

Challenges and opportunities for cross-jurisdictional collaborations

Building research linkages between Australian and Chinese law schools

Paper presented at the 4th Sino-Australian Law Deans' Meeting 2014
Zhejiang University Guanghua Law School, Hangzhou, China
28-29 September 2014

Erika J Techera*

The last three decades has seen the rapid development of networks and expansion of linkages between Australian and Chinese universities. This is part of Australia's commitment to internationalising higher education, and the expansion of the export of higher education services to South East Asia as well as growing onshore student numbers. Internationalisation includes the movement and collaboration of academic staff and researchers, as well as building international research links between countries – which Australian universities, and their law schools, have embraced. This paper will briefly examine the national, state and other resources that are available to facilitate the building of research links, as well as examples of the ways in which these have been utilised. Thereafter, the paper will explore ways in which organisations and individuals can build better linkages, share expertise and move towards collaborative clusters.

INTRODUCTION

The last three decades has seen a sharp increase in collaborative linkages between Australian and Chinese universities. This has in part been driven by Australia's commitment to internationalising higher education including through the export of higher education services to South East Asia as well as a focus on growing onshore student numbers. In the last half a century China has experienced rapid development which has resulted in greater attention to globalisation. It is in this context that it too has focused on internationalisation including in the field of education.

There is a body of literature relating to the area of internationalisation, but it has tended to focus on higher education services and student recruitment, as well as student exchange opportunities.¹ Although these are important aspects more broadly four categories of internationalisation have been articulated:

* Professor Erika J. Techera is Dean of the Faculty of Law, The University of Western Australia and member of the UWA Oceans Institute.

¹ This will be the subject of another paper to be given by Professor Jianfu Chen, LaTrobe University.

- International movement of students;
- International movement of academic staff and researchers;
- Internationalisation of higher education curricula; and
- International links between countries through open learning programs and technologies.²

Facilitating research collaborations can affect each of the above but primarily the second, and is only one way in which academics work together.

Research collaborations have also been driven by an intellectual desire by academics to interact with others as well as government and institutional encouragement to do so, combined with a need resulting from reduced funding and pressure to produce a greater quantity and quality of research outputs. International research collaborations in particular have been facilitated by improved and cheaper communications, transport and technology.³

In Australia attention has turned to international collaborations for several reasons. Firstly, international research collaborations are seen as critical to universities as they seek to improve their global rankings. This in turn affects the reputation of the institution, funding arrangements and the achievement of strategic goals, as well as the ability to recruit academic staff with international standing. Secondly, within Australia, the Australian Research Council (ARC) undertakes an Excellence in Research Australia (ERA) exercise every few years and 'aims to identify and promote excellence across the full spectrum of research activity in Australia's higher education institutions'.⁴ The ERA exercise is carried out for Field of Research (FOR) code areas – law is one such area – and involves the evaluation of quality of research undertaken against national and international benchmarks. Citations and peer review are important indicators of quality and international collaborative research is highly valued. In addition, each year the Department of Education undertakes the Higher Education Research Data Collection (HERDC), gathering information on research income and publications.⁵ Universities receive funding (research block grants) based in part on HERDC data, with different values being placed on various types of output such as a scholarly book, book chapter or journal article. Much more weight, and thus more funding, is given to scholarly books than other publications, and currently textbooks and edited collections generate no income. The above arrangements are important because universities increasingly examine this data (and particularly research income, and the quantity and quality of research outputs as well as global reputation and international research collaboration activity) when recruiting academic staff, setting performance expectations, in considering promotion applications and in granting sabbatical. In relation to the latter, for example, many universities strongly favour applications which involve a period of time spent at an international institution (as a visiting scholar for example) and which envisage international collaborative research projects.⁶

² Grant Harman, 'Internationalization of Australian Higher Education: A Critical Review of Literature and Research' (2005) 16 *Internationalizing Higher Education: CERC Studies in Comparative Education* pp 119-140.

³ J Sylvan Katz, Ben R Martin 'What is Research Collaboration' (1997) 26 *Research Policy* 1-18.

⁴ <http://www.arc.gov.au/era/>.

⁵ <https://education.gov.au/higher-education-research-data-collection>.

⁶ Most Australian universities offer permanent academic staff the opportunity to apply for sabbatical leave: a period of time (often 6 months every 3 years) to focus on research without having to undertake teaching or administrative duties.

