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## Comparative Perspectives on Teaching Foreign Students in Law: Pedagogical, Substantive, Logistical and Conceptual Challenges

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# COMPARATIVE PERSPECTIVES ON TEACHING FOREIGN STUDENTS IN LAW: PEDAGOGICAL, SUBSTANTIVE, LOGISTICAL AND CONCEPTUAL CHALLENGES

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## I INTRODUCTION

Legal education has become a global business. Law schools,<sup>1</sup> like the universities in which they sit, increasingly compete for foreign or international students.<sup>2</sup> This is the case in almost all regions of the world. Yet, it should be noted that this ‘globalisation’ of law schools is not unique to the twenty-first century. Indeed, the initial critical dissemination of Justinian’s *Corpus Juris Civilis*,<sup>3</sup> the origin of the Civil Law tradition, was itself a product of the Northern Italian universities teaching this ‘new’ law to students from all over Europe in

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<sup>1</sup> The term ‘law school’ will be used instead of ‘law faculty’, even though in many jurisdictions the latter is the term employed and the two have specific and different meanings. We do this because the use of the term ‘law faculty’ in some jurisdictions means the ‘academic staff members’ of a law school.

<sup>2</sup> This paper will use the term ‘foreign student’ to distinguish the discussion from the common definition of an ‘international student’ as a non-native English speaker. Though ‘overseas student’ implies the students come from a different continent, whereas in all continents except Australia there are many students studying outside their country but not ‘over’ the seas. Furthermore, this article considers all foreign law students, including those that are: exchange, undergraduate, postgraduate, coursework, and research students.

<sup>3</sup> The late Roman Empire’s *Corpus Juris Civilis* was a primary source of the Continental Legal Tradition, resurfacing first in the eleventh century, and later directly tied to the development of codified Civil Law in continental Europe during the 18<sup>th</sup> and 19<sup>th</sup> centuries. For this history, see, among others, Franz Wieacker, *A History of Private Law in Europe* (Oxford University Press, 1996).

the eleventh and twelfth centuries.<sup>4</sup> Similarly, students in the other ancient traditions of the world would also travel to the centres of learning for their studies, whether it was to study Islamic Law, Jewish Law, Confucianism/Chinese Legalism, and closer to our time, Soviet Socialist Law. But it was not just the students who gained. Attracting foreign students was perceived as boosting the reputation and finances of the instructors and their institutions, and perhaps more critically and long-term, teaching those legal approaches to foreign students would propagate the ideas and approaches adopted by that legal system. Similarly today, reputation, finance and the spread of a legal system's approaches are all well served by internationalisation of law schools' student bodies.

As a result of increased disposable income and diminished travel costs, as well as other forces of globalisation, larger numbers of students from more diverse parts of the world can now study outside their own country.<sup>5</sup> As more students take up such opportunities, a foreign education is increasingly seen as an expected component of a well-rounded legal education, and acknowledged as vital to employment prospects in high-paying and other elite industries.<sup>6</sup> Simultaneously, in a fortunate confluence of demands for international study, law faculties around the world are finding reliance on government subsidies, domestic tuition or alumni support insufficient to fund their ever more diverse and expensive activities, so foreign student tuition is increasingly seen as the answer to that shortfall. Some law schools may even owe their continuing financial survival to their ability to attract foreign students who contribute significantly higher tuition fees, rather than to local government-subsidised or fee-capped students. It is rare that a law school does not market its postgraduate programs or even their basic undergraduate or graduate domestic law programs (LLBs or JDs) to foreign students.<sup>7</sup> Many law schools in non-English speaking countries have even begun offering courses and programs in English as a way to attract foreign students whose second language is most likely to be English.<sup>8</sup> International legal English ('Lenglish') can then be seen as an unexpected successor to the historical requirement in Europe, from medieval times, that all university courses were delivered in Latin.

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<sup>4</sup> See, eg, Mary Ann Glendon, Paolo G Carozza and Colin B Picker, *Comparative Legal Traditions: Texts, Materials and Cases on Western Law* (Thomson West Publishing, 4<sup>th</sup> ed, 2014).

<sup>5</sup> Jürgen Basedow, 'Breeding Lawyers for the Global Village: The Internationalisation of Law and Legal Education' in William van Caenegem and Mary Hiscock (eds), *The Internationalisation of Legal Education: The Future Practice of Law* (Edward Elgar, 2014) 1.

<sup>6</sup> See generally William van Caenegem and Mary Hiscock, *The Internationalisation of Legal Education: The Future Practice of Law* (Edward Elgar, 2014); Carolyn Evans, 'The Changing Environment in the Legal Profession and Legal Education: The Best of the Old World and the New' (2016) 90 *Australian Law Journal* 427.

<sup>7</sup> See the review of offerings in Peter Devonshire, 'Law Schools and the Market for International Postgraduate Students' (2015) 25 *Legal Education Review* 271.

<sup>8</sup> See, eg, LLM in International Business Law offered at the Sorbonne (see Sorbonne-Assas International Law School, *LL.M. Programme* <<http://www.sorbonne-assas-ils.org/programme/>>).

### *A Defining Foreign Students*

To describe a group of students as international can be as misleading as it is explanatory. Most universities will tend to divide students into local (domestic) and international or foreign (overseas) students but this is for fee-setting or government purposes, such as visa status.<sup>9</sup> However, there may be a significant group of students who through family connections, recent migration, or completing a prior level of education in the country are counted as domestic students while having spent most of their lives in another country. Many of the issues we discuss below apply equally to these students. Conversely, there are students who are classified as international who may have come from a country with very similar educational and cultural values, and so for these students — such as Canadians studying in the United States, New Zealanders studying in Australia, Peruvians studying in Colombia — many of the issues below do not apply.<sup>10</sup> Finally, there are likely to be significant numbers of students who are Indigenous Australians or from minority ethnic groups, or from working class backgrounds, who are local students in every sense but who also encounter many of the same learning hurdles as international students.

We emphasise this problem in definition because many of the issues that arise for international students vary in their salience depending on the student's background, and often the issues discussed here may also be faced by local students. Local students themselves are not a homogenous group and universities provide a range of individualised support services. Thus, from a law school perspective, measures that have proved effective with one group of students (local or international) may also be effective with others, and programs for the groups may be able to be combined. From the student's point of view however, experience suggests that many students have a strong self-identification as an 'international student' and it remains important both for these students' reassurance, and for external marketing to provide support that can be seen to be pitched at the 'international' cohort. With those caveats in mind in this paper we will address the ways in which many foreign students' experiences differ from that of many local students.

If these differences are not acknowledged then the success of those foreign law students, struggling in an alien environment, is at risk and correspondingly the purpose (both pedagogical and financial) of the host law school may also be in jeopardy.<sup>11</sup> While there is some literature on the issues associated with foreign students, often excellent works, they have often been program-specific or often only focused on one legal system's education system, usually focused on American law

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<sup>9</sup> See *Education Services for Overseas Students Act 2000* (Cth) s 5, which defines 'overseas student' as 'a person (whether within or outside Australia) who holds a student visa, but does not include students of a kind prescribed in the regulations'.

<sup>10</sup> These students are often excluded from international student definitions. See, eg, Maureen Snow Andrade, 'International Students in English-Speaking Universities: Adjustment Factors' (2006) 5 *Journal of Research in International Education* 131.

<sup>11</sup> In this article the 'host' law school is the one to which the foreign students go to study, as opposed to their 'home' law school in their prior, original or home country.

schools' experiences with foreign students.<sup>12</sup> Both of those approaches miss many issues and indeed will understate the problem.

