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## **The Fall and Rise of Legal Education in Asia: Inhibition, Imitation, Innovation**

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# The Fall and Rise of Legal Education in Asia: Inhibition, Imitation, Innovation

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## **Abstract:**

The history of legal education in Asia bears the scars of colonialism. The most obvious evidence of that today lies in the common law/civil law divide between our various countries, a distinction for which the determining factor was typically the legal system of the European power that happened to exercise colonial power. In recent years, however, the rise of Asia has encouraged more confidence and greater independence.

To pick just one crude measure, the number of Asian law schools listed in the top 50 of the QS World University Rankings for law went from three in 2011, when the rankings were first published, to nine in the most recent rankings. Just four years ago, no Asian law school was listed in the top 20; today there are four. In such an environment, it is appropriate and expected that Asian law schools should feel free to chart their own path — to innovate, rather than merely imitate.

This paper discusses early efforts to inhibit legal education in Asia, due in part to neglect and in part to the desire of the colonizing powers to avoid encouraging “troublemakers”. Secondly, and more briefly, it considers the manner in which many efforts to encourage imitation, in particular the law and development school, produced uncertain and sometimes unhelpful results. Thirdly, it turns to more recent innovations by law faculties across the region in three discrete areas of their national, global, and regional roles.

**Keywords:** Legal Education, Comparative Law, Globalization, Asia, Law & Technology, Legal Profession

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## Introduction

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The history of legal education in Asia bears the scars of colonialism. The most obvious evidence of that today lies in the common law/civil law divide between our various countries, a distinction for which the determining factor was typically the legal system of the European power that happened to exercise colonial power. Hence Singapore, Malaysia, and India are common law countries with nearly identical criminal law codes first drafted by the British, while Indonesia and Vietnam are civil law countries with legal systems heavily influenced by the Dutch and the French respectively. The unique blend of civil and common law to be found in the Philippines was a result of successive colonialism by Spain and then the United States. Other countries, like China, Japan, and Thailand were never colonized, though their legal systems were also influenced by Western norms. “Influence” is not the same as dictate, however. Even in those countries that were colonized, law pre-existed the colonial encounter — Adat law in Indonesia, customary law in the Chittagong Hill Tracts of Bangladesh, Sharia law in Malaysia and elsewhere.

These pre-existing legal systems and the colonial transplants set the stage for the plural regimes that we see today. But how law actually comes to be understood and practised also depends heavily on how law is taught. In recent years, the rise of Asia and the increased prominence of Asian law schools, as well as greater opportunities for collaboration and learning through networks like the Asian Law Institute (ASLI), have encouraged more confidence and greater independence.

To pick just one crude measure, the number of Asian law schools listed in the top 50 of the QS World University Rankings for law<sup>1</sup> went from three in 2011,<sup>2</sup> when the rankings were first published, to nine in the most recent rankings.<sup>3</sup> Just four years ago, no Asian law school was listed in the top 20; today there are four. To be sure, part of this change is due to a refinement of the methodology in ranking. But one of the most significant components of the QS method is reputation, and there is no question that the reputation of Asian law schools is on the rise.

In such an environment, it is appropriate and expected that Asian law schools should feel free to chart their own path — to innovate, rather than merely imitate, as the framing document of this conference/book suggests. But before I get to the move from imitation to innovation, I would first like to add another “i”, as imitation itself came after a period of *inhibition*.

So my remarks will proceed in three steps. First, I will discuss early efforts seeking to inhibit legal education in Asia, due in part to neglect and in part to the desire to avoid encouraging “troublemakers”. Secondly, and more briefly, I will consider the manner in which many efforts to encourage imitation, in particular the law and development school, produced uncertain and sometimes unhelpful results. Thirdly, I will turn to more recent innovation across the region, focusing on three areas in which there is both demand for and supply of innovation: our *responsibility* as national law schools to produce lawyers for our home jurisdictions, our *aspiration* as global law schools to prepare our graduates for global practice, and our *opportunity* as Asian law schools to capitalize on the Asian century.

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<sup>1</sup> Available at <http://www.topuniversities.com/university-rankings/university-subject-rankings/2015/law-legal-studies>

<sup>2</sup> NUS 24th, HKU 31st, Tsinghua 45th.

<sup>3</sup> NUS 14th, Peking 18th, HKU 19th, Tokyo 20th, Tsinghua 39th, Seoul 41st, CUHK 42nd, NTU 43rd, Kyoto 48th.

