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Epilogue

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Two events were selected by the faculty of law at Bond University to celebrate its twentieth birthday. The first in time was a Symposium on the Internationalization of Law in June 2009, and the second was an invitation to the last Law Man of the Wardaman People, an indigenous clan, to visit the Law School as Artist-in-Residence in September 2009 to depict his Law in a painting, and to explain its significance to the academic and the wider community. The painting will then remain at the Law School.

The Law Faculty has had a constant goal since its inception to combine the best of the Australian traditions of legal education with the best modes and content of legal education wherever they may be derived. The striving for this goal is reflected in the diverse nature of the curriculum and teaching methods, the diverse origins and education of the faculty and of the students, and the diverse research output of the school. As the first private law school in Australia, Bond had an unrivalled opportunity to settle its own priorities and policies, and to continue to develop these in a leadership role.

After two decades, the faculty members thought it appropriate to reflect on major legal issues. To do this, we gathered a group of legal scholars from around the world, almost all of whom had a direct link with the Law School before the Symposium and, we hope, all of whom now feel that they have a relationship with the School into the future. The benefits of this thinking will be taken into the planning and practice of legal education and scholarship at Bond.

Our reflections in the Symposium over two days of discussion in June 2009 returned to some of the fundamental and structural issues of law. It is tempting to take a systems approach to the internationalization of law (as Lawrence Baxter does in relation to banking regulation[i]). Consider two opposing views, one which puts much store by designing and directing macro-systems, and another which believes that such systems cannot be predicted nor directed but, at times in complex systems, patterns are revealed at perception tipping points.

The first view would have it that the global community has slowly been taking steps to organize an integrated system of legal rules that binds all jurisdictions together in an overarching mega-system of law. The second accepts that interconnections are constantly being created in a dispersed and independent manner at many different levels and that, at some point, the perception will arise and gain credence that a new and integrated system is in operation. In reality nothing will have changed but, in perception, in concept, in contemplation something new will exist.

This is analogous with the discovery of a new scientific orthodoxy: Darwin's perception and description of the laws of natural selection, of an underlying system at work, makes no difference to the realities on the ground, but gives rise to a new way of perceiving and studying them. In law, the process is more interactive: the perceptions of an underlying 'system' and the account given of it, do also impact on that system. The account in Donoghue v Stevenson[ii] which finally articulated a system or pattern in tort, also impacted on the development of that tort in later years. This is the classic common law methodology of inductive reasoning which had continued at an appellate level for a period of more than thirty years[iii]. In a palette of disparate and separate torts or causes of action, an underlying pattern

is perceived, reported and treated as a reality. But nothing new has in fact been created, but a 'new' and authoritative principle of the common law has been enunciated.

And so it is with the internationalization of law. At one moment we perceive the international legal order as a concatenation of separate (sovereign) legal systems connected by legal bridges or synapses; the next it is overtaken by a view which identifies the underlying factual reality of unity or system. We believe that the tipping point has been reached. We have moved from a perception of a palette of disparate and 'sovereign' systems tangentially connected to the perception of a single underlying system or structure. That this structure is shapeless and to some extent disorganized matters not: it is interconnected and real. We should therefore speak of, and perceive one global legal order or system, one body of law, not a series of disparate jurisdictions tenuously connected. Because although we still speak and think in terms of sovereignty and think primarily up-from-sovereignty, that view no longer represents a reality where the interconnections, transactions, correspondence, collaboration etc between systems is so intense that there are in fact only one, global system.

Illustrating the single life of the law

This one global system or 'single life' of the law can be illustrated by an underlying focus on international legal education. Students are increasingly undertaking full time courses abroad and the courses themselves are underpinned by international aims, and often, an international focus. For example, international students enrolled at Harvard have steadily increased over the past five years with 15.22% of law students in 2008-09 being international.[iv] Similarly, approximately 10% of Columbia Law School's JD students are international students from 32

different countries.[v] This trend reflects a general increase in international students across American Law schools.[vi] In the UK, 18% of students studying law are international students.[vii] Since its beginnings 20 years, Bond University Law Faculty has hosted students from over 100 different countries.

An under current of internationalization is also evident in legal curriculum. The inclusion of compulsory courses in comparative, transnational and international law acknowledges the now arguably inescapable international nature of legal practice. Law Schools in Brazil, for example, are required by government regulation to teach public international law as a compulsory course.[viii] In South Africa, whilst international law is not a government mandated compulsory course, over 13 law schools require students to study at least one course in international law.[ix] The University of Sydney and the Australian National University have compulsory international law courses.[x] The University of British Columbia requires all first-year law students to study Transnational law.[xi]

The emergence of English language LLMs also illustrate an internationalization of the global legal system that moves beyond occasional links and connections and acknowledges an underlying commonality. In Japan for example, Kyushu University and Niigata University both offer the LLM in English.[xii] Kyushu is co-operating with the Chulalongkorn University and National University of Singapore to provide a joint LLM in international economic business law taught in English.[xiii] A joint English language program between Peking University and Columbia University also provides an opportunity for students to study an LLM abroad.[xiv] Here at Bond University, a partnership with Universite Catholique de Lyon allows students to complete a global negotiation course and develop networks with other 'global' students.