### *B Article Structure and Methodology*

This article will discuss the major issues faced by foreign law students from all parts of the world when they go to study coursework in a foreign jurisdiction, either for an initial or postgraduate law degree. Research students face many similar issues, and a range of other issues, but that is beyond the scope of this article.<sup>13</sup> The issues are discussed from two angles, the substantive issues students face in their learning — cultural, linguistic and pedagogical; and the range of broader life issues students face in a foreign environment that range from logistical to administrative to emotional challenges. While the primary focus in this article is on the foreign student's experience we also consider the issues from the perspective of law school teaching and administrative staff as well as the issues raised for domestic law students as a consequence of the presence and needs of foreign law students. We then set out a range of strategies and research questions that law schools should consider in assisting their foreign students. A full treatment of those suggestions is outside the contours of this article. We anticipate that deeper engagement with solutions and strategies will be presented in a follow-up article — although as we note in the concluding remarks, the single most important step may be the identification and recognition of the many different issues, as the complexity of the issues will lead to different kinds of solutions.

Methodologically, this article builds on a qualitative analysis of the collective experiences of the authors. The authors collectively have experience not only as foreign students, but also teaching law students across six continents and teaching both local and foreign students in common law, civil law, non-western and soviet socialist legal systems. The authors have learned and taught in those systems both as locals to those countries, and as foreigners themselves. This article is not an attempt at full systematisation or coverage of all issues across the world. While using anecdotal evidence from other colleagues is a starting point, we understand the limitations of this method; rather, our intention is to initiate a discussion that stretches into the 'real, existing practices' of law schools, rather than just to articulate and advocate aspirations for a globalised world.

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<sup>12</sup> See, eg. Carole Silver, 'Globalization and the Monopoly of ABA-Approved Law Schools: Missed Opportunities or Dodged Bullets?' (2014) 82 *Fordham Law Review* 2869.

<sup>13</sup> 'By coursework' means the program requires completion of law courses, whereas 'by research' means the degree is awarded on the basis of one or many research theses. Note that quite a few schools require a combination of coursework and research.

### C *The Benefits of Having Foreign Students in a Law School*

Before delving into the many concerns and problems raised or faced by foreign students, all of which present challenges, it should be first noted that the benefits to the law school community of having foreign students easily outweigh the costs.<sup>14</sup> Those ‘costs’ include tangible and intangible costs, many of which are noted throughout this article. Specifically though, a few should be noted here. These include tangible costs associated with additional support inside and outside of class that is often provided to international students, and the intangible costs associated with increased frictions and cultural conflicts often present when people from different backgrounds interact, especially in stressful conditions such as those found in law schools.

As an initial matter, foreign students increase the diversity of the law school community, providing different perspectives in class discussions and permitting local students (and instructors) to learn about other legal systems and approaches. Second, despite the challenges students face, the authors have observed that more often than not foreign students complete their studies and subsequently have successful careers in the legal profession, either in their country of origin, the country where they studied, or a third country.<sup>15</sup> There is also the intangible value of the broader network for local students and academics which emerges from interaction with foreign law students.<sup>16</sup> In a number of cases, these values translate into benefits to the next generation of students who are able to take advantage of programs which originated in the personal contact between former students or lecturers, such as an overseas internship at a foreign law firm run by a former foreign law student that is made available to then current local students.

Clearly, one of the primary reasons law schools seek foreign students is financial. It is not unlikely, that in the near future foreign students will increasingly account for significant proportions of law

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<sup>14</sup> Deloitte Access Economics, ‘The Value of International Education to Australia’ (Report, Australian Government Department of Education and Training, 2006) <<https://internationaleducation.gov.au/research/research-papers/Documents/ValueInternationalEd.pdf>>; Alec Cameron, ‘International Students: In Our Best Interests’, *ABC News* (online), 10 November 2010 <[http://www.abc.net.au/news/2010-11-10/international\\_students3a\\_in\\_our\\_best\\_interests/40900](http://www.abc.net.au/news/2010-11-10/international_students3a_in_our_best_interests/40900)>.

<sup>15</sup> Hard data on the economic advantage of a foreign law degree is hard to come by. Indeed, there has recently been a vigorous debate in one of the leading legal education blogs on this very issue. See Carole Silver, ‘The value of a US LLM for International Law Graduates: What We Cannot Know Without New Data (a reply to Michael Simkovic)’ on *Faculty Lounge* (16 January 2017) <<http://www.thefacultylounge.org/2017/01/the-value-of-a-us-llm-for-international-law-graduates-what-we-cannot-know-without-new-data-a-reply-t.html>>; Carole Silver, ‘Part 2: The value of a US LLM for International Law Graduates: What We Cannot Know without New Data (a reply to Michael Simkovic)’ on *Faculty Lounge* (17 January 2017); Carole Silver, ‘Part 3: The value of a US LLM for International Law Graduates: What We Cannot Know without New Data (a reply to Michael Simkovic)’ on *Faculty Lounge* (18 January 2017).

<sup>16</sup> Devonshire, above n 7.

schools' enrolments — and hence incomes. This monetary motivation will also increasingly form part of the strategic plans of law schools who had historically primarily taken local students. Australian law schools are already a good example of this phenomenon as they have historically received generous support for undergraduate teaching from the government. But, with the general contraction of government funding to Australian universities, and competing demands for funding elsewhere in the university, Australian law schools may now find themselves with insufficient funding to support the higher costs of modern law schools, where clinics and other pedagogical approaches are very expensive.<sup>17</sup> Furthermore, unlike US law schools the alumni base has traditionally not donated to their alma mater and so those law schools will not have large endowments from which to finance law school activities. Foreign student fees can help to bridge this shortfall.

Finally, though not a conscious part of a law school's recruitment of foreign students, there are significant advantages to teaching one's legal culture and substantive content to foreign students who may offer a critique significantly different from the local students, who may not have the perspective that permits them to look from outside the system.<sup>18</sup> In addition, foreign law students then will be able to synthesise these ideas and upon their return home may influence the development of their own legal systems. Such interactions both inside and outside the classroom permit greater legal and professional collaboration between foreign students and local students and academics, during the program and after, which is clearly of value to the law school, its academic staff and its alumni.

## II OBSTACLES, CHALLENGES, ISSUES AND CONCERNS OF FOREIGN STUDENTS IN LAW SCHOOLS

### *A Substantive Learning Issues — Legal Cultural, Linguistic and Pedagogical*

International students, in a short period of time, need to become familiar with a range of conceptual hurdles that are largely hidden from other students and may even be unknown to their instructors. This section illustrates some of the more common ones encountered.

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<sup>17</sup> See generally Andrew Norton, Julie Sonnemann and Ittima Cherastidtham, 'Taking University Teaching Seriously' (Report No 2013-8, Grattan Institute, July 2013) <[http://apo.org.au/files/Resource/grattaninstitute\\_takinguniversityteachingseriously\\_july2013.pdf](http://apo.org.au/files/Resource/grattaninstitute_takinguniversityteachingseriously_july2013.pdf)>.

<sup>18</sup> On the use of foreign law to critique one's own legal system, see Karen Engle, 'Comparative Law as Exposing the Foreign System's Internal Critique: An Introduction' [1997] *Utah Law Review* 359. Doing so can allow students to recognise the 'interfering glosses' through which they view their own legal system (see, eg, Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (Harper Collins, 1983)).

