

# THE TRANSNATIONAL LAWYER: GATS, GLOBALISATION AND THE EFFECTS ON LEGAL EDUCATION

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*The emerging transnational agenda has been evident generally in the Australian education sector in recent years, but none more so than in the tertiary legal education environment. Noteworthy factors have been the increasing number of deputations between Australian university law faculties and foreign university law schools including India, China and South East Asia, the increasing numbers of special relationship arrangements between Australian and overseas law schools, the importance placed on increasing the international student numbers at home, and more recently new legal education associations being established at an international level. However, these aspects of the change are only the 'tip of the iceberg'. Economic forces from the agreements on international trade and in particular the trade in legal services are the drivers and they underpin these activities. The services sector is Australia's fastest growing exporter.<sup>2</sup> Exports in professional legal services increased fourfold in the 1990s.<sup>3</sup> Technological advances and international harmonisation of law form the necessary context.*

*This article firstly defines the terminology of this new post-industrial era in law. What is transnational law and what exactly is a transnational lawyer? The article examines the various contextual issues and asks to what extent the changes are pre-determined by the meta-forces such as technology and globalisation. Next it attempts to assess the effects the General Agreement on Trade in Services and other bilateral agreements are having on Australian legal education. Finally, it questions how the law schools are preparing their students for this transition. After all, the twentieth century lawyer needs to have a good understanding of the transnational legal environment because international concerns and agreements in this century are pervasive and encompass virtually all branches of human activity—'from the ocean floor to the planet's climate to outer space'.<sup>4</sup> This article argues that legal educators need to be more aware of the changes and be pro-active in changing to meet the challenges.*

## I WHAT IS TRANSNATIONAL LAW?

Transnational law is not simply another name for international law. It is more than simply the 'interaction between states'.<sup>5</sup> It concerns the way foreign law affects laws and regulations within any individual country. It includes any laws which deal with events that 'transcend national frontiers'.<sup>6</sup> Transnational law exists on a 'supra-jurisdictional level'.<sup>7</sup> It is a consideration of a process, 'the transnational creation of law', rather than about 'traditional closed legal categories'.<sup>8</sup> The transnational practice of law involves more than legal advice on the basis of local law, or legal representation before domestic tribunals. It calls upon lawyers to do more than be skilled in the law in their own jurisdictions. It needs for them to have some grounding in a variety of international legal regimes and be able to handle legislation and caselaw from foreign legal

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regimes and cultures with understanding and sensitivity to their influence on the home law.<sup>9</sup> Therefore, both the term and the concept call for transformation and change.

Transnational law includes, for example, public international law, private international law and internationally endorsed model laws. It includes the relationships between states and the creation of supra-jurisdictional international bodies, such as the World Trade Organisation enhancing liberalised trade regimes and leading to global markets.<sup>10</sup> It covers international commercial law, and the traditional area of conflicts of law which tend to be worked out by individual jurisdictions. Even the international rules separate of state's wishes such as rules relating to international arbitration, pollution and refugees, developed through practice, would be encompassed in the term.

Can legal theory elucidate this definitional process further? Postmodernism suggests we define ideas in respect of their opposites. Is sovereignty the opposite of transnational for example, in the same way that global markets are opposed to protectionism? The United Nations Charter supports the sovereignty of nations. Will transnational forces in law lessen sovereignty? Modern states continually resist the legal power of international and supranational organisations to intrude into their own internal national affairs and government. However, while states tend to resist any attempts at infringing their sovereignty, the forces can not be ignored nor will they disappear. For that reason academic commentators have observed clearly that the 'next generation of lawyers will need to operate within the context of increasingly multilateral legal regulation, even over areas of law that have traditionally been regarded as within the exclusive domain of the sovereign state'.<sup>11</sup> The challenge will be to engender a breed of lawyers who can manage these forces effectively while retaining an excellent knowledge base within their own sovereign state.

## II WHAT ARE THE IDENTIFYING FEATURES OF THE CHANGING ENVIRONMENT?

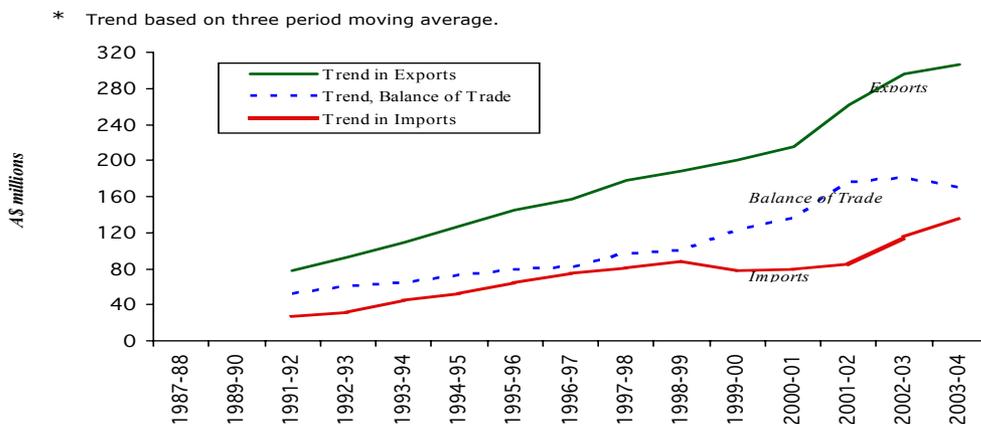
There are several factors typifying the current context. These include a new 'interconnectedness' of the world environment influenced by global developments, new communication and transport technologies, and the internationalisation of legal work and professional frameworks.