What is the role of comparative law?

This means that we have travelled beyond comparative law,[xv] beyond law and legal rules and solutions rooted and situated in fundamentally different and isolated (sovereign) systems. Instead they are situated in a single global order where law in other places is invariably and unavoidably interconnected and interwoven with law-at-home. We all form part of one system, and every aspect of that system can be perceived from that perspective: then artificial barriers to interaction with, learning about and the relevance of any other aspect of that system are removed from perception: a decision of the Supreme Court of France (the Cour de Cassation) is then not ipso facto irrelevant in Australia because it comes from France, a 'separate and distinct' jurisdiction. It is just another aspect, another decision, another source within the one system of which a decision of an Australian court is an equal part. Just as the concept of sovereignty has dominated international law for three hundred and fifty years, so the concept of authority dominates domestic law. As the place of sovereignty has moved on a spectrum of relevance, so has authority on a spectrum towards persuasion. But neither has totally disappeared. The analogy of oil and water drawn by Chief Justice French[xvi] is as apt in this context as it was when first drawn by Maitland when explaining the relation of common law and equity within the broader framework of the common law in the nineteenth century.[xvii]

This perception we could not have in the past, because systems were not only *legally* and thus nominally separated by notions of sovereignty and legal disconnection, but also practically, 'physically', factually separated in terms of place, methodology, education, training and culture. Now that is no longer the case. Technology has brought all systems together, as have cheap and regular transportation, open global travel etc. There is really no longer any reason to view in Queensland a decision from a court in Alberta differently from a decision of a

court in Victoria, or the legislation concerning copyright in Holland any differently from that of the Commonwealth. All of them contain valuable reasoning about common legal problems thrown up by universally occurring facts or events. We cannot simply close our minds any longer to legal rules, principles, solutions, ratios that hold sway elsewhere: there is a logical, rational deficit in doing so merely on the basis of a technicality such as sovereignty or authority. Lawyers educated and trained within one jurisdiction routinely work in and across a range of systems, countries, languages and cultures. Cross-border transactions are carried out without difficulty numbered in hundreds of thousands every day.

But how can this work? Is it possible to solve a legal problem by drawing on one global system that recognises no sovereignty and therefore no hierarchy between legal sources? It is very difficult to perceive this as possible, but really only because our thinking is rooted in an acquired, a learned mindset based on authority; but in fact it is quite simple, since not only is there a single universe of law and legal sources, there is also a single universe of law and rules about the hierarchy and application of those laws, and of course there is a single universe of 'fact'!

Common core

This brings us to a crucial topic of debate emanating from the Symposium, about the 'common core' or 'core principles', 'universal principles' of law. Is it possible to identify such a common and universal core of legal principles and teach it to all students who, with such a foundation, will be able to perceive particular rules in particular places as expressing and reinforcing these common principles? Is it perhaps in the area of procedure that it is most

easy to arrive at such a common core? For instance, consider the core principles of criminal procedure - these principles of law might include that an accused is innocent until proven guilty; that an accused cannot be expected to contribute to his or her own conviction; that any confession should be freely given; that the punishment should fit the crime; etc. These common principles then need to be worked out, and worked down into specific detail within a particular place of application and particular facts that are always varying and often novel..

Similarly the rule of law is a clear principle underlying every aspect of the administration of law whether criminal or civil. The rule of law requires a sufficient certainty about the law, so that it can be predictably applied and behaviour be set by it. No person should be subject to conflicting laws. Therefore a preference must always exist for one set of rules over another in any given place where there is not complete uniformity of the law across the globe – the latter being rarely the case since the law springs forth in different fora at the same time. The principles of certainty and unity of the law are translated into particular rules and applications in different places, but these procedural rules still have a high level of consistency throughout the global sphere. Of particular significance to a system of justice is finality - that there be a designated and independent final arbiter; and that ultimate power to apply law and order actions, and even force if necessary, must rest within a single system , always open for recourse to all, without any exception. This is a type of sovereignty, the essence of sovereignty, but it has nothing to do with nations, nationality or some contrast between the national and the international. In fact, complex sovereignties of this kind are constantly created and elaborated beyond or with disregard of nations' borders or national jurisdictions, and interconnectedness makes anything other than this disregard impossible. The legal system other than in this aspect should be seen as flat and un-hierarchical. Further there is only one law, not national and international law; like the term 'comparative law' which does

not refer to a body of law but a process or technique, there is no such thing as international law; and no such thing as national law which escapes extra-national law any longer. This phenomenon is clearly demonstrated by international commercial arbitration where the decisions are made and enforced overwhelmingly without the intervention of States and frequently without reference to technical rules of law and evidence.[xviii]

From above or from the grass roots?