In the research context it is clear that other disciplines, such as science, have led the way in catalysing and building international linkages and collaborations. Law has come to this topic somewhat late; nevertheless, there is now significant momentum for institutional linkages and partnerships as well as individual academic collaborations.⁷ Existing opportunities, with some examples, will be explored below as well as challenges and prospects for law schools to facilitate the development of new and expansion and strengthening of existing arrangements: to move from siloes of knowledge to collaborative clusters.

RATIONALE FOR COLLABORATIVE RESEARCH

Research collaborations have become more significant in a globalised world and as academics are increasingly being called upon to increase both the quantity and quality of outputs.⁸ Such cooperative endeavours have many positive benefits including enabling broader understanding of any discipline. Such research partnerships may take the form of cooperative institutional links and networks or individual collaborations between researchers. Networks in particular are valuable in advancing knowledge in specialist and complex areas and there is evidence, at least in the sciences, that 'intense collaboration is associated with achieving higher levels of research quality'.⁹ Yet it has been found by others that 'when account is taken of the number of authors on publications, collaborations is not associated with high levels of research productivity'.¹⁰

Other disciplines are further advanced than the legal field; for example it has been said that '[t]he time of presenting major findings in a solo-authored scientific work has probably passed'.¹¹ Nonetheless, law schools and legal academics have embraced international research collaborations and much work is now being done in this regard.

There are many reasons to build research collaborations which may range in scale from multi-institutional MOUs to share facilities and resources to individual partnerships to share data or pool ideas in a narrow area of mutual expertise. At the institutional level multi-jurisdictional arrangements may be entered into between universities, faculties or schools. These may take the form of binding agreements or memoranda of understanding (MOUs). At the university level they may provide a cooperative framework for a broad range of purposes and projects, may focus on building partnership relationships and/or may establish a foundation for the sharing of facilities. At the faculty or school level such arrangements can afford a linkage framework to provide focused opportunities for staff and research student exchange, for example. Such arrangements may also exist between research centres and institutes where they are working in similar areas. At the

⁷ Almost all Australian law schools articulate their support for international collaborations, for example, by encouraging visiting scholars from overseas in order to build international research collaborations:

[http://www.flinders.edu.au/ehl/law/visiting-scholars/;](http://www.flinders.edu.au/ehl/law/visiting-scholars/)
<http://sydney.edu.au/law/parsons/about/visitors.shtml>.

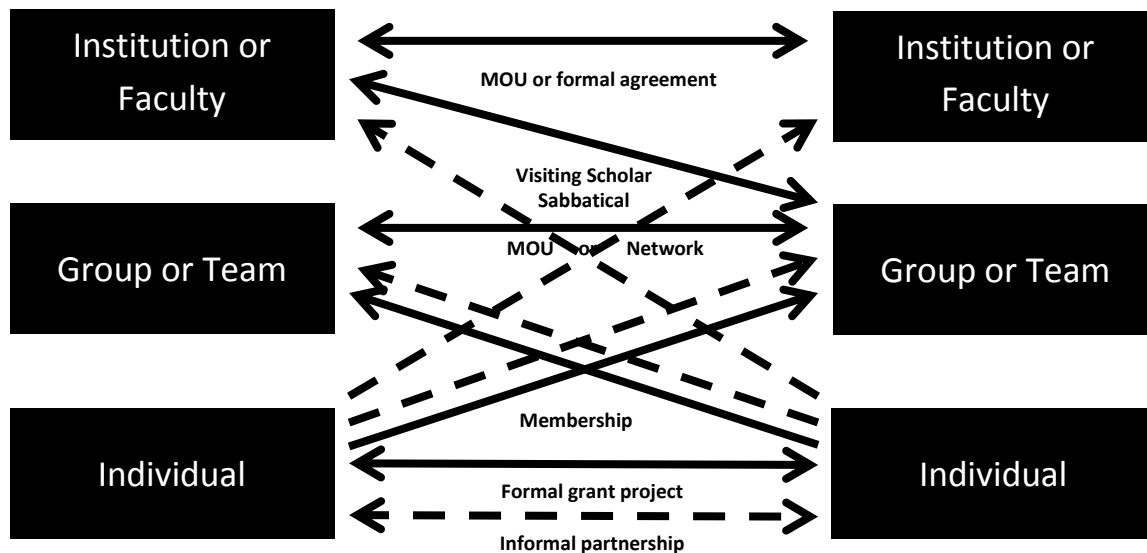
⁸ Angela Brew, David Boud, Lisa Lucas and Karin Crawford, 'Reflexive deliberation in international research collaboration: minimising risk and maximising opportunity' (2013) 66 *Higher Education* 93-104.