An example of this new interconnectedness of the world environment is the worldwide alliances being formed against terrorism in the wake of September 11. Interdependence is forcing states to develop co-operative solutions to major world issues. Important areas such as human rights, international trade, the environment, international criminal justice, natural resources and indigenous rights all require a global approach.<sup>12</sup> There are other signs of global frameworks—the prominence of the World Economic Forum and the work of the UN generally.<sup>13</sup> The formation of the European Union represents another force in harmonisation. This entity aims to retain the sovereignty of the individual nation states while increasing the ease of travel and trade through more seamless transitions for people throughout Europe. The International Court of Justice and the International Criminal Courts enforce international standards of conduct and resolve international disputes. Human rights norms are pervasive and reflect the benchmarking of conduct through the European Court of Human Rights.

The growing trade in the export of legal services is linked inextricably to globalisation and competition within global markets. The following Table taken from the Australian Bureau of Statistics data demonstrates the increasing trends in trade in professional legal services between 1987 and 2004.<sup>14</sup>

Transnational relationships are cost-effective because of the access to instantaneous and relatively cheap communication—mobile phones, email, text, blogs, teleconferences and internet

## Trend\* - Trade In Professional Legal Services



Source: ABS Cat 5302.0

telephony packages such as Skype. Information communications technology, including the ubiquitous Internet, is having an amazing effect on access to information. The power inherent in controlling information through broadcasting and television is transformative. This is about speed in communication, flexibility in dealing between different timezones and mediums. Improved transport technology and global competition between the airlines also allows speedy movement of increasing percentages of the population around the world. This context provides a transformative aspect of the current world context.

Unfortunately, some nations and peoples have more power to influence these changes than others. Not all nations are wealthy enough to have access to all these technological and communication resources; and not all citizens of even the wealthy nations have that access. This situation breeds inequality and resentment—but that is a separate issue altogether. However, some previously third world countries such as India are striding ahead in the new technological arena. Even the poorest subsistence farmer is likely to be affected by global markets although the farmer may not be aware of how the forces are working or have the power to drive or fight those forces.

Therefore these forces are leading to an internationalisation of legal work itself in areas as diverse as fishing, trade, foreign investment, international expansion and mergers.<sup>15</sup> The global law firms' work will increasingly be the servicing of the specific rules contained within a transaction, and arranging private dispute resolution. Many commercial deals include a private consensus as to which law is to be applied to the contract.<sup>16</sup> New norms of legal practice are developing, spurred on by business expediency and trading imperatives. This is backed up by a growing trend away from adversarial means of resolving disputes towards mediation which fits more closely within commercial and non-common law frameworks. However, national laws must still play a part where the dispute resolution falls down, and of course national governments and courts are most keen to see their own laws apply. Thus local legal knowledge remains a valuable (and necessary) asset.

Lawyers need to be well-versed in the law in their own jurisdiction to facilitate foreign investment. On the other hand, those same lawyers will be looking for help for their own clients

who want to invest overseas. This will lead to more mega-firms being established to cater for these needs—multi-jurisdictional and multi-disciplinary, and including expertise in language, culture, technology, management and networking abilities.<sup>17</sup>

These forces have led to changes in the legal profession framework. The last ten years have witnessed much more cross-jurisdictional work between Australian states and territories. There are many more legal firms organising on a national basis. In addition, it has been noted that Australian legal services have already begun to organise their work on an international basis because clients are demanding legal and professional services ‘that are delivered on a global scale at predictable standards worldwide’.<sup>18</sup> Multi-disciplinary partnerships which were once outlawed are now providing a one stop shop for ideas and services.<sup>19</sup> This means that accountants, tax specialists and lawyers are banding together to provide a more complete service.

Services are usually subject to restrictions not through tariffs, but through regulations on the provision of those services.<sup>20</sup> In order to practice in Australia for example, foreign lawyers need accreditation. The *Model Practice of Foreign Law Bill* (1996) which was drafted by the Standing Council of Attorney-Generals allows lawyers accredited in other jurisdictions to practice foreign law in Australia. Uniform requirements for admission to practice among the Australian states and territories are leading to a truly national legal profession. This will enhance Australia’s ability to ensure consistency in the quality of overseas lawyers allowed to practise law in Australia.<sup>21</sup> Where Australian lawyers intend practicing overseas, there are various bilateral agreements paving the way.