There is a common view that there can be a directed global legal system or hierarchical global governance system based on legal foundations created by States. In fact, attempts at harmonization and creation of separate international legal orders only create additional complexity and uncertainty. It is an illusion, for instance, to imagine that, with the creation of a European legal order with its own institutions which attempt harmonization, we somehow created a simpler, more homogenous, less mediated legal system. In fact it has added a layer of complexity. Perhaps, it is therefore time to accept that the global legal order[xix] is about as good as it will ever get, that there is no nirvana of unity and simplicity that we can achieve by prescriptive governance. However, we *can* develop more sophisticated ways of dealing with the global web of law. We should all take away some of the focus from major international organizations with major plans and work more energetically at the grass-roots level of interaction, information exchange, and the natural evolution that results from intercourse. Global law can evolve and operate only in this way. A mandate from above by global instrumentalities does not coordinate and harmonize, but merely adds layers of complexity, and frequently generates resistance and a determination to differ. Globalization comes about

by exchange, by understanding, by natural evolution, and by the creation of the interconnections and links which are described above.

It is in this exchange of information, in this generating of interaction, contact and exchange that the legal academy and the legal profession can play a direct role, by intermediating, translating, and seeking to understand and explain across language and cultural difference. That is the level at which law faculties should be active, and that is how law schools should teach their students.

Turning a blind eye?

The critical point here is that, as pointed out above, we are now at such a stage of integration, interaction, connection and collaboration in law between all quarters of the world, that it is time to make the conceptual leap and see the world as riveted together by a single integrated legal system, rather than by modular units connected in some way. We reiterate this here because we must draw the inescapable inference that our teaching, and the research that supports it, should recognise this new reality, and adapt.[xx] If sovereignty in the traditional sense is a dying concept, then so is comparative law in the traditional sense of the word: that discipline presumes fundamentally different systems, standing apart, sovereign and singular. If we view the law as formulated, as applied, as emanating from authorities in different countries as part of one seamless totality, we can have a different perception: no longer are we studying different systems, but we are studying one and the same system, in which actors behave with a degree of disparity; but then actors in any given system do. That perception

should be our starting point for the explanation and teaching of the law, rather than something that is drawn into the debate during the latter stages of teaching as a ‘By the way…’.

We recognize that anything happening anywhere within the system may have an impact anywhere else in the system. A decision of a court situated remotely from the observer can have – in fact always does have but to varying degrees – an impact; since it is all one system, the decision modifies the totality of the system of which the observer, the decision-maker, the reasoner is apart. It changes our position wherever we may be, and whether we know it or not. However, its degree of impact will vary considerably. The closer the connection, the greater is the proximity of the sources. But since it modifies a point of the system to which we also belong, it modifies us.

This perspective has a considerable impact on how we perceive every aspect of the life of the law: of research, teaching, practising and authoritatively applying the law. It accepts what is a reality of today: that none engaged with the law can turn a blind eye to what happens elsewhere, because of the simple fact that it is there, accessible, available to us via the internet and other technological means. One can only truly ignore what one does not know. If one ignores what one knows, some reason must exist, must logically be proffered for doing so. If daily in our inbox we receive an email with recent legal developments around the world in an area of law, then we must have some reason, some rational position as to whether and why what we so learn is significant or insignificant – whether to tell our students or not ? We must in other words operate under some written or unwritten set of principles which apply to this foreign legal information. Even if we decide to ignore some piece of information on some basis, that decision integrally connects that piece of information to our conceptual framework, whether we consciously perceive it as such or not.

The Symposium at Bond

For us it is this sense that we are at a point where information and knowledge about the law around the globe is so readily available to us, thrust in upon us, that the choice of the topic of 'Internationalization of Law: Legislating, decision-making, practice and education' for the Symposium marking 20 years of Bond University Law Faculty History was such an obvious one. The Bond Law Faculty has always maintained a very international perspective, so in that sense it was also self-evident. At the same time we see all around us as academics that the legal academy is grappling with internationalization, and striking a balance between preparing students for domestic admission without ignoring the reality of the international environment so many will encounter. Further, there is a sense of a need for conversation and direct exchange of ideas on how to tackle these issues, in particular from an Australian perspective.