⁹ Alex W Hewitt, Seyhan Yazar and Maria Franchina 'Explosion of ophthalmic collaborative research networks in Australia' (2012) *Clinical & Experimental Ophthalmology*

¹⁰ Brew et al, above n 8, referring to S Lee and B Bozeman, 'The impact of research collaboration on scientific productivity' (2005) 35(5) *Social Studies of Science* 673-702.

¹¹ Mott Greene 'The demise of the lone author' (2007) 450 *Nature* 1165.

individual level informal relationships may be built which facilitate the sharing of data as well as mutually beneficial expertise. This may allow research to be undertaken which could not be done alone. Linkages may also be built between groups of academics, for example, through networks of researchers focused on innovating in specific areas or undertaking specific comparative legal studies. Formal collaborations may also be built with regard to specific grant or projects which bring researchers together with specific expertise to addressing issues that could not be dealt with alone. The various arrangements and linkages are set out in the diagram below.



The above analysis applies equally to law as other disciplines. Nevertheless, there are some particular reasons why collaborative research, either institutional or individual, might benefit the legal field. In particular, the area of comparative law and comparative analyses across jurisdictions, which do not exist, for example, in the field of science. Such research may, for example, lead to innovations in law and also law reform ideas in purely national contexts or reducing fragmentation in the implementation of international law.

There are a number of existing opportunities involving established relationships and also funding to build new relationships, which are explored below.

AN OVERVIEW OF EXISTING OPPORTUNITIES

There are a number of national research initiatives which facilitate collaboration between Australian and Chinese institutions and academics. These exist at all scales and levels from national and state initiatives to industry led and university opportunities.

National Level

In terms of building future collaborations funding is needed for travel and research assistance. There are a number of Australian government initiatives which are vehicles for such partnerships. These

include funding opportunities to establish centres or institutes as well as for individual projects and researchers.

The premier national government research body in Australia is the Australian Research Council (ARC) which has an international strategy. Its mission includes advancing Australian research and innovation globally with the overarching goal being to ‘maximise Australia’s contribution to and benefits from international research collaborations, partnerships, developments and policy’.¹² It does this through the provision of the National Competitive Grants Program (NCGP) which includes ‘direct support of international researcher collaboration’ by providing funding for international researchers, as well as ‘participation in research forums, and liaison with funding agencies overseas’.¹³ Details of the NCGP are set out in the table below.

BODY	FUNDING TYPE	DETAILS
Australian Research Council	Centres of Excellence	Prestigious foci of expertise with high-quality researchers collaboratively maintaining and developing international standing in key research areas; attracts researchers with an international reputation as well as promising research students
	Linkage Projects	Supports collaborative R&D projects; and overseas organisations are eligible to be partner organisations
	Linkage Infrastructure, Equipment and Facilities Scheme	Funding for research infrastructure, equipment and facilities; fosters cooperative use of national and international facilities
	Discovery Projects	Funding for individual research projects or research teams; International Collaboration Awards provide support for travel and subsistence costs
	Laureate Fellowships	Open to world-class researchers and research leaders of international repute; and creates rewards and incentives for the application of their talents in Australia

There are a number of recent ARC projects which have involved research collaborations with China. These include some legal projects funded under the ARC Discovery program:

- Business-Local State Relationships in China;
- Intangible Cultural Heritage across Borders: Laws, Structures and Strategies in China and its ASEAN Neighbours;
- Legal Origins: The Impact of Different Legal Systems on the Regulation of the Business Enterprise in the Asia-Pacific Region;

¹² http://arc.gov.au/general/international_strategy.htm.

¹³ Ibid.

- Enforcement of Chinese Employment Law: Regulatory Innovation and Wage Arrears;
- Pushing against globalisation: Understanding how state and non-state actors in socialist transforming East Asia shape global laws and regulations.
- Mekong Laws: Scales, Sites and Impacts of ‘Hard’ and ‘Soft’ Law in Mekong River Basin Governance;
- Sustainable development law - China and Australia.

In addition, the Cooperative Research Centre (CRC) program is another Australian Federal Government initiative which is administered by the Commonwealth Department of Industry. The program was established in 1990 the CRC program emphasises the importance of collaborative arrangements and education. The Cooperative Research Centre Association (CRCA) is the principal non-Government advocate of the CRC Program, and promotes the CRC program, facilitates information sharing and learning between CRCs. The CRCs established to date have focused on science, technology and medicine and there are none relating to law and policy.