# 1 Inhibition

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Despite the rhetoric of a civilizing mission, the purpose of colonialism was clearly not primarily educational. As Lord Lugard noted with relative candour concerning Africa, there was, at best, a “dual mandate”:

Let it be admitted at the outset that European brains, capital, and energy have not been, and never will be, expended in developing the resources of Africa from motives of pure philanthropy; that Europe is in Africa for the mutual benefit of her own industrial classes, and of the native races in their progress to a higher plane; that the benefit can be made reciprocal, and that it is the aim and desire of civilised administration to fulfil this dual mandate.<sup>4</sup>

In the colonial context, law was often an important tool used to justify and enforce what was essentially foreign occupation. In such circumstances, it is not surprising that legal education of the local population was not a high priority. This was true even in the British colonies, where law was a vital part of the structures that facilitated colonial rule, with local elites co-opted into those legal structures.

In the early colonial period, education as a whole was often left to missionaries. This meant that secular law — and much else — lost out to religious instruction.<sup>5</sup> Even in countries where education later came to be seen as part of the colonial enterprise, however, law was either not prioritized or actively discouraged.

As Muna Ndulo has written of Africa, this was not an accident or an oversight: it was policy.<sup>6</sup> The reasons given tended to fall into two broad categories. First, it was sometimes suggested that the lack of law schools was simply a question of priorities. It was more

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<sup>4</sup> F.D. Lugard, *The Dual Mandate in British Tropical Africa*, 3rd ed. (Edinburgh and London: W. Blackwood & Sons, 1926), p. 617.

<sup>5</sup> Bruce L. Ottley, "Legal Education in Developing Countries: The Law of the Non-Transferability of Law Revisited", *Loyola of Los Angeles International and Comparative Law Journal*, vol. 2 (1979), p. 47 at 51.

<sup>6</sup> Muna Ndulo, "Legal Education in Africa in the Era of Globalization and Structural Adjustment", *Penn State International Law Review*, vol. 20 (2002), p. 487 at 489.

important to train “engineers, doctors, and agriculturalists than lawyers”.<sup>7</sup> But it was obviously not just a question of limited resources. Those “who wished to read law were regarded as preparing for a career in politics”, William Twining wrote, based on his own experience in Tanzania in the 1960s. From the colonial point of view, it would have been self-destructive to encourage the production of such trouble-makers.<sup>8</sup>

By the Second World War, the Dominions, British India, and British-administered Egypt had reasonably-developed systems of higher education, often including law schools. But for the 66 million people living in the territories in Africa and Asia controlled by the British Colonial Office, there were only four universities and only one of them — the Royal University of Malta — had a law school,<sup>9</sup> which in any case had predated Malta’s incorporation into the British Empire.<sup>10</sup>

In the period after the Second World War, it became increasingly clear that self-government and independence of Britain’s colonies was essentially inevitable. A series of university colleges were established in Africa, notably in the period 1945 to 1949 with the creation of Ibadan in Nigeria, Khartoum in Sudan, Achimota in what is now Ghana, and Makerere in Uganda.<sup>11</sup>

The same was largely true in Asia.<sup>12</sup> British India had seen the establishment of law schools at the Government Law College, Bombay (now Mumbai) in 1855,<sup>13</sup> the Punjab University

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<sup>7</sup> William Twining, "Legal Education Within East Africa" *East African Law Today* (London: British Institute of International and Comparative Law, 1966), p. 116.

<sup>8</sup> *ibid.*; Samuel O. Manteaw, "Legal Education in Africa: What Type of Lawyer Does Africa Need?", *McGeorge Law Review*, vol. 39 (2008), p. 903 at 912-917.

<sup>9</sup> Assaf Likhovski, "Colonialism, Nationalism and Legal Education: The Case of Mandatory Palestine", in Ron Harris, et al. (eds.), *The History of Law in a Multicultural Society: Israel 1917-1967* (Dartmouth: Ashgate, 2002), pp. 76-77.

<sup>10</sup> The University of Malta’s Faculty of Law dates to 1769. Malta officially became part of the British Empire in 1814 under the Treaty of Paris.

<sup>11</sup> Ottley, "Legal Education in Developing Countries", at 52.

<sup>12</sup> See generally TAN Cheng Han et al., "Legal Education in Asia", *Asian Journal of Comparative Law*, vol. 1(1) (2006), p. .