All of these factors therefore—technology, globalisation and financial trade imperatives—are leading to a context that is forcing change for lawyers. Legal educators need to produce the goods in terms of lawyers who know and can work with the law in their own jurisdiction. However there is money to be made in the larger world market for those lawyers trained to take on other legal specialisations.

### III NEW TRADE AGREEMENTS

There are several trade agreements that have affected the current situation quite drastically. The principal ones are the General Agreement on Trade in Services (GATS), and the Australia-US Free Trade Agreement.

#### *A General Agreement on Trade in Services (GATS)*

GATS was concluded in 1994, in the Uruguay round of trade negotiations. It is a World Trade Organisation (WTO) agreement to provide for the liberalisation of services. GATS is designed to facilitate international trade and provide a major step towards the liberalisation of the service industry,<sup>22</sup> while providing economic growth for treaty members. Continual rounds of negotiation are intended to lead to increased liberalisation. According to the most favoured nation treatment, a major principle underpinning the GATS trading system, the service providers from either Australia or the US are not to be treated any differently from any provider of a service from a third country.<sup>23</sup>

‘Service’ is defined in the Treaty to include any service, other than those supplied by a ‘governmental authority’.<sup>24</sup> Part III contains Specific Commitments with respect to market access. In sectors where market-access commitments are undertaken, a Member shall not maintain:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.<sup>25</sup>

The GATS treaty is designed to increase export opportunities in professional services.<sup>26</sup>

### *B GATS and Legal Services*

At the initial 1994 introduction, legal services were left off many of the countries' schedules of liberalised trade services, and those who did recognise legal services included a large number of limitations.<sup>27</sup> GATS now requires signatory nations to make legally binding commitments to the improvement of trade in legal services.<sup>28</sup> These requests have also covered allowing Australian lawyers to practice whether in Australian law, international law, a third country law where qualified, and all without the need to have to undergo any 'onerous criterion' in order to practice the law in the jurisdiction.<sup>29</sup> This would therefore allow firms to provide international legal services to international and local clients.

Australia's negotiation position has been to support a limited licensing position.<sup>30</sup> This allows a 'limited' right to foreign lawyers 'to provide advisory services in foreign and international law, but not a right to provide advisory services in the laws of Australia or appear before Australian courts to represent clients, unless the foreign lawyers have fully satisfied the admission requirements to practise the laws of Australia'.<sup>31</sup>

### *C Australian-United States Free Trade Agreement (AUSFTA)*

GATS is not the only ongoing agreement affecting the legal services market. The Australia-US Free Trade Agreement began on the 1st January 2005, after implementation legislation was entered into by both governments in November 2004.<sup>32</sup> The US is the biggest importer of services.<sup>33</sup> Australian services exports to the US are approximately \$4.4 billion.<sup>34</sup> The services part of AUSFTA is designed to prevent regulations hindering market access, such as limiting service providers, service transactions or natural persons.<sup>35</sup>

The Australian and American governments are required to provide two things—national treatment meaning foreign service providers are given the same treatment as the service providers of the home country and most favoured nation treatment where the service providers from either Australia nor the US are not treated any differently from any other provider of a service from a third country.<sup>36</sup>

The services liberalisation under AUSFTA is more extensive than under GATS, and aims to ensure that there will not be any discrimination; for example the US is unable to limit the suppliers of a service.<sup>37</sup> In regard to overseas (US) students, the education sector benefits from the non-discrimination treatment because it ensures recognition of Australian degrees in the US, and in terms of recognition of degrees, the agreement creates a framework for the accreditation and licensing of professionals.<sup>38</sup> However, in terms of the effect of AUSFTA on legal service provision in the US, Chris Arup has concluded that we are ‘unlikely to see any Australian growth into the American legal market’.<sup>39</sup> This is because the regulation of the legal profession is conducted by the states in the US, and as the US has reserved the non-conforming status of the states, then AUSFTA will be unlikely to have any immediate effect.

#### IV WHAT HAS BEEN THE GOVERNMENT’S RESPONSE TO THE CHANGING LEGAL ENVIRONMENT?

There have been two main responses to facilitate this new environment.<sup>40</sup> The first has been legislation based. New legislation has aided foreign lawyers in gaining practice rights in Australia. Secondly the government has established the International Legal Services Advisory Council or ILSAC to provide advice on developments in the area.

##### *A New Legislation*

As discussed earlier, the Standing Council of Attorneys-General (SCAG) agreed to implement the *Model Practice of Foreign Law Bill*. This has been enacted in several states and paves the way for foreign-trained lawyers being allowed to practice in Australia. Most of the states have opted for a limited licence approach. South Australia has opted for a minimalist approach which means that a person may practice foreign law without committing an offence.<sup>41</sup> Victoria and New South Wales legislation provide examples of the general approach being adopted.