## 1 *Legal Cultural Issues*

A major reason for the foreign student's enrolment is often to experience and learn about the local legal culture, which then turns into a personal, intellectual and economic benefit. After all, fluency and comfort with different legal cultures is today one of the skills required for lawyers who work increasingly in transnational settings.<sup>19</sup> Legal culture has been defined as consisting:

of those characteristics present in a legal system, reflecting the common history, traditions, outlook and approach of that system. Those characteristics may be reflected in the actions or behaviours of the actors, organizations, and even of the substance of the system. Legal culture exists not because of regulation of substantive law, but as a result of the collective response and actions of those participants in the legal system. As a result, legal culture can vary dramatically from country to country, even when the countries share a common legal tradition.<sup>20</sup>

As the definition above suggests, a foreign student at law school will be studying in an unexpectedly alien environment, especially as law schools strongly reflect the local legal cultures, which exist almost invisibly as a 'given' or at least are largely unquestioned. Indeed, even if a law student is studying 'international law' courses, the materials selected and perspectives driving the analysis will still derive in significant respects from the local legal culture.<sup>21</sup>

However, the interface between the foreign student and the local legal culture will itself be likely a source of issues and obstacles. Some of those will be substantively based and will be reflected across the entire legal education experience — in the classroom, the assessment, the communications between foreign students and other students and the instructors. The real question is whether these challenges are just quantitatively different; that is, if the students face the same challenges as local students, but at a different magnitude. Or is it a qualitative difference, where the challenges are of a substantially different kind or type, which then necessitates teachers, administrators and students to adopt significantly different approaches to learning.

This paper will use a number of necessary generalisations about legal approaches, traditions and cultures in order to make an overall point about the experience of foreign law students. Admittedly there are many variations of legal systems and approaches, but the aim of this

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<sup>19</sup> Carole Silver, 'The Case of the Foreign Lawyer: Internationalizing the US Legal Profession' (2001) 25 *Fordham International Law Journal* 1039.

<sup>20</sup> See Colin B Picker, 'China, Global Governance & Legal Culture: The Example of China & the WTO' in Junji Nakagawa (ed), *China and Global Economic Governance: Ideas and Concepts* (Institute of Social Science University of Tokyo, 2011) 69, 72 (citations omitted).

<sup>21</sup> For example, in common law jurisdictions, such as the United States, the use of 'principles' is alien despite it being one of the sources of international law, see *Statute of the International Court of Justice* art 38, whereas in civil law jurisdictions there would be considerably more comfort with their use. See, Glendon, Carozza and Picker, above n 4, 296.



paper does not allow us to delve deeper into the fascinating differences between different systems. What is vital is for each law school to undertake its own research to determine the issues for its own student mix. The following generalisations are intended to be pointers to that research.

(a) *Alien Terrain*

The first generalisation relates to the alien substantive terrain that the foreign law student will set foot on. For example, a foreign student from a civil law background, whether on exchange or pursuing further legal studies, who is studying in a common law based law school will immediately be confronted with different approaches to case law and interpretations of statute law and how participants act when resolving legal disputes. One very typical problem faced in that situation, that is taken for granted by domestic students in common law systems as part of their legal culture, may be the need to resort to and rely on past judicial opinions for guidance in the first instance — from the very start of trying to solve the legal problem. This issue is perhaps most acute in the situation of postgraduate students, who have previously received law training in their home civil law system country.<sup>22</sup> There, their previous training and their home legal culture may not have emphasised the absolute need to resort to detailed and sophisticated research and analysis of past judicial opinions from the very start of a problem as it is done in common law systems: that is, engaging in hyper-sophisticated analysis distinguishing the law and facts of cases from previous cases and from the problem being considered. This legal cultural disconnect will take place alongside the common law lecturer's assumption that someone who has a law degree knows how to read a case, distinguishing facts and law from previous cases, and understands the case's significance in the development of the law.<sup>23</sup>

Similarly, a common law origin law student at a civil law-based law school will also be in an alien environment. A common problem faced in this context is reading 'blanket' or 'general' clauses in statutes. Civil law statutes often lack a 'definitions' section, and terms are not defined in relation to the case law, they are rather defined on their own, relying primarily on scholarly writing which is often very abstract. Also, common law origin law students may never have experienced the civil law system's concrete use of abstract legal principles in problem analysis. So too, a common law based student may fail to understand

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<sup>22</sup> Cf Kirk W Junker, 'What Is Reading in the Practices of Law?' (2008) 9(1) *Journal of Law in Society* 111.

<sup>23</sup> For some of this discussion, see Basil Markesinis, *Comparative Law in the Courtroom and Classroom: The Story of the Last Thirty-Five Years* (Hart Publishing, 2003). For discussion of the particular issues related to the development of this way of reading and understanding facts see, eg, Larry O Natt Gantt II, 'Deconstructing Thinking Like a Lawyer: Analyzing the Cognitive Components of the Analytical Mind' (2007) 29 *Campbell Law Review* 413; Elizabeth Mertz, *The Language of Law School: Learning to 'Think' Like a Lawyer* (Oxford University Press, 2007).

how to read the often very short discursive civil law cases, such as those from France's highest court — the *Cour de Cassation*.<sup>24</sup>

Similarly, those from non-western based legal systems when placed into western law based systems, will experience substantive challenges.<sup>25</sup> Hence, for example, a student who studied in a Sharia- or socialist-based law school may find civil or common law based law schools alien, although it should be noted that most socialist or Sharia-based systems also include significant civil or common law aspects (eg often in the private law).<sup>26</sup> Indeed, given the increasing numbers of non-western based foreign law students, especially those from China, Africa and the Middle East, it is worth noting one of the critical substantive law difficulties they may encounter. Indigenous, religious and Soviet socialist origin legal systems contain a more obvious role for ideology or belief, which is akin perhaps to natural law-type approaches, than is typically found in the common or civil law systems.<sup>27</sup> Similarly, legal pluralism, while operational at a practical level in religious and soviet socialist systems, is at a theoretical level less present in those systems which in some instances may hold that other systems are simply 'wrong'. Thus a religious legal system may believe that a deity has provided the law, applicable to all humans, and hence may be less willing to accept the normative legitimacy of other legal systems. Similarly an ideological system which results in law reflecting that ideology may also view other legal systems which do not reflect that ideology as being illegitimate. This lack of legal pluralism, even if only at a theoretical level, will exist even as those legal systems must at a practical level accept the existence of other legal systems and must interact with them. This issue presents a conceptual or theoretical disconnect for those foreign students, though, once again, this also presents a great pedagogical opportunity for the host law school, for the foreign student in a class, even as they encounter these difficulties will be able to provide valuable comparative insights for the rest of the class and the instructor.

### (b) *The Role of Courts and Government*

Another fundamental issue that students from these legal systems often face is the role that legal and government authority plays in the

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<sup>24</sup> See Glendon, Carozza and Picker, above n 4.

<sup>25</sup> See Harold J Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard University Press, 1983) 7.

<sup>26</sup> The private law in China was historically based on the German civil law system. See Jianfu Chen, *Chinese Law: Context And Transformations* (Martinus Nijhoff Publishers, 2008) 25. Similarly, there is a very strong presence and role of the French civil codes in the Iranian Islamic legal system expression. See, eg, Hossein Mir Mohammad Sadeghi, 'A Study of the Consolidation of Islamic Law and Modern Western Law in the Iranian Penal Code' in Vernon Valentine Palmer, Mohamed Y Mattar and Anna Koppel (eds), *Mixed Legal Systems, East and West* (Taylor and Francis, 2015) 251.

