist contract law subjects/units include problem-solving activities incorporating contract law examples from other jurisdictions, or case note that discusses and explains a recent contact-related decision that has an international element.	• Assessments include contractual problem solving activities involving more than one legal jurisdiction.	• Students are assessed in accordance with the requirements of the overseas law school, and possibly in a foreign language.