At the national level there are several other funding opportunities to facilitate research collaborations specifically between Australia and China. These do not focus specifically on law but do assist in building cross-jurisdictional linkages. The Australia-China Joint Research Centres are co-funded by both the Australian and Chinese governments as part of the Australia-China Science and Research Fund (ACSRF) which supports strategic science and research collaborations and partnerships of benefit to both Australia and China. There are currently six Joint Research Centres, details of one is set out in the table below:

Australian Partners	Chinese Partners	Title	Field
University of Melbourne; University of Western Sydney; CSIRO; Murray-Darling Basin Authority	Ten partners including: Chinese Academy of Sciences; Ministry for Water Resources; Tsinghua University.	River Basin Management (Water Resources and Water Quality)	Engineering

There are no such Centres covering any areas of legal research. However, as discussed below, the scheme provides a useful collaboration framework which may be of value in building legal research collaboration opportunities. The key aspects of the framework include:

- Joint research centres which link Australian and Chinese research institutions particular research areas;
- Group missions involving visits by Australian groups to China or Chinese groups to Australia to achieve specific purposes related to innovation including settling research facilitation agreements and planning joint research programs;
- Academies Symposia Series which brings together the Chinese Academy of Sciences (CAS), Australian Academy of Sciences (AAS), and the Australian Academy of Technological Sciences and Engineering (ATSE) to strengthen research links in areas of mutual national interest;

- Australia China Young Researchers Exchange Program which facilitates future long term research collaboration;
- Knowledge Exchange opportunities to facilitate measures to increase the sharing of information about Australian and Chinese research collaboration.

The Australia-China Council (ACC) is another national body established to ‘promote mutual understanding and foster people-to-people relations between Australia and China’ in ways that support Australia's foreign and trade policy interests.¹⁴ The ACC provides funds for over 30 Australian Studies Centres across China. East China Normal University in Shanghai, has launched a new website to serve and connect the whole Australian Studies in China network. They also have a grants program which

State Level

There are, in addition, a number of state funding initiatives as well as specific programs whereby state governments support international collaborations focused on building linkages between Australia and China. An example is the Queensland-Chinese Academy of Sciences Collaborative Science Fund.¹⁵ Although none of the specific state arrangements appear to focus on legal research per se, other state programs are broader and allow for international collaborations but do not focus upon them.

University Level

At the University level existing clusters and partnerships can be utilised to further new collaborations, research projects and networks. At the University level there are initiatives such as the China Studies Centre at the University of Sydney and the Perth US Asia Centre at the University of Western Australia.

Many Australian Law Schools have bodies that facilitate linkages with and projects about China. For example, the Melbourne Law School Asian Law Centre and the University of Sydney Centre for Asian and Pacific Law. There are also existing centres and initiatives focused on specific legal issues including the Melbourne Law School Asia Pacific Centre for Military Law. There are also research networks such as the China Law Network at the University of Melbourne.

Representative Bodies

In Australia there are several relevant bodies whose membership is drawn from the legal profession, judiciary, government and academics. For example, LawAsia includes members from Australia, China and other countries in Asia, and encourages and facilitates regional interaction.¹⁶ It holds annual

¹⁴ <http://www.dfat.gov.au/acc/>.

¹⁵ <http://www.business.qld.gov.au/industry/science/grants/qcas>.

¹⁶ <http://lawasia.asn.au/>.

conferences on a range of legal topics. The Law Council of Australia represents the legal profession at the national level and undertakes research on key areas, most of which is focused on Australia but there is an international division.¹⁷ Other specialist bodies such as the Centre for International Finance and Regulation funds international projects in targeted areas with one recent project focusing on Financial System Regulation- is Australia's "Twin Peaks" Approach a Model for China?¹⁸

CHALLENGES

There are some complexities in building international legal research collaborations between Australia and China. First and foremost are differences in language. Relatively few Australian legal academics are fluent Mandarin speakers. This may affect communications between researchers but also other aspects of a joint research project such as search parameters utilised in obtaining key literature, the language used in surveys for empirical work. Again this is an area where the sciences may fair better than the field of law. Science, and areas such as mathematics and engineering, are to a great extent universal in terms of language. In addition, the disciplines do not draw heavily on the written or spoken word. Law, on the other hand, is jurisdiction specific and depends heavily on words and their interpretation. Subtle nuances in language can result in very different interpretations and outcomes.

In addition, there are significant cultural differences between China and Australia which may affect how academics work together, as well as their strategic and personal goals from a project or network. In the legal context this extends to structural differences in the legal systems of each country and ways in which law is made and reformed. The Australian government has sought to overcome internal challenges in building world-class research collaborations between the research sector, industry and government through the National Collaborative Research Infrastructure Strategy (NCRIS); but not across cultures and countries.

The tyranny of distance is also a problem but less so in the current globalised world – and for those from Western Australia, the lack of any time difference with China is a significant advantage.