<sup>27</sup> See, eg, John Henry Merryman, David S Clark and John Owen Haley, *Comparative Law: Historical Development of the Civil Law Tradition in Europe, Latin America, and East Asia* (LexisNexis, 2010) 19.

host country's legal system. Students from such countries as the United States and Australia are encouraged to be respectfully, but thoroughly critical of the political influences that underlie the law's attempt to be impartial. Students are encouraged to suggest errors in judicial reasoning, to find fault with politicians' justifications for legislative reform, and to suggest better and more principled ways to structure the law.<sup>28</sup> This can be intimidating for students who come from a culture where such critique was discouraged or even forbidden. Students may have legitimate fears based on personal experience that if they criticise law enforcement they may suffer reprisals. Students who have recently migrated or have refugee status may also have such fears about host country authorities.

(c) *Local Background Knowledge and Social Context*

Another set of substantive issues unrelated to the alien nature of the host's legal system is that foreign law students will lack some of the basic local background knowledge necessary to understand many of the issues and cases presented in a course. The background knowledge missing may relate to the history, politics, economics and culture of the region within which the law school is located or from the ethnic or other groups that makes up the law school population. This knowledge is important, for example, with respect to role of local history and politics in understanding the development of the local law (particularly in public and constitutional law, but in all areas of law to some degree) or the reception and interaction of the local system with transnational and international law.<sup>29</sup> Similarly, geographical knowledge is also important, especially in federal systems. Knowledge of local popular and elite/high culture can also be important. While foreign students may slowly acquire the necessary background knowledge, they will likely not arrive with it, and so may be at a disadvantage right from the start in understanding the context and background of the law and of class discussions and lectures. This can be particularly difficult in earlier stages of the degree, as teachers often use popular culture as a way of making legal concepts more relevant to local students, and as a way of allowing students to bring their own experiences to the classroom discussion.

Indeed, the very best of modern legal education emphasises the social context within which laws are promulgated and interpreted.<sup>30</sup> The social context is used to give new or deeper meaning to laws. Students who are alien to that surrounding culture may fail to appreciate its impact or nuance. Indeed many local students are themselves often

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<sup>28</sup> See, eg, Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' (2008) 39 *University of Toledo Law Review* 233.

<sup>29</sup> Readings of international law are also heavily influenced by domestic social, political and legal traditions. The Statute of the International Court of Justice, for instance, speaks of the importance of 'the representation of the main forms of civilization and the principal legal systems': *Statute of the International Court of Justice* art 9.

<sup>30</sup> For an overview see Alex Steel, *Good Practice Guide (Bachelor of Laws): Law in Broader Contexts* (Australian Learning and Teaching Council, 2013).

unaware of the broader society in which they live, but the problem may be magnified for foreign students. More prosaically the very facts of a case being studied may contain a range of socially assumed knowledge. Thus legal principles based on everyday incidents such as in sport (insurance, assaults, spectator expectations), relationships (de facto and marriage expectations, gender roles, etc), offensive behaviour (street offences, defamation, etc) may be incomprehensible or misinterpreted by foreign students. At the very least, such students will have a lack of confidence in interpreting such complex and nuanced aspects of social behaviour.

(d) *Role of Religion, Ideology, and Culture in Law*

As noted above, foreign students may also arrive with different legal approaches based on religion, culture and ideology. While the absence of those foreign approaches in the host law classroom will be disconcerting to foreign students, there is also the possibility that a foreign student's approaches based on their home legal system and legal culture may itself be questioned in a class. Thus foreign students from a non-market economy, especially where ideology drives much of its legal approach, may find problematic the strong in-class advocacy, however unintentional and treated simply as a premise for the operation of the law, of neo-liberalism and the utility of market forces.<sup>31</sup> Similarly, students from cultures with different approaches to family relationships or gender may find human and civil rights discussions confronting to their own beliefs and experiences. Even the centrality of individualism may be disconcerting for many foreign law students.<sup>32</sup>

These ideas are not just applicable to non-common law, non-western students studying in Anglo-American law schools. It is just as applicable to the experience of an Australian or US student who undertakes overseas study and has to deal with views and approaches in class and outside class that are critical of US/Australian/Western approaches. Indeed, for the majority of the world the normal experience is to deeply question, or even belittle or vilify US/Australian/Western approaches to law and its role in society. There are a number of benefits in classroom discussion of expressing such different perspectives and experiences as they contribute to the diversity and comparative insights for all students, but the reactions against those approaches may be equally intimidating and offensive to foreign law students, and to the local students. So, a key factor in successfully studying law in a foreign country is learning to deal with different and sometimes hostile contrary views, and perhaps it is even one of its primary benefits. But it can

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<sup>31</sup> On the connection between certain views of the legal system and their connection to markets, see Max Weber's work, particularly as discussed by David M Trubek, 'Max Weber on Law and the Rise of Capitalism' (1972) 3 *Wisconsin Law Review* 720.

<sup>32</sup> Cf Prem Ramburuth and John McCormick, 'Learning Diversity in Higher Education: A Comparative Study of Asian International and Australian Students' (2001) 42 *Higher Education* 333; Thi Tuyet Tran, 'Is the Learning Approach of Students from the Confucian Heritage Culture Problematic?' (2013) 12 *Educational Research for Policy and Practice* 57.

interfere with the foreign law student's success in class and may contribute to emotional difficulties for foreign students and even some local students upset by the views of the foreign students. Ideally, the local instructors in the law schools will be aware of these potential issues and would manage the class discussions to minimise harm and discomfort, but it is not unlikely that the majority of those local instructors will either not be aware of the issues or would be incapable of knowing how to best manage them.

## 2 *Linguistic and Cultural Issues*

### (a) *Reading Fluency*

Language is often the first and primary focus when people consider the challenges posed in teaching law to foreign law students – despite local language ‘fluency’ typically being a requirement for admission. In part this is because most foreign law students will be studying in a language foreign to them,<sup>33</sup> with the fluency requirements often insufficiently rigorous, though even those considered exceptionally fluent will struggle given the difficulties in studying in a foreign language, especially if it is the first time. Initially, and perhaps throughout their studies, it will typically take foreign students longer to read cases and materials than it will for the local students. While the amount of time needed is hard to quantify, there is little question that especially in the early period of their studies, foreign students will take significantly longer to read a legal document than a local student. Also, at the beginning of their studies, often the hardest time for new law students, their fluency and comprehension will necessarily be challenged by the complex and sophisticated language used in legal writing. Whereas a local student faces difficulties when first learning the ‘language of the law’,<sup>34</sup> a foreign student faces issues in not only learning the ‘language of the law’, but doing so in a language that does not come as naturally to them as their mother tongue. Similarly, in-class PowerPoint and other presentations will take foreign students longer to read, understand, and respond to, as will reproducing class discussions in their notes. This time gap also significantly influences students’ ability to participate in class discussions. Also, where class participation is expected (as is often the rule in legal education settings across the common law world) sometimes it can even affect part of a student’s final grade for the semester.<sup>35</sup>

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<sup>33</sup> Even those foreign students that will be studying in what should be the same language (eg Americans studying in England) will find word use, idiom, accent and other differences, sometimes sufficient to make the experience reminiscent of studying in a foreign language.

<sup>34</sup> Daniel G Stroup, ‘Law and Language: Cardozo’s Jurisprudence and Wittgenstein’s Philosophy’ (1984) 18 *Valparaiso University Law Review* 331.