Law College<sup>14</sup> in what is now Pakistan in 1870, Rangoon University (now the University of Yangon) in Myanmar in 1920, and the University of Dhaka in what is now Bangladesh in 1921. Lee Kuan Yew, Singapore's founding Prime Minister — and a lawyer — argued in 1959 that, precisely because of their experiences in India, the British were reluctant to establish law schools in other parts of the empire:

[T]hey knew that large numbers of lawyers meant large numbers of self-employed intellectuals who were well-versed in the mechanics of the colonial system, and who then set out to lead the mass of the local people in breaking down the colonial system.<sup>15</sup>

People like him, in other words. And so it went: in the rest of the British Empire in Asia, the creation of law schools tended to take place either just before or sometime after independence.

Sri Lanka's first law school dates back only to 1947 at the University of Ceylon (now the University of Colombo), a year before it achieved Dominion status. In Malaya, the first law school — what is now NUS Law — was established in Singapore in 1956, a year before the Federation of Malaya became independent; when that federation fell apart, Malaysia itself lacked a law school until the University of Malaya established a Faculty of Law in Kuala Lumpur in 1972. The University of Papua New Guinea School of Law was established with six students in 1965 while the territory was under Australian administration, a decade before independence. Hong Kong University launched a Department of Law in 1969. The University of the South Pacific's School of Law was created in 1994.<sup>16</sup> This unusual entity has a main branch in Vanuatu, but is owned by twelve member countries that were former colonies of

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<sup>13</sup> Arjun P. Aggarwal, "Legal Education in India", *Journal of Legal Education*, vol. 12(2) (1959), p. 231 at 232; Arthur Taylor von Mehren, "Law and Legal Education in India: Some Observations", *Harvard Law Review*, vol. 78(6) (1965), p. 1180. See also Lovely Dasgupta, "Reforming Indian Legal Education: Linking Research and Teaching", *Journal of Legal Education*, vol. 59(3) (2010), p. 432.

<sup>14</sup> <http://law.pu.edu.pk>. See also Osama Siddique, "Legal Education in Pakistan: The Domination of Practitioners and the Critically Endangered Academic Symposium: Legal Education and Legal Reform in South Asia", *Journal of Legal Education*, vol. 63(3) (2014), p. 499.

<sup>15</sup> LEE Kuan Yew, "Text of the Speech by the Prime Minister, Mr. Lee Kuan Yew, at the University of Malaya Law Society Dinner" (14 November 1959), available at <<http://www.nas.gov.sg/archivesonline/data/pdfdoc/lky19591114.pdf>>.

<sup>16</sup> <http://www.usp.ac.fj/index.php?id=518>

Britain, Australia, New Zealand, and France (one of them, Tokelau, is still listed by the United Nations as a non-self-governing territory).<sup>17</sup> Brunei, which became independent from Britain in 1984, established the Universiti Brunei Darussalam the following year but does not yet have a law school.

In other parts of Asia, law schools also tended to be relatively recent innovations. In China, the Sino-West College was started in 1904; by the 1950s there were more than 50 law schools, but in the tumultuous decades that followed that number shrank to only two: at Peking University and Jilin University.<sup>18</sup> In Indonesia, the Dutch colonial government established a secondary school for law in 1909 that was upgraded to a school for higher education in 1924. This became the Faculty of Law at the University of Indonesia in 1950, five years after independence. Legal education in Thailand dates back to 1933;<sup>19</sup> a small law faculty was created in the University of Hanoi in 1976.<sup>20</sup> And so on.

Until local law schools were established, the path to legal practice typically lay through the metropole. For the British Commonwealth, that meant training in London and the Inns of Court. The costs of such an education ensured that it was limited both in number but also in the class background of the individuals who pursued it. The majority of colonial subjects who trained in London did so through the Inns of Court, enabling them to qualify as barristers but not solicitors. This distinction was of little relevance in the colonies — and sometimes caused problems. As the 1961 Denning Commission recognized of lawyers educated in this way, “Many of the young men [*sic*] coming back can make quite a good show as lawyers, but they have absolutely no knowledge of how to handle their accounts or the desirability of keeping their clients' money separate from their own.”<sup>21</sup> Another problem

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<sup>17</sup> Cook Islands, Fiji Islands, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tonga, Tokelau, Tuvalu and Vanuatu.

<sup>18</sup> TAN Cheng Han et al., "Legal Education in Asia", at 1-2.