As was pointed out during the Symposium, internationalization is, in some ways, nothing new. But a general sense that it is now in a different league, as we substantiate above. Speakers pointed to the mobility of information (via the internet) and of people (because of cheap and easy travel and fewer legal restrictions) as one element. Others presented figures that illustrate how legal practice is going across borders: legal matters are no longer simply handed to corresponding firms, not only the major firms now expanding legal practice (either through joint ventures or establishing offices) into many other countries. Any major firm now needs to be able to deliver an integrated service to its clients, and as John Corcoran demonstrated[xxi], the legal marketplace in Australia is saturated. A further real change, as John Haley pointed out forcefully[xxii], is the emergence of China as a major trading partner to the world. It is also a country with a distinct legal culture with greater reliance on public ordering and contrasting private attitudes to the law with which the rest of the world will have to come

to terms with. The other major jurisdiction, as yet closed to foreign legal practitioners, is India. The emergence of such major players 'completes' the international legal scene, and adaptation becomes unavoidable for every country. However, mobility and communications across borders also affect smaller firms or local practice: families are dispersed across the globe, as are assets; and ordinary people travel and have difficulties in foreign climes.

At the same time legal practice has undergone a process of commodification. Law is a business and as such actively pursues new opportunities and new markets: as a service industry, as domestic work becomes saturated (Corcoran), it operates in global markets where its competitors are, and into which it follows its clients. There is a trend towards liberalization and lowering or removal of barriers – what are the limits of this trend? Legal services are part of international Free Trade Agreements. Different organization of the profession and differences in relation to market access and transparency of regulation still persist – for example, in India the profession is completely closed to foreigners (Corcoran)[xxiii]; and there are still very small numbers of lawyers in Japan (Beyer[xxiv]).

Further, international trade is constantly increasing, whatever the setbacks may be with the World Trade Organization negotiations in the current Doha Round. The financial system that supports trade and investment was shown by Lawrence Baxter[xxv] to be both fundamental and a nerve-system that interconnects every central bank, every finance house across the globe, whether willingly or not. The integration and interaction that accompanies it requires development of a cross-jurisdictional rule-system into new areas. As Patrick Quirk showed[xxvi], the internet itself also requires such rules to be developed in more and more areas: for example, privacy; consumer protection; contract formation; intellectual property.

These developments make it simply impossible for any lawyer, whether teacher, researcher, practitioner or adjudicator, to stick their head in the sand and pretend to be able to teach, research, practice and judge as if only the national or local jurisdiction exists and the rest of the world can, or should be, ignored. And as Justice Finn urged, the rest of the world ought not to be ignored, there being an inherent benefit in the development of the law in having proper regard for the law and legal cultures[xxvii] (perhaps jurisprudence as referred to by Valcke[xxviii]).

While no jurisdictions can live in isolation from others, which press in on it, this is also the case with legal 'families'. The excuse 'but that is a different country's law' cannot be abandoned in favour of 'but that is a civil law system (and vice versa)' without more. As Bogdan pointed out,[xxix] many systems are already very mixed. This is not only the case in the new market economies (ex-Soviet states) but also in some countries that have not undergone a process of reception in recent times, such as Canada (Quebec), some parts of the US (Louisiana) and Hong Kong. Within legal families, we are accustomed to far greater regard for other jurisdictions – coordination and harmony between the common law as developed by the judges of the common law world was a higher good until recent times. Now such effort as there is at coordination is directed elsewhere: in the case of the UK, toward Europe; in the case of Australia, perhaps inward.

Internationalization and the study of law

What effect does greater international integration have? One is to reinforce a questioning approach to what we do in law faculties. In any case, this constant questioning of what we do

and what we teach, the constant testing against measures and standards, is an essential part of teaching in the academy – exposure to foreign cultures triggers this self-examination, and presents us with a new standard or reality to measure against.

This rationale for studying law across borders has always existed, but in today's integrated world more hard-edged rationales are added. The global lawyer practices in a world without borders, where he or she constantly transitions from one legal order to the next, so that the distinctions between legal orders in fact become blurred? What does a lawyer practicing in such an environment, daily confronted with such a reality actually look like?

Another effect of internationalization is that we have to deal with the difficulties which the coexistence of different legal orders pose – an order of complexity which was in earlier times more limited. Such an order of complexity requires some coping, and one message emanating from the Symposium was that it can be dealt with only by drilling down to what lies underneath. Complexity can be resolved only by simplicity, by the consistent application of core truths or principles. This takes us back to the general agreement that legal training in the new world order requires the elucidation, study, training and commentary upon core principles, a common core of law as a fundamental starting point of all legal training. This also requires emphasis for the importance of similarities more than difference. Where such similarities are perhaps most readily identified is in the common methodologies of the law: of legal reasoning or problem solving – such as mentioned by Gautier:[xxx] the use of analogy; that body of principles of statutory interpretation in the common law world. This focus on core and on simplicity also puts into perspective how we teach. During the Symposium there was considerable collaboration in the attack on the case-based or fact-based teaching methods commonly employed in the common law world, as against the principled method,

although rigorous case-based teaching leading to the induction of principles is effective, but it is time-consuming and frequently thought unnecessary in areas where statutes dominate.