<sup>35</sup> Cf E Marcia Johnson, ‘An Investigation into Pedagogical Challenges Facing International Tertiary-Level Students in New Zealand’ (2008) 27 *Higher Education Research & Development* 231; Denise Mulligan and Andy Kirkpatrick, ‘How Much

*(b) Contribution to Class Discussion and Group Work*

Class discussion has been recognised in the literature as a significant issue for foreign students.<sup>36</sup> This may be compounded by the fact that some non-western cultures may highly prize the ability to remain silent.<sup>37</sup> However American/Australian legal education increasingly emphasises the benefits of a constructivist approach to learning through discussion.<sup>38</sup> In-class discussions and tasks may prove difficult for foreign students studying in a foreign language. But while the difficulties for foreign students can be real, it is simplistic to suggest that they are not in favour of such constructivist approaches to learning.<sup>39</sup>

An additional challenge is that local students and instructors may have difficulty understanding foreign students' accents (and foreign students may also have trouble with their own foreign classmates' accents). The converse is also true — one of the most enduring complaints of foreign students is that they find it very difficult to understand the local students' and instructors' accents.<sup>40</sup> For example, it is often remarked that very few Australian students actually speak 'proper' English, as the local students may speak using fragmented sentences, slang, and over-modification of words — which may be combined with poor oral communication skills, as well as generally poor acoustics in the classrooms.<sup>41</sup> Often complaints are also directed at instructors, who speak too quickly, do not enunciate properly, and also engage in informal uses of language as a means to break some of the barriers between students and instructors.<sup>42</sup> While the latter is generally laudable as a pedagogical strategy, it has the unintended consequence of contributing to the alienation and difficulties facing foreign students.

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Do They Understand? Lectures, students and comprehension' (2000) 19 *Higher Education Research & Development* 311.

<sup>36</sup> See, eg, Margaret Robertson et al, 'International Students, Learning Environments and Perceptions: A Case Study using the Delphi Technique' (2000) 19 *Higher Education Research & Development* 89.

<sup>37</sup> See, eg, Heejung S Kim, 'We Talk, Therefore We Think? A Cultural Analysis of the Effect of Talking on Thinking' (2002) 83 *Journal of Personality and Social Psychology* 828.

<sup>38</sup> For an overview see, eg, Alex Steel, Julian Laurens and Anna Huggins, 'Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students' Engagement, Skills Development and Deep Learning' (2013) 36 *University of New South Wales Law Journal* 30; Cassandra L Hill, 'The Elephant in the Law School Assessment Room: The Role of Student Responsibility and Motivating Our Students to Learn' (2013) 56 *Howard Law Journal* 447.

<sup>39</sup> See Anna Huggins and Alex Steel, 'The Relationship Between Class Participation and Law Students' Learning, Engagement and Stress: Do Demographics Matter?' in James Duffy, Rachael Field and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016).

<sup>40</sup> See, eg, Mairin Hennebray, Yuen Yi Lo and Ernesto Macaro, 'Differing Perspectives of Non-Native Speaker Students' Linguistic Experiences on Higher Degree Courses' (2012) 38 *Oxford Review of Education* 209; Robertson et al, above n 36.

<sup>41</sup> See, eg, Robertson et al, above n 36.

<sup>42</sup> *Ibid.*

There are other challenges related to the number of ‘Englishes’ in the world.<sup>43</sup> The English of the local students may also not be the English that the foreign students studied at home — this is especially the case for those foreign students studying in non-American or English law schools. Also, some students from Singapore or India may communicate with each other in Singlish or Hinglish, but have learned American English, and as a result, may find a Lowlands Scottish or Pakeha New Zealand accent difficult to understand. Group work may be affected by any consequent failures of communication between classroom participants, as might presentations. In addition to impeding foreign students’ learning, all of this may chill the participation of foreign students, which may then affect class participation assessments.

(c) *Legal English*

Furthermore, because foreign law students will overwhelmingly be studying in English-language programs, as English is likely the most common second language for the socio-economic group likely to be studying law as a foreign student, there are all the problems associated with the use of English as a language of instruction and assessment. English is initially deceptively easy due to its easy forgiveness of mistakes at the level of basic conversational English — ‘airport English’. Furthermore due to its ubiquity in global popular culture and in global environments like the Internet, achieving some basic conversational fluency is not uncommon. But law requires highly sophisticated English, of a level not achieved by most native speakers of English. The English that is required for law school instruction is therefore difficult, even for local students. This difficulty in legal English is also located in legal history; the Norman-French invasion and the role of the early Church provided the grounding for ‘law French’ and the heavy use of Latin as the written language of the Courts and of wider administrative procedures, with some of those terms continuing in use today.<sup>44</sup> Thus, foreign students of law, more so than perhaps of almost all other studies, are forced to operate from the very start at exceptionally high levels of what is a highly complex and nuanced language, with frequent use of archaic forms of the language. It can be mystifying to lawyers themselves, let alone students as to why the courts can determine liability on the precise contextual meaning of one word — and at times its declension.<sup>45</sup> Furthermore, the law typically studied will likely span various English language jurisdictions each with their own writing style, which is itself hard for native English speakers of law to handle, let alone foreign students.

<sup>43</sup> Andy Kirkpatrick, ‘Which Model of English: Native Speaker, Nativized or Lingua Franca?’ in Rani Rubdy and Mario Saraceni (eds), *English in the World: Global Rules, Global Roles* (Continuum, 2006) 71.

<sup>44</sup> Roger K Ward, ‘The French Language in Louisiana Law and Legal Education: A Requiem’ (1997) 57 *Louisiana Law Review* 1283, 1310.

<sup>45</sup> A recent Australian case has found liability for bringing drugs into the country could turn on whether the word in the offence was ‘imports’ — held to be an act, or ‘importation’ — held to be a process (*R v Campbell* (2008) 73 NSWLR 272).

Of particular difficulty is the propensity for legal judgments in some jurisdictions to be written in discursive narratives, without clear structure. In the West, the conceit of using literary language and Latinisms also detracts from the clarity of the judgments.<sup>46</sup> While all students struggle with the ‘search for the ratio’ — itself a Latinism — foreign students face a greater challenge.

Prospective students for English language courses or jurisdictions are also not assisted by the impressions created by the various English proficiency tests they take to gain admittance. Such tests are not based on legal language and can often give the student a false sense of competency. This is compounded by law schools wishing to increase international enrolments and, not wanting to exclude students with talent, law schools may often set the proficiency tests as low as they can.<sup>47</sup>

(d) *Communication Norms*

Language may also be thought to include social language — the communication of our actions and mannerisms. Those forms of communication will often be immediately employed in class — especially in those classroom environments that encourage back and forth dialogue. But those in-class communications are strongly set by cultural norms, whether legal cultural or local general culture and they can also generate challenges for the foreign student, the local students and the instructors. Foreign students violating local cultural norms can be confronted with classmate censure and even loss of class participation marks. But those norms can run in very opposite directions to those understood or employed by the foreign student. In some legal systems’ law schools (or educational contexts in general) the act of challenging the instructor, especially if it is an elderly full professor, can be viewed as exceptionally rude. In other legal systems’ law school environments, agreeing with the instructor can be viewed as at best being insufficiently critical to at worst as courting favouritism. Even coming to class unprepared can violate a local cultural norm. Talking in class may be acceptable in some places but beyond the pale of acceptable behaviour in other places. Those cultural norms are also relevant outside of class. For example, the relationship between the instructor and the students in law schools can run the whole range from the use of first names to complete lack of access, by email or in person, to the instructor outside of the lecture. Students get used to whichever

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<sup>46</sup> For a non-critical analysis of this practice see Elwyn Elms, ‘On The Use Of Classical Allusions In Judgment Writing’ (2008) 31 *University of New South Wales Law Journal* 56.