In the amendments to the *Legal Practice Act 1996*, Victoria reduced the requirements for those from foreign jurisdictions with comparable legal jurisdictions (particularly common law jurisdictions) providing they knew and respected the local laws. This means there are allowances to foreign lawyers to practice their home jurisdiction law for a limited time in Australia on a ‘fly in, fly out’ basis.<sup>42</sup> Part 2.8 of the *Legal Profession Act 2004* (Vic) provides for limited licensing. Australian-registered lawyers cannot appear before a court (unless on their own behalf), nor practice law in any Australian jurisdiction. Where Australian laws are concerned, advice can be given on Australian law where it is necessarily incidental to the work of the foreign lawyer (s2.8.6(3)(a)), and where it is given by an Australian lawyer (s2.8.6(3)(b)).

There is a limited licensing approach in New South Wales too. The *Legal Profession Amendment (Practice of Foreign Law) Act 1998* (NSW) and the later *Legal Profession Act 2004* (NSW) implemented a rule allowing local registration of a foreign lawyer. The purpose of the sections were to ‘encourage and facilitate the internationalisation of legal services and the legal services sector by providing a framework for the regulation of the practice of foreign law in this jurisdiction by foreign lawyers as a recognised aspect of legal practice in this jurisdiction’.<sup>43</sup> Multi-disciplinary partnerships are allowed between a practising lawyer in an Australian jurisdiction and someone who provides other services (but is not a foreign lawyer).<sup>44</sup>

## B *International Legal Services Advisory Council (ILSAC)*

The International Legal Services Advisory Council (ILSAC) was established within the Attorney-General's Department in 1990 to support Australia's international legal services. The aim was to develop 'a collaborative strategy for legal work', ensuring Government policies relating to international legal services are 'appropriately co-ordinated' and to provide an 'information gathering service on international legal services performance'.<sup>45</sup> Membership includes representatives of government departments, law firms, law schools and the Law Council. The objectives are to improve the 'international performance' of Australia's legal and related services—particularly international trade, education and commercial disputes in the legal system.<sup>46</sup>

ILSAC has published an *Australian Legal Services Export Development Strategy* with this in mind. In this it sets out the following principles to guide 'the liberalisation of transnational trade in legal services':

1. Formal recognition, on reasonable terms, of the right to practise home-country law, international law, and where qualified, third-country law, without the imposition of additional or different practice limitations by the host country (eg, a minimum number of years of professional experience or a refusal to recognise concurrent practice rights where the foreign lawyer's home country is a federal jurisdiction);
2. Formal recognition, on reasonable terms, of the right of foreign law firms to establish a commercial presence in a country or economy without quota or other limitations concerning professional and other staff, location, number and forms of commercial presence, and the name of the firm;
3. Formal recognition, on reasonable terms, of the right of foreign law firms and lawyers to enter freely into fee-sharing arrangements or other forms of professional or commercial association, including partnership with international and local law firms and lawyers;
4. The right to practise local law to be granted on the basis of knowledge, ability and professional fitness only, and this to be determined objectively and fairly through a transparent process;
5. Formal recognition, on reasonable terms, of the right of a foreign law firm to employ local lawyers and other staff; and
6. Formal recognition of the right to prepare and appear in international commercial arbitration.<sup>47</sup>

The ILSAC report notes a steady pattern of growth in the legal services sector. It also reports that legal education and training services are an emerging area of export growth. In particular, 'the Asian Development Bank has a Law and Development program amongst Technical Assistance and other programs which have been of interest to Australian legal services exporters. Austrade provides services to access some of this work. Australian law firms have won World Bank and Asian Development Bank work in Vietnam, China, Indonesia, Pakistan, and the Central Asian republics and other countries'.<sup>48</sup>

ILSAC is involved in many of the issues at the heart of law school concerns—internationalisation of the curriculum, admission standards for foreign lawyers, and accurate and informative publicity for Australian law schools through such publications as the annual *Studying Law in Australia*. In addition, in June 2004, it also published *Internationalisation of the Australian Law Degree*. The 2004 Report made a number of recommendations in regard to the internationalisation of legal curriculum including:

- 6.1 That a representative committee be established to develop national policy and implement strategies to promote internationalisation of Australian legal education.
- 6.2 That incentives be developed through Commonwealth university funding to stimulate efforts to introduce global legal perspectives to substantive and skills-based legal education.
- 6.3 That a model syllabus be developed to promote the internationalisation of core legal subjects.
- 6.4 That practical skills necessary for the delivery of legal services in a global context be integrated into core subject areas of Australian legal education.
- 6.5 That an inter-disciplinary approach to legal education be promoted to enable law students to engage effectively with international organisations, particularly international trade and economic institutions.
- 6.6 That a national conference be held on the impact of globalisation on legal services to raise awareness among legal academics, law faculty management and practitioners about the need for a genuinely international approach to legal education.
- 6.7 That internationalisation of the law degree be achieved without adding significantly to the substantive content of the curriculum. In particular, efforts need to be made both to revise the Priestley 11<sup>49</sup> and to ensure that an international perspective is integrated into core areas of curriculum.<sup>50</sup>

These are all crucial developments for legal education and training in Australia and must affect the law schools' agendas.