<sup>19</sup> *ibid.*, p. 2.

<sup>20</sup> *ibid.*.

<sup>21</sup> Commission on Legal Education for Students from Africa (Cmnd. No. 1255, London, 1961), 27 (quoting the Solicitor-General of one of the territories under review).



was that although many of the colonies had inherited English law, its application was often different in the various territories.

I have begun with this historical survey not to suggest that Asian law schools started their various projects with a blank slate. On the contrary, the plural regime I described earlier defines the complex environment within which we each operate. But what the colonial approach to legal education does suggest, and what is born out in many of the countries from which we come, is that law schools were at least initially regarded as inherently political institutions and therefore seen as potentially destabilizing to the social order.

Another speech from Lee Kuan Yew, this time in 1962, is indicative of the view at the time:

The rule of law talks of habeas corpus, freedom, the right of association and expression, of assembly, of peaceful demonstration, concepts which first stemmed from the French Revolution and were later refined in Victorian England. But nowhere in the world today are these rights allowed to practice without limitations, for blindly applied these ideals can work towards the undoing of organised society.<sup>22</sup>

Law schools across the region and around the world continue to train people who develop into political actors — both leaders and “troublemakers”. Indeed, just one indication is that in the elections held in Singapore in September 2015 fully 12 of the 89 seats in Parliament were filled by graduates of NUS Law, representing both the People’s Action Party and the opposition Workers’ Party.

The men and women who pass through our walls are among the brightest and most articulate, and we — hopefully — further strengthen their ability to think critically and communicate effectively. This is a tremendous opportunity for us as educators, but also imposes a special responsibility on us to ensure that our graduates do not only have sharp minds and silver tongues, but also fully-formed consciences and hearts.

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<sup>22</sup> LEE Kuan Yew, "Singapore Prime Minister's Speech to the University of Singapore Law Society Annual Dinner at Rosee d'Or" (18 January 1962), available at <<http://www.nas.gov.sg/archivesonline/data/pdfdoc/lky19620118.pdf>>.

## 2 Imitation

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So law schools were initially inhibited in many of the former colonies, until it was clear that these colonies were going to become their own legal systems. As many of the new schools were created somewhat hastily around the time of independence, there was naturally a considerable amount of imitation. As the Committee on Legal Education in the Developing Countries put it in a 1975 report:

University law schools in Asia, Africa and Latin America have been developed as parts of universities which were significantly patterned after English, French or other European models, and they have been greatly influenced by the "received" culture of education. In many parts of the world the programs have been significantly shaped — at a formative point — by expatriate staff, and they have, in any event, been controlled by persons who have sought to replicate foreign models rather than build an essentially indigenous institution.<sup>23</sup>

Such mimicry is not unique to Asia or indeed to the colonial experience. Law schools and lawyers tend to be conservative and not a great deal has changed fundamentally in the past hundred years or so. This is true at the macro- as well as the micro-level.

At the macro-level, though Harvard's Christopher Columbus Langdell famously invented the modern common law curriculum in the 1870s,<sup>24</sup> it was only in 1921 that the American Bar Association recommended that admission to practice be linked to completion of a degree programme.<sup>25</sup> This was distinct from the English tradition, according to which lawyers were educated not in universities but in court.<sup>26</sup> A different approach had long existed in civil law jurisdictions where Roman Law was taught, beginning with its rediscovery at the University

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<sup>23</sup> Legal Education in a Changing World: Report of the Committee on Legal Education in the Developing Countries (International Legal Center, New York, 1975), available at <<http://nai.diva-portal.org/smash/get/diva2:275991/FULLTEXT01.pdf>>, 26.

<sup>24</sup> Howard Schweber, "Langdell, We Hardly Knew Ye", *Law and History Review*, vol. 17(1) (1999), p. 145.

<sup>25</sup> James P. White, "Rethinking the Program of Legal Education: A New Program for the New Millennium", *Tulsa Law Journal*, vol. 36 (2000), p. 397 at 400.

<sup>26</sup> Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law*, 3rd ed. (Oxford: Oxford University Press, 1998).

of Bologna in the 11th century.<sup>27</sup> Interestingly, courses in Roman Law were also offered at universities such as Oxford and Cambridge — though they had little practical application.<sup>28</sup> (Following a recent year-long curriculum review at Oxford, it was decided that the curriculum was in no need of change. Roman Law remains compulsory while Company Law remains optional.)