<sup>47</sup> For example, the Australian admitting authorities require an overall IELTS score of 8: see Legal Profession Admission Board, *Welcome to the Legal Profession Admission Board (LPAB)* (15 March 2017) <[http://www.lpab.lawlink.nsw.gov.au/lpab/legalprofession\\_overseas\\_practitioners/legalprofession\\_overseas\\_practitioners\\_english\\_req.html](http://www.lpab.lawlink.nsw.gov.au/lpab/legalprofession_overseas_practitioners/legalprofession_overseas_practitioners_english_req.html)>; and yet, as a quick glance at university websites will show, many Australian law schools set entry requirements of between 6.5 and 7.5.



of those relationships they are exposed to even in the primary and secondary education, and then find the switch to the other hard. These sorts of cultural norms are veritable booby traps for foreign students — hidden and unknown until too late.

While the in-class dynamic is impacted by general and legal cultural norms, it is also impacted by the usual vagaries of human nature — running from envy to ignorance. Thus some instructors and local students, even as they are so very often supportive to their foreign students or classmates, may also hold negative views about the extra experience, opportunities and support services provided to foreign students.<sup>48</sup> These negative views may be bolstered by the inevitable misunderstandings of the foreign students (linguistically, substantively, culturally, etc) and by a lack of cultural and legal cultural sensitivity. Paradoxically, this may be compounded by an over-sensitivity to foreign students' statements and behaviours. While one would expect these negative behaviours and opinions to be isolated, hidden and unusual — they are likely to exist, making life more difficult for the foreign students subject to them.

### 3 *Additional Discipline-Specific Pedagogical Issues*

Pedagogy in law, and hence pedagogical challenges for foreign law students, is so firmly intertwined with the substantive law and underlying legal culture of each legal system that it cannot be considered in isolation. This is because each legal system has its own approach to the regulation of the legal profession and to the education that leads to that profession, all of which reflects their own legal cultures and unique legal education histories.

#### (a) *Beliefs Implicit in Teaching Structures*

Though less clearly understood as linked to the legal system's substantive law or legal culture, in fact such a link does exist even for what appear to be just logistical or procedural approaches to teaching. For example, the use of small classes may reflect the belief that they are necessary to support law schools' roles in producing competent practitioners.<sup>49</sup> In contrast, the use of large lectures may reflect the view that the law can be considered as relatively straightforward and easily passed on without question<sup>50</sup> — for large lectures do not easily permit the back and forth associated with complex instruction. Teaching style may also reflect the legal culture. For example, the use of the Socratic

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<sup>48</sup> See, eg, Robertson et al, above n 36.

<sup>49</sup> Steel, above n 30.

<sup>50</sup> Michael Chesterman and David Weisbrot, 'Legal Scholarship in Australia' (1987) 50 *Modern Law Review* 709; Jude Wallace and John Fiocco, 'Recent Criticisms of Formalism in Legal Theory and Legal Education' (1980) 7 *Adelaide Law Review* 309.

teaching style in US law schools — its ‘signature pedagogy’,<sup>51</sup> may reflect the elevated position litigators have in US legal culture, as opposed to the non-litigation (less confrontational) side of the profession, whereas legal systems developed from Confucian philosophies may discourage such individualist behaviour for collectivist, mediatory ideals.<sup>52</sup>

Sometimes the differences between systems’ approaches can be vast, though convergence or homogenisation across legal systems and their legal education approaches may be taking place.<sup>53</sup> It should be noted, however, that transplantation, even across related systems, will not take place without change to the transplanted device.<sup>54</sup> For example, law school clinical legal education devices that are imported from the United States, which has a fused profession and a strong rights-based legal culture, to another common law system with a split profession and diminished rights-based legal culture, will likely result in clinical experiences and approaches that are different in style and result.<sup>55</sup>

Beyond these theoretical disconnects, at a practical level any new and different pedagogical approaches will be challenging, and rewarding, for foreign law students. Thus, based on the authors’ collective experience it is often the case that foreign students experience quite a shock when, for example, moving from their home law school small seminar-style classes to large lecture instruction at the host law school. A comparable disconnect will take place for the move in the opposite direction. Similarly, expectations of class participation, whether through the Socratic method or group work or presentations can be quite alien to students from many legal education systems. Likewise oral examinations, common in many jurisdictions, may be particularly troublesome for those students that may never have experienced them before. Mandatory class attendance could also be quite confronting, especially in light of the traditions of ‘Free’ Law Schools in countries like Germany, Argentina and Brazil. In those places, emphasising the ‘freedom’ of the student, students are not expected to go to every class, and indeed while they have to sit exams, the classes themselves are entirely optional.

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<sup>51</sup> William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007).

<sup>52</sup> Yun-Hsien Diana Lin, ‘Civil Mediation in Taiwan: Legal Culture and the Process of Legal Modernization’ (2011) 6 *East Asia Law Review* 191.

<sup>53</sup> For example, Sciences-Po Law School (in Paris, France) and the Getulio Vargas Foundation Law Schools (in Sao Paulo and Rio de Janeiro, Brazil) have openly adopted more common-law like approaches to legal education, adopting even variations of the Socratic Method.

<sup>54</sup> Pierre Legrand, ‘What “Legal Transplants”?’ in David Nelken and Johannes Feest (eds), *Adapting Legal Cultures* (Hart Publishing, 2001) 55.

<sup>55</sup> See, eg, Frank S Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice* (Oxford University Press, 2011).

*(b) Expectations of Assessment*

Perhaps one of the more common challenges surrounds expectations with respect to students' legal analysis. Assessments that expect students' own analysis and critique as opposed to regurgitation of a lecture or of the course's materials can be among the most difficult problems for many foreign students who are not used to it.<sup>56</sup> The role or use of student analysis in legal education may reflect historic legal cultural and ordinary cultural characteristics. For example, Confucianism places the teacher close to the apex of the social hierarchy with corresponding respect expected and demanded from students.<sup>57</sup> Thus, students from such backgrounds may be less willing to engage in what could be viewed as criticism of the teacher or of other scholars' views found in the course materials or reflected in decisions or other legal materials. Also, legal systems based on ideology or religion may be less welcoming of independent student critique. Similarly, legal systems or fields that have remained relatively static also lend themselves less to analysis. Of course, analysis can also take place in the context of problem-solving, especially in assessments like exams. But problem solving, while the underlying rationale for much of the law in all legal systems, may be more explicitly a part of the law in some fields and in some legal systems. The common law, for example, was built on the back of problems solved by judges or issues resolved ad hoc by legislatures (at least partially an inductive method, where general rules are derived from a number of cases). By contrast, the more systematic code-based systems elicit a more deductive approach to legal reasoning (the general rule of the code as applied to the specifics of the case).

*(c) Notions of Academic Honesty*

Finally, another source of problems relates to the issue of 'academic honesty', specifically plagiarism. Plagiarism is understood and handled differently across the many different legal systems' law schools. The treatment of plagiarism ranges from strict and draconian enforcement in many US law schools to its almost complete absence as an issue in other countries — either because all assessments are in-class or under strict control or because plagiarism is understood differently from, for example, its meaning in the United States.<sup>58</sup> Regardless, foreign

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<sup>56</sup> David Kember, 'Misconceptions About the Learning Approaches, Motivation and Study Practices of Asian Students' (2000) 40 *Higher Education* 99; Sam Blay, Angus Young and Grace Li, 'Adventures in Pedagogy: The Trials and Tribulations of Teaching Common Law in China' (2005) 15 *Legal Education Review* 137.