In terms of identifying and studying principles, being the core elements of the law, there was much emphasis on the study of model laws and laws and rules, for instance as used in arbitration. In various for a, model laws for international use have been carefully elaborated, for example, in the context of arbitration and international contracts. These can form a ready starting point for the study of common core of law, and they are not simply theoretical constructs, but living principles applied every day in international arbitrations and contract negotiations around the globe. We point to arbitration as an example of a civil law/common law amalgam: with the development of arbitral jurisprudence; and the publication of awards leading to a body of law or accepted practice. There is a high level of compliance and apparent satisfaction with the process. It is also demonstrated in the phenomenon of 'amiable composition', namely that law may be dispensed with entirely and yet a just and acceptable decision attained. Lawyers not necessarily qualified to practice in the seat of the arbitration participate in arbitrations. Arbitrators are private persons of diverse nationality, but they may settle questions of significant public law, especially in the busy field of investment arbitration governed by international treaties. Arbitration is a stalking horse, leading and harmonizing effectively, though not without some controversy and debate.

It was also pointed out repeatedly at the Symposium that many sovereign systems are in fact recognized as hybrid systems: bringing legal families together can be done and is being done on a daily basis in many countries, or in the context of supranational jurisdictions such as the European Union. These therefore form a particularly relevant object of study. In the field of international criminal law there is also a hybrid body of law which can be studied to great

effect as it combines elements of common law and civil law systems. It is ‘common core in operation’.

Further, significant in this context of the common core of skills of lawyers, is to emphasize teaching how to learn rather than what to learn. Another emphasis on similarity rather than difference focuses on skills- based teaching and learning, accepting that lawyers have and law students are attempting to acquire common skills, centred on persuasion in different skills of advocacy, of mediation, or persuasion. These can be analyzed taught and practiced universally. Bogdan pointed out that principled core-focused learning can be done by exposure and contrasting, and by building in experiences across different jurisdictions, which inevitably focuses the mind on commonalities[xxxi]. In this context, Farrar[xxxii] pointed out that more focus was required on comparative methodology; however, the divergences and disagreements in the literature are legion.

The identification of common methodologies assists with building coherence, identified as a core aspiration of legal research and comment. The need is to cut through complexity in a world where there are so many more sources, so much more information, where so many interactions and apparent complexities exist. This is an important and unifying role of the academy or scholars, and perhaps requires a closer and more positive symbiosis between courts and scholars. This institutional separation is certainly a hindrance to an integrated view of the law. However, acceleration of the volume of material available, through technology and mobility, also increases the need for intermediation and clarification and selection; this becomes a vital part of the role of teacher and analyst. And it cannot be ignored that although physically more material is available every day, real accessibility in crucial ways is still hampered, for example, by language, by poverty, by general ignorance and through lack of

education. Overcoming the limitations is an important part of every lawyer's aspiration and of the teaching profession in particular.

Unfortunately, as was identified during the Symposium, the realities of practice, the realization of commentators concerning the fact that it is impossible to subsist, teach and research in the context of a single free-standing jurisdiction is not matched by the regulatory environment. Curriculum and administrative restraints stand in the way, although more in some jurisdictions that others, since academic studies are more closely connected to practice in some (such as Australia where a recognized academic law degree is an entry ticket to the profession). In particular in this country, the Priestley eleven[xxxiii] does not require international perspectives or exposure, and therefore requires review. In fact internationalism can offer a way through the liberal vs professional school dilemma.[xxxiv] It is a way of studying, an attitude to the law which takes it beyond a narrow technical art and into a broader sphere and more contextual situation. Considering the law in other jurisdictions forces one to see the law, to think about the law in context, that is against a specific social and cultural background, and not as a technical, self-sufficient rational system. The same objective is achieved though a study of the history of the law, which leads to the conclusion that it is an organic, rather than a planned, phenomenon. The importance of legal culture emerges from a world view of the law, which applies to the culture of the jurisdiction as a whole but also more specifically to the culture of lawyers, their mindsets, self-perception and attitudes, which themselves form an important part of the totality of the law.

Another unifying discipline is to develop a common discourse and taxonomy, a role peculiarly allocated to the academy: a discourse about difference which accommodates contradictions and disagreements. Boulle pointed out in this context that there is increased

tension between plurality and harmony with an increase in globalization – as through the spread of Islamic law and practice[xxxv]. Farrar pointed out that the idea of convergence is perhaps naïve;[xxxvi] again this is something that can be overcome by accepting difference, developing a taxonomy to deal with it, and considering the law as one global system, integrated but not necessarily uniform. Another counterforce to harmonization is competitive regulation.