## V WHAT HAS BEEN THE LAW SCHOOLS' RESPONSE TO THE CHANGING LEGAL ENVIRONMENT?

In 2000, the Australian Law Reform Commission's view of legal education may have been that legal education had not changed sufficiently or kept up with the needs of graduates working in the new internationalised environment.<sup>51</sup> However, Australian universities are increasingly striving to be 'more competitive, and more nationally and internationally relevant' with a focus on programs being geared to employment and career development.<sup>52</sup> Unfortunately this is occurring in the face of a decline in public sources of financial support for higher education and higher student debt loads forcing employers to consider higher wages, and an ever-present grade-consciousness in both students and employers.<sup>53</sup>

There have been a number of changes in the law schools in response to the new environment. Many were canvassed in the 2003 report by the Australian Universities Teaching Committee.<sup>54</sup> Developments include more competition between the schools and the increasing use of marketing to draw foreign student enrolments. Even mooting has become a marketing tool with the publicity provided to local teams' success in international, often US-based, competitions. International law and internationalisation have gained added prominence in the curriculum. Legal skills have gained importance. Basic first year courses have been rearranged to take a broader approach so the students are introduced to many important issues (such as international and comparative law) early in the degree. Student exchanges are encouraged. There is the prevalent use of technology in teaching and in some cases the complete offering of units via the web. Faculty are being sent overseas to teach offshore programs. Specialist qualifications, especially at the postgraduate level, are being encouraged. Some jurisdictions are attempting to capitalise on their in-built differences. Canada is an excellent example of this approach of merging teaching and scholarship in civil and common law to produce more flexible graduates. In addition, some schools are banding together

to provide their students with an edge through joint cross-jurisdictional offerings—the ability to experience a truly transnational degree.

### *A More Competition and Marketing of the Law Schools*

Marketing is important, so important that training courses are targeting those responsible for these strategies in universities. Participants are being informed about the new economy, strategic marketing as a management function in universities and even ‘meeting the challenge of staff resistance to marketing’.<sup>55</sup> Many of the Australian law schools are individually advertising their courses through the web. Another important initiative is *Studying Law in Australia 2006* published by the Council of Law Deans (CALD). This is available on the web and provides an introduction to Australia’s legal system, the Australian legal education framework, a description of costs and conditions of education in Australia, and studying law in particular. The directory includes a brief description of undergraduate, graduate and postgraduate law qualifications in Australia, a list of pre-admission practical legal training courses in Australia and information on the postgraduate areas of study available in Australian law schools.<sup>56</sup>

In fact a recent report has concluded that ‘the urge to be competitive—rather than simply earn export income—has emerged as the leading rationale for internationalisation among universities’.<sup>57</sup> Competitiveness, based in having the brightest students, the best staff and reputation, was cited as ‘most important by 28 per cent of the 526 higher education institutions in 95 countries taking part in a survey by the International Association of Universities’.<sup>58</sup>

### *B Mooting Competitions*

International mooting competitions are another way of exposing students to the international sphere of law. There are a number of international mooting contests. Foremost of these are the Jessup Moot<sup>59</sup> and the Vis Arbitral Moot.<sup>60</sup> The history of the Vis Moot is indicative of the growth of these transnational competitions. It was first proposed at the UNCITRAL Congress on International Commercial Law in 1992 ‘as a means of interesting law students in the work of UNCITRAL, more specifically in the United Nations Convention on Contracts for the International Sale of Goods (CISG) and in international commercial arbitration’.<sup>61</sup> Such competitions provide important marketing tools for law schools and the photos of successful moot teams often grace the newspapers. The rules of the moots conform to the jurisdiction and procedure in which the moot is being organised. This, together with the emphasis on written testimonials, and the need to travel and mix with students from other jurisdictions, enhances the transnational learning aspects of the process for the students.

### *C Increased Prominence for International Law and Internationalisation in the Curriculum*

Academic professional bodies have been at the forefront of recognising the need for change due to globalisation and internationalisation within legal practice.<sup>62</sup> The theme of the International Association of Universities recent Beijing conference, for example, is Internationalisation of Higher Education: New Directions, New Challenges.<sup>63</sup> How have the law schools taken up the challenge? Eugene Clark and Sam Blay writing in 1999 acknowledged that legal education had to be relevant to the vocational needs of a global economy.<sup>64</sup> The AUTC Report, *Learning Outcomes and Curriculum Development in Law*, suggested employing the following ‘internationalising’ aspects for law schools: recruiting more international students, student exchanges, offering

international/comparative units, particularly in first year, offshore teaching programs attracting post- and under-grad students, overseas academics teaching domestic programs, specialist graduate degrees, international law electives, combining law studies with language programs in Arts degrees.<sup>65</sup> There is certainly recognition and integration of these aspects taking place.