<sup>57</sup> See generally, Qi Wu, 'Re-examining the "Chinese Learner": A Case Study of Mainland Chinese Students' Learning Experiences at British Universities' (2015) 70 *Higher Education* 753.

<sup>58</sup> Cf Jean-Marc Wise, Shu-Hsiang (Ava) Chen, Praweenya Suwannathachote, and Pornsook Tantrarungroj, 'International Plagiarism: Comparing Thai, Taiwanese, and American University Students' Knowledge, Behaviors, and Attitudes towards

students working in an ‘academic honesty’ environment that is different, sometimes radically different, from their own will face difficult challenges. These challenges include situations that range from foreign students who violate the rules or, from the opposite perspective, foreign students upset at the different treatment or non-enforceability of their (often strict) understanding of academic honesty.<sup>59</sup>

This collection of substantive issues highlights the myriad of expectations that any given lecturer is expected to juggle in the context of a classroom with multiple nationalities. Once these obstacles are overcome, the benefits to the host law school and to the foreign students far outweigh the costs. Benefits are wide ranging, from more and richer perspectives during classroom discussions to the new opportunities presented to domestic students to question their own legal cultures and even their legal vocabularies.<sup>60</sup> But issues with foreign students are also faced outside the classroom by administrators, and they can significantly influence the overall pedagogical experience of foreign students. To some of those matters we move next.

### *B Broader Lifestyle Issues — Logistical, Administrative and Emotional*

Foreign students do not just face substantive and legal cultural obstacles and challenges, but they also must manage a whole host of logistical and administrative demands that are either different or more than those faced by their local classmates.<sup>61</sup> Those demands may also be of a nature and style entirely new and alien to the foreign students. Such demands can have a significant impact on foreign students’ success and wellbeing at law school.<sup>62</sup> They may drain the foreign student’s physical and mental energy, use up time, money and other resources, and interfere significantly with a foreign student’s academic and social life. Many of these issues are also common to foreign students studying in non-law courses and as such will not be discussed in too much detail here,<sup>63</sup> though any discussion of foreign law students would be remiss not to briefly mention those issues.

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Academic Integrity’, in Michael Simonson (ed), *2013 AECT Annual Convention Proceedings* (ERIC, 2013).

<sup>59</sup> Usually this is considered from the one-way example of foreign students violating local rules, but one of the authors was forced to confront the opposite. That occurred when American law students who were taking an exam in another country became exceptionally upset during the exam after observing local law students engaging in what the American students considered cheating, but which the local students considered to be acceptable collaboration.

<sup>60</sup> Engle, above n 18.

<sup>61</sup> See generally Andrade, above n 10.

<sup>62</sup> Ronald J Svarney, ‘Counseling Foreign Law Students’ (1989) 68 *Journal of Counseling and Development* 228.

<sup>63</sup> Barbara A Clarke Oropeza, Maureen Fitzgibbon and Augustine Barón, ‘Managing Mental Health Crises of Foreign College Students’ (1991) 69 *Journal of Counseling and Development* 280; Sakurako (Chako) Mori, ‘Addressing the Mental Health Concerns of International Students’ (2000) 78 *Journal of Counseling and Development* 137.

## 1 *Visas*

Perhaps the first and often the most demanding of the logistical and administrative challenges are those associated with the host country visa.<sup>64</sup> For many students the ongoing bureaucratic demands and pressures of the visa even after arrival can prove daunting, perhaps even debilitating. It can be the case that the visa may restrict the student's ability to arrive into the host country and at the law school in a timely manner (eg, either due to delay in issuance or due to time in-country limitations), there may be little to no time between arriving at the airport and starting orientation classes, making the already daunting tasks of finding accommodation, sorting out banking, telephones/internet, academic scheduling and books even more difficult. Visa problems can be even more problematic for those students arriving with families, especially with partners who need or want to work and with school-aged children who need to attend school. Indeed, even though sojourners, foreign students will experience most of the same bureaucratic nightmares that immigrants face. Handling those challenges at the same time as settling into a new legal education system and keeping up with very demanding classes can be especially difficult.

## 2 *Emotional and Psychological Issues*

Those difficulties become an even greater burden if they are coupled with emotional and psychological issues that may pre-exist or be brought on by the stress of settling into and studying in a foreign country. This is especially so with legal studies. The role of threshold concepts in education is increasingly being recognised as key to a student's development from novice to expert. Threshold concepts are those learning points that a student has to grasp in order to be able to access other forms of knowledge.<sup>65</sup> Legal education contains a significant number of such concepts — the skills of case analysis, the ability to recognise legally relevant facts, basic statutory interpretation skills, and the ability to connect law to historical, social and political contexts, among others.<sup>66</sup> All of these are significant cognitive leaps that every student must make in their law degree. It has been suggested that law students are more highly stressed than other students, and the complexity of these threshold concepts may be a contributing cause.<sup>67</sup> The high pressure of law school alongside the usual challenges of life means that law students in particular may experience emotional or psychological issues sufficiently serious as to impact their law school

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<sup>64</sup> See generally Andrade, above n 10.

<sup>65</sup> Jan Meyer and Ray Land, 'Threshold Concepts and Troublesome Knowledge: Linkages to Ways of Thinking and Practising within the Disciplines' (Occasional Report 4, Economic & Social Research Council, 2003) 1.

<sup>66</sup> Aidan Ricketts, 'Threshold Concepts in Legal Education' (2004) 26(2) *Directions: Journal of Educational Studies* 2.

<sup>67</sup> Wendy Larcombe and Katherine Fethers, 'Schooling the Blues? An Investigation of Factors Associated with Psychological Distress among Law Students' (2013) 36 *University of New South Wales Law Journal* 390.

life.<sup>68</sup> Recently, universities, including law schools, have begun to try to help with students' emotional and psychological issues, and indeed, to 'normalize' them.<sup>69</sup>

While one should not assume that there is a higher incidence of emotional or psychological challenges for foreign students per se, they may encounter stresses that local students may not have to face, such as those described above, in addition to all those faced by local students. Furthermore, foreign students will face all these challenges without the support of home family and friends, who may not even be easily contactable and may not understand the environment or challenges facing the student. In addition, due to their being away from home and their community, foreign students may also be feeling homesick, lonely, confused, culturally lost, and alien.<sup>70</sup> These psychological issues may be greatly exacerbated for those students from societies and communities which are at different places on the spectrum of recognition, understanding and accommodation of psychological and emotional issues. That may mean little to no home support, perhaps even the opposite — family and community not accepting the existence or impact of such conditions, maybe even further aggravating the situation by suggesting to the student that it is a sign of weakness or some other personal failing. Also, if the foreign student is from a culture or society that is less aware or accepting of mental illness the foreign student may not recognise the issues within themselves or may themselves refuse to seek help.

### 3 *Bureaucratic Issues*

Other issues that need to be considered include the challenges faced by foreign students when navigating a new bureaucratic system within the university and within a new community outside of the university. Banking systems vary greatly from one country to the other, for instance, and it is often a challenge for a newcomer to a country to open a bank account upon arrival. The same applies to getting a mobile telephone number, for instance, which often leads to a Catch-22 scenario: students cannot open a bank account because they do not have a phone number, but they cannot get a phone number before they open a bank account. Some universities are well-prepared to assist students in these and many other matters, including housing, renter's insurance, registration with local police authorities (still required in many countries), procurement of local ID cards (to prevent risk of loss or theft of the passport, which creates enormous problems for students and universities alike), health insurance and many other matters. While

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<sup>68</sup> Alex Steel and Anna Huggins, 'Law Student Lifestyle Pressures' in Rachael Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016).