This need for a more sophisticated discourse about difference, about the tension between integration and jurisdictional diversity is required to overcome isolationism and judicial resistance.[xxxvii] Simple outright rejection of foreign approaches to legal problems and issues is no longer acceptable – it requires more 'taking seriously', more contemplation and less arrogant consideration of why foreign legal sources or information and knowledge may be relevant.

Things to consider

So we are left with the question: 'what to do?' Of particular interest to us is what can and should we in law faculties, in the legal academy do? Obviously the question is just as pertinent to the other branches of the legal profession, but the focus below is on teaching/learning and research.

1. One theme that emerged strongly and consistently throughout the Symposium was that we should focus on developing and studying the 'common core' of law around the world. This tended to then be split into two subject areas: a common core of substantive law

‘principles’; and a common law of procedural principles. The advantage of this approach is twofold: first, it forces us to reflect on and analyse what the law has in common across jurisdictions, what its core values are and how they are expressed in principles, and this across all areas of law. In other words, core principles of commercial law (including contract); of delict (tort); of basic rights (freedoms); etc. Secondly, the teaching of a common core instils in students a knowledge of what we have in common and how it finds expression in different jurisdictions – it generates a common language of recognition, exchange and understanding. That forms a platform for work in the law.

In relation to common principles of procedure, taking as a starting point the basic requirements of a just and fair system of administering the law, then allows us to investigate how these principles are brought into existence in different places, and the systems’ design choices that have been made in different countries. It fosters discussion about the pros and cons of different ways of administering disputes or dealing with criminal cases.

2. A further and related theme that emerged was that much can be gained by all students studying, on the one hand, hybrid legal systems; and on the other hand, arbitration; and thirdly, international criminal courts and the like, where global legal principles have been amalgamated and filtered into one body of law or principle. Studying mixed jurisdictions (some of them emerging developing or post-communist, as described by Bogdan[xxxviii]) allows us to emphasize how it is possible to bring together varying legal traditions and make a working system. It allows us to study what is adopted, what is abandoned, and why, and therefore drill down to some core issues in the administration of law.

Apart from choosing some mixed jurisdiction(s) to study there is also great benefit in studying arbitration, in particular the procedural rules developed and applied. The lack of widespread publication of arbitral awards is a difficulty, but plenty of information is available in written form about procedural aspects, and from arbitrators in person. Again the world of arbitration is in a sense a mixed system, from which much can be learned broadly about the law, and about particular jurisdictions by contrasting. Further there are a number of new institutions, in the public law sphere, which have had to develop, because of their multilateral and collaborative nature, a set of rules and principles, which are substantive to a degree but certainly procedurally satisfying to lawyers from very different jurisdictions. The International Criminal Court is a prime example; the importance of those rules, concerning as they do criminal justice and thus the freedom of the individual, has meant that there has been very close scrutiny and that there will be a developed jurisprudence which can be studied. The study of such a body should be a point of departure for criminal law, rather than something like postscript studied in the rarefied air of select advanced courses at post-graduate level.

Separate but connected is the study of areas of law that are directly impacted by internationalisation, such as internet privacy.

3. A third point that seemed to garner a lot of support is the importance of research into and study of common methods of reasoning and problem solving in the law. Gautier[xxxix] referred to some of these, such as reasoning by analogy, but even more basic forms of reasoning and logic essential to legal argumentation and persuasion should be studied. For instance, reasoning by inference, questions to do with the nature of relevance, and how to deal with and reason with facts, legal facts, and consequences. A fair dose of legal philosophy will find

its way into studies of this kind, and therefore of fundamental thinking about different attitudes to law: is there a legally correct answer to any problem; or just a more persuasive one; what do we seek when 'solving' a legal problem?. There are many basic issues about which there is much disagreement.

This point leads us to the next topic, that of teaching and studying the skills of lawyers, on the assumption that these skills are fairly homogenous across the world. One of those skills is the capacity for legal reasoning. Other skills are more practical and direct: how to resolve conflict by various processes and procedures; advocacy, whether oral or in written submissions; mediation of legal disputes; and legal research and writing. In other words, it is important to identify, study and practice common or universal legal skills, in the process paying attention to how these skills receive varying emphasis in different jurisdictions (for example, oral advocacy is less significant in the civil law countries) and to explore why that is), and by those means learn about the different ways in which things are done in different countries.

An important suggestion is to introduce students to the realities of international, cross-border legal practice. This will require a greater involvement of the profession with law faculties, in support of teaching in a range of subjects, or as a free-standing compulsory exercise towards the end of the degree, an international capstone course.

4. A connected point that was oft-repeated, is that in an integrated world where students have more and more access to more and more materials from across the world, but perhaps with less effective/intrusive intermediation, it is important to develop and teach how to use technology effectively. How do we develop common methodologies of filtering and

prioritising legal sources? Where do google searches sit in the pantheon of legal research techniques – a necessary evil or a crucial starting point, something to be pursued when and how? Which databases should be consulted and what search techniques can be used? How do we deal with foreign language sources and materials, and with translations of 'authentic' texts?