There may also be significant procedural differences between institutions in the two countries; for example, in relation to obtaining ethics approval or the treatment of joint intellectual property that may result from a research project. It has been found that it is the ‘complexity of the institutional interfaces rather than the complexity of the research per se that increases interaction costs’.¹⁹

All of these challenges affect collaborations on institutional and individual levels. One further matter that should be mentioned is that Australian academics face a barrier to increasing collaborative work because in our system of ‘valuing’ research outputs greater weight is given to sole authored publications as well as research monographs rather than edited books. This may have the effect of disincentivising collaborative endeavours in the form of joint research outputs. Nevertheless, it is clear that an edited book, for example, may form an important product of joint research – such as a

¹⁷ <http://www.lawcouncil.asn.au/lawcouncil/>.

¹⁸ <http://www.cifr.edu.au/site/Academics/Academics.aspx>.

¹⁹ Brew et al, above n 8, at 103.

conference or workshop – and catalyse further collaborations.²⁰ However, as discussed above many national funding opportunities appear to favour collaborations.

OPPORTUNITIES – WHAT WE CAN DO

Firstly, we can support an intellectual environment where collaborative research projects can emerge and grow. In Australia most universities and law schools already do this but we can perhaps enhance the prospects by providing improved fora for dialogue by focusing on some opportunities afforded by technology. It is clear that the internet can foster collaborations that did not exist before through E-Collaboration. Any frameworks that are developed must, of course, include research students, who may provide a conduit for communications between Australian and Chinese law schools and act as ambassadors. Similarly, it must be recognised that new and existing collaborative clusters may operate as incubators for future linkages, networks and projects.

Secondly, we can utilise existing inter-university linkages and collaborative networks to further existing, and establish new, partnerships and projects. One advance may be to provide better communication of funding opportunities, potential projects and partners. In this regard the existing collaboration – Sino-Australian Law Deans – could take an active role in providing a combined clearinghouse of information for legal researchers and institutions. Thereafter, in our various law schools we can assist groups and individuals to access existing funding opportunities for research collaboration.

Thirdly, we can identify common areas of importance and facilitate academic staff and research student exchange between law schools; for example through MOUs. We can set up mutually supportive travel and research grants where there are areas of mutual interest. At higher levels we can seek to align common criteria to measure performance expectation and for promotion and sabbatical to recognise and therefore incentivise collaboration. We can also ensure that where we can we raise the issue of quantitative evaluation of research outputs, which currently favour individual achievement, and seek to amend them to better recognise collaborations. This is currently something of an anomaly in Australia because universities and other institutions are simultaneously appealing to staff to undertake international collaborative research but not fully valuing co-authored works.

A longer term goal is to focus on actively building collaboration opportunities. In this regard, there is much to be learnt from other disciplines. For example, consideration could be given to finding ways to mobilise national institutes as has been done in the medical context: the *National Institute of Complementary Medicine* in Australia has entered into an MoU with the *China Academy of Chinese Medical Sciences*.²¹ In 2013 the collaboration was recognised in China as a National Level International Joint Research Centre. Although 38 Centres have received this recognition, none are in the legal field. This provides a future collaborative opportunity. The NICM appears to have thirteen other agreements with overseas organisations. This is something we could agitate for in Australia. The Law Council and Law Asia both provide opportunities in this regard.

²⁰ It is acknowledged that this is only one indicator of success of research collaboration: J Sylvan Katz, Ben R Martin 'What is Research Collaboration' (1997) 26 *Research Policy* 1-18.

²¹ http://nicm.edu.au/about/international_collaboration

Similarly, support could be given for the establishment of collaborative arrangements along the same lines as the Australian Academy of Sciences and the Chinese Academy. The Australian Academic of Law (AAL) or Australian Academy of Social Sciences and the Chinese Academy of Social Sciences, Institute of Law. Possible funding opportunities include the ARC Linkage Learned Academies Special Projects which funds the Academies to undertake projects.²²

CONCLUSION

The above analysis illustrates the breadth of support for international research collaborations, the extent of existing arrangements and the opportunities to expand in this area in the future. At the national level, both strategic frameworks and funding options support international collaboration. Whilst the detail of institutional possibilities may vary it is clear that support for academic projects is universal and extends from policies for short and long term exchanges of staff and research students, frameworks for research centres, institutes and clusters, and funding options. As academic leaders we have the obligation and the opportunity to foster a culture of collaboration and mobilise support for international research partnerships in the future.

²² http://arc.gov.au/ncgp/lasp/lasp_default.htm.