<sup>69</sup> Anna Huggins, 'Autonomy Supportive Curriculum Design: A Salient Factor in Promoting Law Students' Wellbeing' (2012) 35 *University of New South Wales Law Journal* 683.

<sup>70</sup> Erlenawati Sawir et al, 'Loneliness and International Students: An Australian Study' (2008) 12 *Journal of Studies in International Education* 148.

these issues are not particular to law students, they are nevertheless grave and recurrent, and are additive to the many other challenges that these students face.

Emotional, logistical and administrative issues, while not necessarily specific to legal education, have a severe impact on the pedagogical side of foreign law teaching, and while it is unclear exactly who within an institution should have carriage for managing these issues, they may be serious enough to interfere with the education of foreign students that at a minimum legal educators need to be aware of them. The next section briefly explores some solutions or approaches to the issues and challenges discussed in this paper.

### III FUTURE STRATEGIES AND RESEARCH

Foreign students are now a major part of an increasing number of law schools' student bodies — economically, pedagogically and socially. Therefore a critical mission of the law school is to recognise their concerns and needs. Not only is this an academic concern, but it is also a question of living up to the marketing of degree programs (especially the advertising aimed specifically at foreign students), as well as the usually higher tuition fees charged by the host institution. What is important for decision makers in the law school is to decide which obstacles are inherent in the experience of being a foreign student, as difficult and challenging as they may be, and which obstacles can be tackled to improve the learning experience, yet still be rigorous for the students, teachers and law school itself. Increasingly, where possible and helpful, law schools recognise an ethical obligation to their foreign students, the instructors and the local law students to manage these many issues so as to ensure the success of the law school's mission and the achievement of foreign students' objectives. It may also be the case that many of these suggestions apply equally to foreign students in non-law programs.

This section will suggest a number of approaches and techniques that can be employed.

#### *A Broad Awareness of the Issues*

The starting point is ensuring awareness of the many challenges and issues discussed above. Awareness can be accomplished through orientations, training and workshops for students, instructors, academics, and professional and technical administrative staff. Such training should include legal cultural and foreign cultural sensitivity training. Indeed, ensuring a wider understanding within the law school community of substantive comparative law would also be helpful. Only by understanding the foreign legal and educational environments from which the foreign students originate can many of these issues be better understood and action taken.

## B *Early Intervention*

The next general point is the need for and usefulness of early-detection and pre-emptive strategies with respect to the many pedagogical issues identified in this article. There is a limit to how much time and resources law instructors and school administrators can put into resolving these issues, but often simple initiatives can produce big impacts. For instance, requiring students to produce a short sample of writing during one of their first classes (even if it is only a 20-30 minute task) can provide a good indicator of a student's linguistic ability in law. If issues are promptly identified then the student can benefit from additional linguistic support much earlier in their academic career, instead of having to wait for poor grades before action is required.

Based on our collective experience working with foreign law students, though, there is also such a thing as too early intervention. For example, sessions on plagiarism policies before the beginning of classes or at the very beginning of semester, while valuable as due diligence exercises for the corporate entity that is the university, tend in our experience to have been less effective for foreign students as opposed to often and shorter discussions taking place right after an assessment task is given to students in the context of a course. For instance, when examples can be given by an instructor, the range of situations covered by plagiarism policies may be much clearer to students, particularly if they can relate those rules to the early strategies they may be forming for completing the assessment task.

## C *Pedagogic Support*

Our experiences strongly suggest that pedagogical challenges can be addressed by appropriate first-year programs aimed at foreign students, with follow-up in later years. For instance, language classes focused on law can contribute significantly to addressing linguistic issues. The effect of these classes can be enhanced if there are follow-up classes in subsequent semesters, to enable students to continuously improve their command of legal English as they expand their knowledge of the legal field itself. An important factor here is that language learning is clearly a complex issue and requires significant time outside of class in order to provide a basis for developing legal academic literacy.

The establishment of specific courses which focus on the development of law and of legal writing in the host country may be one useful way to help foreign students. The benefit of such courses is that it can 'slow down' the learning of substantive law to enable students to ask questions and discuss issues which otherwise are discussed too quickly. Also, a class dedicated to students in a bridging language will mean greater confidence to speak and debate, as everybody is at an equal disadvantage.



### D *Sharing Experiences*

The sharing of experiences between lecturers and foreign students, having a true dialogue, may also help to convey and even imbue the local academic culture. More than simply lecturing on the local academic culture and plagiarism, though, it may be more constructive to engage in a roundtable format where students can share their own views on their home academic cultures, to be then directly contrasted with the local one. Through this process, students can more easily understand the new and different expectations of the local systems, and the local instructors can also more easily understand foreign students' background and expectations. Perhaps even more helpful is the interaction between the older and the new students. Older students, both domestic and foreign, after all, remember the challenges of being a student better than seasoned lecturers. Experienced foreign students, in particular, are in an optimal position to understand what their new peers are experiencing. We note, however, that peer-mentoring should not, ideally, be left simply to the students themselves; it can (and should) be mediated by the institution whenever possible. Nor should these support and experience-sharing activities just take place at the start of a program, but should be continued throughout, for new issues and challenges arise, as well as deeper levels of understanding or perhaps even confusion.

Similarly, providing accounts of the experience of law students in foreign jurisdictions or even of lawyers and the legal system, through books, television or movies may also be helpful. While somewhat dated, a book such as Scott Turow's 'One L' (1977) or a movie such as 'Legally Blonde' (2001) can convey significant, if not entirely accurate, understandings of American legal education that may give valuable insight to incoming students, foreign or domestic. Unfortunately, the dominance of American and British popular culture means that finding such resources for other legal systems can be more of a challenge. But even in the Australian context there are still worthwhile possibilities, as one of the best law movies, which also shows some critical parts of the local legal culture is the classic 'The Castle' (1997).

### E *Expert Advice*

With respect to the mental health issues noted above, specifically the fact that they may be alien to or viewed negatively by some foreign communities, working with experts from the communities, ideally ones located locally, may be an approach worth trying. For example, there may be within the specific community a specialist used to working with members of that community, who may then have strategies or be able to work on mental health issues effectively with such foreign students. For example, for a Chinese student experiencing psychological stress, resort to the assistance of a counsellor, psychologist or psychiatrist from the local Chinese community might be helpful.

### *F Peer Support*

When it comes to other administrative and logistical issues, perhaps more effective than university support is peer support. Foreign students who have already settled in the country the previous academic year are usually much better equipped to recognise and address problems faced by incoming cohorts of foreign students. Furthermore, willing local students may also be able to provide helpful support. We suggest such engagement should be facilitated and encouraged by the educational institutions themselves, and worked out under their umbrellas, but we believe other students can more easily understand these types of challenges than a local who may tend to take much of the fine print for granted.

## IV CONCLUDING COMMENTS

Finally, in light of the many challenges noted in this article, it is necessary to reiterate what was noted above about the value of foreign students to a law school: that they bring into the law school tremendous enthusiasm and comparative insights; that they contribute to the diversity and maturity of the student body; that they bring into the classroom different and often unique experiences; that they will be future and very different colleagues, partners, employers, and friends for the academics and the students; that they have the ability to spread the law school's purpose overseas; and that they provide connections with our roots (it is often the case that many of the local students' families share cultural, ethnic and other roots with the foreign students). Resolving the issues noted above is thus a benefit to the whole law school community.