5. Throughout the Symposium, the connection between law and cultural and social norms was also emphasised. Law is partly explained by context, by attitude, by history, by culture and by self-perception. This realisation and the analysis that logically follows from it is fundamental to teaching the relativity of law. It tends to take law away from being a logical sovereign system, a closed system that stands unconnected to society and to other such systems. Law in context places particular legal issues in that context and helps to resolve them.. This necessitates bringing in academics and practitioners from other countries who can add this cultural nuance. It emphasises the need for exchanges at the personal level – that students and lawyers in general should travel to other countries to study the legal system in its native environment, rather than from afar as a technical exercise standing remote from cultural and social reality.

6. So what stands in the way of human exchanges and movements across borders in the world of the law? One obvious obstacle is admission rules, and there was universal support for relaxing jurisdictional admission rules on the basis that competition will take care of the consumer, and to seek to persuade admission authorities of this goal. The other point emphasised was that law faculties can teach a curriculum in ways which make it easier for graduates to obtain admission. This can be done by having uniform or homogenous core

curricula. There was support for the development and adoption of such a curriculum by law faculties in different jurisdictions working together.

Indeed collaboration between willing and interested law faculties on the development of a core common curriculum may be one of the most important initial steps/initiatives that this Symposium can propose. A working group could be composed of representatives from different law faculties across the continents to work up a ‘common core curriculum (CCC)’. This was suggested at the Symposium leading to the conferring of an ‘International Legal Baccalaureate’.

7. Since more integration and collaboration across borders, between students and lecturers in different countries, making more use of technology, was something that attracted much support, the elaboration of the CCC could be a ‘stalking horse’ for such collaboration. It would trigger the need to review each faculty’s own programs and approaches and give an incentive to internationalisation.

8. Finally, it was much repeated that it is important to develop common taxonomy and methodology when looking at diverse legal systems.

Starting point

We suggest that there should be formed a working group of willing faculties across borders to pursue work on a Common Core Curriculum or International Legal Baccalaureate. The common core should not be elaborate and detailed, but it should not so general that it could

not be taught in one standard tuition period. It should attempt to cover all areas of law. This work could begin between scholars and schools that have a recognized exchange relationship.

Much of the preparatory work is already under way. There may be further particular courses to be designed and experimentally taught; and course materials to be developed. There are already examples of joint degree arrangements so that students can experience in a substantial way being part of two learning environments, satisfying the regulatory requirements of two jurisdictions at least with the same preparation. With technology, interactive classes can be and are taught simultaneously by the same person, although the members are distant in time and space from each other. Substantial learning now takes place through such mooting competitions as the Jessup Moot, the International Criminal Court Moot, and the ELSA/WTO Moot Competition, in which identical problems are mooted by nationally disparate teams, using the same skills of research, writing, and argument, and based on the same principles and concepts of law. The achievement of this goal of an international baccalaureate based on a common core of principles of law should be seen as a realistic ambition of this generation of legal scholars and teachers.

[i] *See* Lawrence Baxter, 'Internationalisation of regulatory policy: the case of financial markets and the global meltdown' (2009) *Presented at the Bond University 20th Anniversary Symposium*, 26-27 June, Bond University, Faculty of Law, Gold Coast

[ii] [1932] AC 562 (House of Lords)

[iii] This begins with the decision in *Heaven v Pender* (1883) 11 QBD 503 (English Court of Appeal)

[iv] Harvard University International Office, 'Student statistics' (1 November 2008) < http://www.hio.harvard.edu/abouthio/statistics/studentstatistics>

[v] Columbia Law School, 'Frequently asked questions: International Students' (2009) <http://www.law.columbia.edu/jd_applicants/faqs/international>

[vi] Open Doors 2008, 'Table 16: International Students by Field of Study' (Report on International Exchange, 2008) <http://opendoors.iienetwork.org>

[vii] UK Council for International Student Affairs, 'Higher Education Statistics' (2008) <http://www.ukcosa.org.uk/about/statistics_he.php>

[viii] Brazil, Ministry of Education, Administration rule no 1.886/94 (Official Gazatte, January 4th, 1995 238)

[ix] Neville Botha, Committee on the Teaching of International Law, 'The Situation in South Africa' (2002, Second Report of the New Delhi Conference) <http://www.ila-hq.org>

[x] Jeremy Gilling, 'Globalising the law degree' (2 February 2009) *Campus Review* < http://www.campusreview.com.au>

[xi] The University of British Columbia, 'JD first year curriculum' (2009) <http://www.law.ubc.ca/current/jd/curriculum/year1/index.html>