#### *D Legal Philosophy and in Particular Human Rights as Espoused in the International Treaties Given More Pre-Eminence in the Curriculum*

Aligned with the focus on international law, many schools are also recognising that there must be an appropriate focus on the underlying philosophy of law, ethics and human rights. Some commentators have pointed to the importance of the teaching of human rights as the cornerstone of legal education, with a strong philosophical approach, as being the best way of achieving a respect of cultural diversity.<sup>66</sup>

#### *E Legal Skills Training*

Legal skills are becoming all-important - in particular mediation, negotiation and of course legal research. Both the 1987 Pearce Report<sup>67</sup>, and the McInnis and Margison Report<sup>68</sup> in 1994 commented there was a need for faster adoption by law schools of skills learning. Most Australian law schools are recognising this need.<sup>69</sup> The focus now is on what lawyers need to be able to do rather than what lawyers need to know.<sup>70</sup> Traditional Australian legal education has seen a focus on substantive knowledge through the use of the Priestley Eleven which is the list of basic subjects that are to be included in law degrees for the purpose of admission to practice throughout Australia. The requirement of having a substantive law ‘core’ has been criticised both in the US in the American MacCrate Report,<sup>71</sup> and by the Australian Law Reform Commission.<sup>72</sup> This substantive core may be inadequate for current graduates where only 50 to 60 per cent will remain in longterm legal work. Other ‘skills’ are being valued more highly than substantive knowledge—such as communication, time management, and computer skills.<sup>73</sup>

QUT was one of the first Australian law schools to recognise the importance of teaching legal skills within a law degree. The Law School has developed a framework for identifying and integrating opportunities for law students to develop both the attributes they will require as lawyers and the technical knowledge traditionally provided.<sup>74</sup> The Law School has identified 26 skills, which have been integrated with the content of the compulsory units within the undergraduate LLB and incrementally developed up through the degree in 3 broad levels of skill progression, which moves from generic to legally specific and complex. Other Australian law schools are also moving down similar paths.<sup>75</sup>

Skills’ training is gaining increasing prominence in the law curriculum, and this is generally reinforced by the recognition for generic skills training at the university levels.

#### *F Changes to the Curriculum in First Year Courses*

In order to meet this challenge the curriculum has been broadened to prepare students for the new work environment. This means including politics, commerce, financial markets and capital, cultural and indigenous rights – and how all these influence international law norms. First year students are examining how international norms develop, how international norms interfere with the domestic regulatory regime, the internationalisation of human activity—how humans interact on a global scale, such as international crime, comparative law, and some convergence in substantive and procedural laws, and multilateralism, and the UN system.<sup>76</sup>

## G *Use of Technology in Teaching*

The increased use of IT will mean there is an additional likelihood and ability for students to be enrolled transnationally.<sup>77</sup> Online web teaching sites allow students to access basic course outlines, study guides, readings and links which aids flexibility in terms of time and space. Online tutorials and notice boards allow information to be effectively passed between students and academics.<sup>78</sup>

Student exchanges offer an opportunity for students to gain a more cosmopolitan view of legal practice, but these are still extremely expensive for the students involved and in many instances complex to arrange.<sup>79</sup> Where financial and administrative programs hinder exchange programs, an alternative will be ‘virtual classrooms’—where there is a class of students from around the world learning together. One example of this is *Law, the Individual and the Community: A Cross-Cultural Dialogue* with partner universities from Finland, Hong Kong and Canada.<sup>80</sup> The focus of the classroom was online seminars with some real-time synchronisation. Another example is *Comparative Law: Internet Regulation and Free Flow of Information* where a comparison was made between national (Canadian) and supranational (EU) regulation of the internet, but also with a focus on human rights.<sup>81</sup>

IT is being used in clinical education, too, to provide a more extensive service for clients and experience base for law students. Thus it is possible to link law students in cities with those people in rural areas where there is no access to free legal advice. Internationally, it would allow law students and lawyers to communicate to their clients in places around the world.<sup>82</sup>

## H *Cross-Jurisdictional Courses*

Canada provides some excellent examples of the approach of merging teaching and scholarship in civil and common law to produce more flexible graduates. Some schools are banding together to provide their students with an edge through joint cross-jurisdictional offerings—the ability to experience a truly transnational degree. At the Transnational Law (Graduate) Program run at the University of Sherbrooke in Quebec, for example, there is a bi-jural environment of civil private law and common public law.<sup>83</sup> This comprises a two-part curriculum including the teaching in terms of common and civil law jurisdictions and secondly transnational aspects which includes legal norms, international trade and human rights.