At the micro-level, even within individual subjects one can see resistance to change. Criminal law, for example, is taught throughout most of the common law world by starting with homicide, perhaps followed by other assaults — in particular sexual assault. Though important, such crimes are relatively rare. As Kris Gledhill has pointed out, it is unlikely that the considered view of every criminal law lecturer around the world is that murder and rape are the best way to teach criminal law. A more probable explanation is that we teach that way because that is how we ourselves were taught.<sup>29</sup>

Mimicry was not simply a matter of domestic institutions blindly following past precedent. There was also support from the outside to make our law schools more like those in the West. There is, of course, value in learning from the experiences of other regions. But there are significant limits to what can be achieved by uncritically exporting mechanisms that work in one region to another, or drawing conclusions based on dubious comparisons between the needs and interests of members. A spectacular example of the limitation of such an approach to reforming institutions was the “law and development” movement of the 1960s. This was an ambitious programme run by the U.S. Agency for International Development, the Ford Foundation, and other private American donors seeking to reform the laws and judicial institutions of countries in Africa, Asia, and Latin America. The programme generated hundreds of reports and articles. A decade later, however, leading academic participants and a former official at the Ford Foundation declared it a failure. Criticisms included the program’s over-reliance on exporting certain aspects of the U.S. legal

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<sup>27</sup> Henry Mather, "The Medieval Revival of Roman Law: Implications for Contemporary Legal Education", *Catholic Lawyer*, vol. 41 (2002), p. 323

<sup>28</sup> See further Simon Chesterman, "The Globalisation of Legal Education", *Singapore Journal of Legal Studies*, vol. 2008 (2008), p. 58.

<sup>29</sup> Kris Gledhill, "The Teaching of Criminal Law: Are We Stuck in a Timewarp?" (National University of Singapore Faculty of Law, 6 September 2011).

system — notably strategic litigation and activist judges — that were incompatible with the target countries.<sup>30</sup>

Today there is less pressure to mimic the West; what pressure there is now tends to take the form of carrots rather than sticks. Instead of colonial enforcement we sometimes see development dollars encouraging legal education in a particular direction — or there is the ever-present spectre of rankings, implying that there is some ladder that we are all climbing towards Oxford or Harvard. As a more diverse range of law schools join the Anglo-American oligopoly at the top of such league tables, my hope is that some of the pluralism with which we are all familiar will rub off on them, broadening our conception of excellence in legal education rather than narrowing it into a lonely ivory tower.

### 3 Innovation

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So legal education in Asia has moved from a period of inhibition through a period of imitation. Now we have the opportunity — and, arguably, the responsibility — to innovate. But this should not simply be change for the sake of change, nor does it take place in a vacuum. As we each think about the path we will chart with our own law schools, let me propose three considerations that might be useful when contemplating new strategies for our various law schools. These considerations relate to the three discrete identities that we have as law schools. We are, first and foremost, national schools educating students and producing research within a specific jurisdiction. Secondly, however, we are — or aspire to be — global, preparing our graduates for a globalized profession and participating in global

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<sup>30</sup> David M. Trubek and Marc Galanter, "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development", *Wisconsin Law Review*, vol. 4 (1974), p. 1062; John. H. Merryman, "Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement", *American Journal of Comparative Law*, vol. 25 (1977), p. 457; James Gardner, *Legal Imperialism: American Lawyers and Foreign Aid in Latin America* (Madison: University of Wisconsin Press, 1980). Later assessments have been less negative, however, noting that law reform projects take many years to bear fruit and that the rise and fall of the movement may have been more connected to U.S. domestic political issues in the period 1965-1975 than with programs on the ground in developing countries. Mary McClymont and Stephen Golub (eds.), *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World* (New York: Ford Foundation, 2000); Brian Z. Tamanaha, "The Lessons of Law-and-Development Studies", *American Journal of International Law*, vol. 89 (1995), p. 470.

debates. Thirdly, however, and often overlooked, we are *Asian* law schools, giving us and our graduates a unique chance to seize the Asian century and the opportunities that it offers.

Let me discuss these in turn.

### 3.1 National

Despite the best efforts of globalization, the practice of law remains largely jurisdiction-specific. If only as a regulatory matter, then, the vast majority of law schools have a primarily *national* focus. Our graduates get admitted to practice in specific jurisdictions and we must report to regulators in those jurisdictions.