[xii] LLM Guide, 'A Gateway to the east' (10 December 2007) <http://www.llm-guide.com/article/245/a-gateway-to-the-east-asia-focused-llm-programs>

[xiii] Hachiya Michiko, 'Proposal three: LLM on Asian law (English language)' (Kyushu University Faculty of Law, 2003) < http://www.isc.kyushu-u.ac.jp/intlweb/_html/intlweb/html/opcia/asiaconf/hp/HP/Abstract-Law.pdf>;

[xiv] Columbia Law School, 'Peking University Semester Exchange Programme' (2009) < http://www.law.columbia.edu/center_program/intl_progs/Semesterstudy/Peking>

[xv] 'Comparative law' is in any case a rather contested discipline. Is it clearly not law in the sense that tax law, corporations law and the like are. People who view themselves as comparative law scholars clearly have very varying views of what that means, what the merits and goals, benefits and dangers of comparative work are.

[xvi] *See* Chief Justice Robert French, 'Oil and water: International and domestic law in Australia' (2009) *Presented at the Bond University 20th Anniversary Symposium*, 26-27 June, Bond University, Faculty of Law, Gold Coast

[xvii] Frederick Maitland, *The forms of action at common law* (Cambridge University Press: Cambridge 1962)

[xviii] The numbers of awards handed down in institutional arbitration has increased by up to 80% in the last decade.: Doug Jones, 'Challenges for international dispute resolution in the global financial crisis' (2009) *Presented at the Chartered Institute of Arbitrators*, East Asia Branch, 4 May, Hong Kong. It is

true that there is an underlying network of international treaty in the New York Convention on the Recognition and Enforcement of Arbitral Agreements and Awards, but almost all arbitral awards are accepted and honoured by the parties without court intervention.

[xix] 'Global' is a nice term because it avoids the contrast between national and international.

[xx] Luca Melchionna, 'Transitional Study Programs and the Global Law School' (2009) St John's Legal Studies Research Paper No.09-0164

[xxi] *See* John Corcoran, 'Law: A global practice – perspectives on the liberalisation of legal services markets' (2009) *Presented at the Bond University 20th Anniversary Symposium*, 26-27 June, Bond University, Faculty of Law, Gold Coast

[xxii] *See* John Haley 'Lawyers in Magellan's World' (2009) *Presented at the Bond University 20th Anniversary Symposium*, 26-27 June, Bond University, Faculty of Law, Gold Coast

[xxiii] *See* Corcoran, note 21

[xxiv] *See* Vicki Beyer, 'Internationalisation of legal practice: the Japan experience' (2009) *Presented at the Bond University 20th Anniversary Symposium*, 26-27 June, Bond University, Faculty of Law, Gold Coast

[xxv] *See* Baxter, note 1

[xxvi] *See* Patrick Quirk, 'Internationalization of legal research: finding facts and finding law before the next big crash' (2009) *Presented at the Bond University 20th Anniversary Symposium*, 26-27 June, Bond University, Faculty of Law, Gold Coast

[xxvii] *See* Justice Paul Finn, 'Internationalisation or isolation: the Australian cul de sac' (2009) *Presented at the Bond University 20th Anniversary Symposium*, 26-27 June, Bond University, Faculty of Law, Gold Coast

[xxviii] Catherine Valcke, 'On comparing French and English contract law: insights from social contract theory' (2009) < http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1328923>

[xxix] *See* Bogdan, Part 4

[xxx] *See* Pierre-Yves Gautier, 'The Influence of Scholars Upon the Courts in Europe' (2009) *Presented at the Bond University 20th Anniversary Symposium*, 26-27 June, Bond University, Faculty of Law, Gold Coast

[xxxi] *See* Bogdan Part 4

[xxxii] John Farrar (2009) *Presented at the Bond University 20th Anniversary Symposium*, 26-27 June, Bond University, Faculty of Law, Gold Coast

[xxxiii] The Law Admissions Consultative Committee (LACC) Prescribed Academic Areas of Knowledge are known as the 'Priestley Eleven' after the longstanding chair of the predecessor Committee, Priestley L.J. They are the various areas of academic study which someone seeking admission to the legal profession in Australia on the basis of an Australian academic qualification, must have successfully completed before applying for admission

[xxxiv] For a classic exposition, *see* William Twining, 'Pericles and the plumber: an inaugural lecture to the Queen's University of Belfast' (1967) 83 *Law Quarterly Review* 396

[xxxv] *See* Laurence Boulle, 'International arbitration and competing dispute resolution options' (2009) *Presented at the Bond University 20th Anniversary Symposium*, 26-27 June, Bond University, Faculty of Law, Gold Coast

[xxxvi] *See* Farrar, note 32

[xxxvii] *See* Justice Paul Finn note 27

[xxxviii] *See* Bogdan, Part 4

[xxxix] *See* Gautier, note 31