Research programs can also be run with a transnational focus. Instead of focusing on internships, Osgoode Law Hall, uses Collaborative Research Teams which work with global research partners to produce similar papers.<sup>84</sup> Another initiative is the collaboration between York University and the Latin American Network for Human Rights Education and Research, which involves the creation of a masters course (Inter-American Human Rights Masters Model Program) and a diploma (Inter-American Human Rights Diploma Program), based on distance education.<sup>85</sup>

Osgoode Uni (Toronto), York University, Monash University (Melbourne), and Montreal University have formed a grouping to research and shape a degree in transnational law and governance.<sup>86</sup> It is envisaged that the structure of the degree would be a combination of ‘home units’ and coursework in particular other universities. There would probably also be a ‘virtual component’ where there is a ‘global classroom’, using technology. As an example, York University (Canada) has agreed to take joint research works with the possibility of a joint online work-paper series on a theme in transnational legal work.<sup>87</sup> Degrees such as this are becoming more prevalent internationally with joint offerings opening up between US and Canadian law schools.<sup>88</sup>

Other courses such as the International Business Taxation course at Bond University involve a non-jurisdictional attempt to teach the principles involved with international business taxation.<sup>89</sup> Bond University has also used its courses to form learning links between Bond and another university in another jurisdiction, and provides an example of information technology in use to link various universities and students. Courses are structured to provide for a transnational negotiation, facilitated via email (for position statements) and video conferencing for the negotiation. In addition, in some classes, students from different countries give a presentation on how to act in negotiations with citizens from a different culture.

## VI THE LEGAL ACADEMY RESPONSE INCLUDING NEW AND REGENERATED PROFESSIONAL ASSOCIATIONS

Apart from these grass-roots initiatives, the last five years have seen the formation of three new organisations. These are the Global Alliance for Justice Education, the International Association of Law Schools and the fledgling Australian Academy of Law (AAL). These associations join the existing pivotal academic organisations—the Council of Australian Law Deans<sup>90</sup> and the Australasian Law Teachers Association.<sup>91</sup> The first two associations are global in their constituency but the AAL appears to be a direct response by the Australian legal profession and educators to the new transnational environment.

### A *Global Alliance for Justice Education (GAJE)*

GAJE is a ‘Global Alliance of persons committed to achieving Justice through Education’.<sup>92</sup> This organisation had its inception in Sydney in September 1996 when 21 law teachers, judges, and legal activists met to discuss the formation of an international organization committed to the promotion of ‘socially relevant legal education’. The participants came from eleven countries: Argentina, Australia, Bangladesh, Canada, China, Fiji, India, Nigeria, South Africa, the United Kingdom, and the United States. The inaugural GAJE conference was held in Thiruvananthapuram, Kerala, India in December 1999. There have been conferences in 2001 and 2004, with another planned for Argentina in 2006. GAJE publishes regular newsletters publicising global meetings and membership is free.

### B *International Association of Law Schools (IALS)*

An international Conference on Educating Lawyers for Transnational Challenges took place on May 26-29, 2004 in Hawaii. The conference was organised by the American Association of Law Schools. The rationale was that there was no other international body which had the ability to react to and understand the global legal situation, and the implications for legal education.<sup>93</sup> Some of the aims were stated to:

- Improve understanding of the world’s varied and changing legal systems,
- Prepare lawyers for the challenges of transnational legal work,
- Improve the quality of legal education world-wide, and
- Recognise that all areas of law are being increasingly influenced by global trends.<sup>94</sup>

Membership is only open to institutions and activities such as information exchange between law schools, the preparation of guidelines for transnational legal teaching content and methods,

educating and informing law teachers about transnational trends for teaching and research, and faculty and student exchange programs were all in contemplation.<sup>95</sup>

A preamble to the charter was also prepared to highlight the new association's commitment to advancing transnational education. This charter was finalised at a meeting in Istanbul in May 2005.<sup>96</sup> The concept was endorsed by the Australasian Law Teachers Association (ALTA) at their meeting in Darwin in July 2004.

### C *Australian Academy of Law (AAL)*

Les McCrimmon, examining *Managing Justice: A review of the federal civil justice system*, noted that one of the recommendations was that 'The federal Attorney General should facilitate a process bringing together the major stakeholders to establish an Australian Academy of Law'. The objective was that '[t]he Academy would serve as a means of involving all members of the legal profession—students, practitioners, academics and judges—in promoting high standards of learning and conduct and appropriate collegiality across the profession, and the Academy should have a special focus on issues of professionalism (including ethics) and professional identity'.<sup>97</sup>

In September 2002, the Council of Australian Law Deans resolved in principle to institute a body to be known as the Australian Academy of Law. The inaugural meeting of the Foundation Fellows of the Australian Academy of Law, took place in Sydney on 7 June 2005 and included the patron, High Court Chief Justice Murray Gleeson, three current CALD members (Deans Coper, Croucher and Fairall), and CALD past Chair Professor David Barker. Thirty-five members of the profession had been invited as Foundation Fellows. The Academy's objectives are to provide a forum in which academics, judges and practitioners could meet and freely exchange views.

All of these organisations have been formed in the last decade and are still finding their true direction. It will be interesting to see what lobbying strength they can bring to bear on governments, as well as the support base, emphasis and impact of their programs.

## VII FUTURE DIRECTIONS

Some authors have voiced a warning about the potential harm in transnational forces which could lead to a new colonialism through the exporting of western legal culture. Transnationalism, they warn, could become an exercise in exporting North American/Western ideas about the nature of law.<sup>98</sup> This evangelical development would be based on the deep-seated views of common-law lawyers that the doctrines of the common law system are superior to other systems, '... that the common law has a certain natural dimension to it that makes its worth surpass the extant circumstances of its creation and operation'.<sup>99</sup> The threat is that developing countries' legal education systems may be swamped with first nation courses. However generally the transnational forces have been greeted with optimism by law teachers. As is evident from the previous review of developments, many university academics and law schools are seeking to build and expand their programs using the new technology and environment. However, there is still need for further work in meeting the various challenges ahead.

More prominence should be given to comparative law and international law, especially international business law, in the curriculum. Students would benefit from more real-world examples in this respect, and the 'real-world' in the present context is a world of international emails and instant communication. This enhancement to the curriculum is able to be achieved without adding to the Priestley 11. The content of the core units might be revised to provide an international perspective as suggested in the ILSAC Report.<sup>100</sup> Such an undertaking has significant

cost and time ramifications, and the Report made no suggestions as to how this was going to be achieved.

For this reason, perhaps there is more scope in the short term for further cross-institutional university offerings and development of specific diplomas in transnational law. Targeted courses and specialisations would give further options for the transnational aspirations of the student body. Groups of electives at both the undergraduate and postgraduate levels can provide a basis of knowledge for those wanting to focus on an international career.

The ILSAC Report refers to the ability ‘to engage effectively with international organisations, particularly international trade and economic institutions’.<sup>101</sup> This pre-supposes some background in finance and economic theory and process. It suggests a broadening of focus at some point in the law degree. Again, perhaps the level of knowledge might be best suited to development in the elective units for those students interested in transnational practice. Law students generally would benefit from more interdisciplinary methodology training, but it is always a struggle finding a balance between knowledge and skills in the degree.

However, more exposure to generic skills, including legal research, legal writing and communication, and cross-cultural awareness can more easily be included, and indeed this has already happened in many law schools in the last decade. It is not clearly recognised that the research skills courses, especially where they exist as separate units, provide a great opportunity to achieve transnational training objectives. Students need to be able to research the law outside the confines of their own jurisdiction. They need generic and transferable legal research skills, and grounding in the main foreign jurisdictions and their legal sources. A knowledge and ability to research law from the European Union law, the United Nations, the United States, Canada, our neighbours in the Pacific, and the ‘rising star’ nations such as India should be mandatory for upper year law students.

There also needs to be more research and data available on perceived student needs. Lyn Armytage and Sumitra Vignaendra reported in a survey conducted in 1995, that only 46 per cent of the respondents wanted to work in the private legal sector (as either a barrister or solicitor) on graduation.<sup>102</sup> According to another study, Chris Roper reported that 24 per cent of respondents were not planning on being admitted, with 13 per cent having immediate plans to do something else, but leave admission option open, and 4.4 per cent choosing not to seek admission.<sup>103</sup> However, there appears to be difficulty in getting true statistics on Australian law graduates employment, and in particular the numbers of graduates who are choosing to move outside this country.<sup>104</sup> Anecdotally it would seem many graduates are undertaking work periods overseas a few years after graduation. This area needs more research. Would students who are not planning on practising law still benefit from more exposure to internationalisation?

We need better organised exchange programs. Student and staff exchanges are an excellent way of bridging the gap between a legal education that is purely focused on domestic work and one that prepares lawyers for international agendas.<sup>105</sup> Worthwhile student exchange programs ensure that the subjects undertaken in a foreign jurisdiction are appropriate for the domestic jurisdiction and acquaint the students with the new culture. There are financial concerns of course in this process, particularly for lower-income students who may wish to take part. However, the benefits stretch further than the individuals involved. Students coming into the jurisdiction provide cultural awareness opportunities for classes. Exchanges may be beneficial for the entire student body, because ‘while it may not be as good as actually living and studying in a foreign country, the benefit of studying alongside foreign students should not be completely overlooked’.<sup>106</sup> The same is true for academic exchanges. Additional funding and resources should be directed to

encouraging visiting adjunct professors specifically to interact and research with local staff, and in encouraging Australian academics to teach in other jurisdictions.

This article has endeavoured to review the many changes taking place in legal education in Australia today. Many adjustments are already being made at the institutional level through changed curriculum and course design. However, legal academics need to be more aware and be supported in facing the challenges ahead. The national legal profession is a challenge as it suggests a move away from purely local jurisdictional concerns in terms of the curriculum. Along with this potentially massive change there is the need to cater for the transnational agenda.

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