This is not the only model, of course. There have been some interesting experiments that do not link legal education to practice. Tilburg University's LL.B. in Global Law, for example, does not qualify its graduates to practise law in any jurisdiction. The Tilburg website states that

you can apply for jobs in international organizations or in the public sector, or you can continue in academia. ...

Imagine a large international company such as Google ... These companies have legal departments with specialists from all over the world. What they are lacking, however, is someone with the skills of a global lawyer, who is able to tie these different legal systems together.<sup>31</sup>

Another interesting experiment is the Peking University School of Transnational Law, in Shenzhen, which in 2008 launched a J.D. based on the typical curriculum in U.S. law schools. It also announced that it was seeking ABA accreditation for this programme,<sup>32</sup> which was ultimately rejected in 2012.<sup>33</sup> It subsequently refocused its mission to emphasize genuinely

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<sup>31</sup> <https://www.tilburguniversity.edu/education/bachelors-programs/global-law/career/>

<sup>32</sup> DU Guodong, "Peking University School of Transnational Law Opens", *Xinhua*, 23 October 2008.

<sup>33</sup> Megan Stride, "ABA Votes No on Accrediting Foreign Law Schools", *Law360* 2012.

transnational law, expanding its China law curriculum to complement what had essentially been a transplantation of U.S. law.<sup>34</sup>

But for the most part, law schools focus on giving graduates the opportunity to practise law in their home jurisdiction, in many cases with the additional requirement that these graduates sit an additional bar examination. Yet it would be foolish to suggest that we have done our job if our graduates understand only a single jurisdiction. Even if they do practise only in the jurisdiction in which they qualify, they will frequently interact with lawyers from other jurisdictions, they will have clients who operate in multiple jurisdictions, and they will need to understand the pressures on their home jurisdiction from the globalized economy.

This is something touched on by many of the other chapters in this volume. Souichirou Kozuka, for example, highlights in his chapter the pressures from globalized law firms on the Japanese legal education system. Andrew Harding & Maartje de Visser stress that global pressures go both ways, as states seek extraterritorial implementation of certain laws, while also needing to integrate themselves into a global economy. This is particularly important in Singapore where so much of economic activity is tied to cross-border transactions. Similarly, Bui Ngoc Son explored the tensions exposed by the “renovation” of legal education in Vietnam between its commitments to socialism and to globalization. China has also been affected by globalization, with its entry into the World Trade Organization in 2001 also requiring a transformation in its legal education regime, as described by Li Xueyao & Hu Jiaxiang. At the global level, Francis Wang highlights what has been achieved by linking law schools through the International Association of Law Schools, among other things establishing some baseline indicators of what we have in common and what common challenges we share.

Specific challenges remain in our roles as national law schools.

One is whether we can and should participate in the protection of specific areas from the external influences of globalization. While it might be natural, for example, for our postal and telecommunications rules to be in harmony with other jurisdictions, many countries

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<sup>34</sup> Philip McConnaughay paper.

balk at exposing public law to such forces. The manner in which human rights and constitutional law is taught can sometimes raise sensitivities among local authorities.<sup>35</sup>

A second question is whether we can and should protect specific constituencies — notably the local bar — from the kind of competition in which most other parts of the economy must engage. This is not something that law schools alone can determine, but there is a big difference in our educational mission between seeing the main “consumers” of our “product” as being main street lawyers in our home jurisdiction or the Magic Circle and white shoe law firms of London and New York.

## 3.2 Global

The answers to such national questions are often heavily influenced by global trends.

Although the guild-like nature of the profession once encouraged a focus not merely on national but on *sub*-national jurisdictions, that is no longer tenable. In the United States, for example, admission to practice in one state a century ago did not require either familiarity with or the ability to practise in another.<sup>36</sup> As interstate commerce and thus cross-jurisdictional legal practice increased, however, so did the need for lawyers to be familiar with other jurisdictions; with the increased movement of professionals it became necessary to have a means of transferring accreditation.<sup>37</sup>

That is now a global phenomenon. Today, the practice of law has been transformed by new clients, a new operating environment, and new law firms.

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<sup>35</sup> Cf. LEE Kuan Yew, "Speech to the Law Society 1962": "A curious position that has arisen in Malaya is that the temporary alliance of the pure academic who talks in terms of the absolute qualities of freedom, liberty and the rights of man, finds himself a strange fellow traveller with the Communist revolutionary, whose whole philosophy is a complete denial of these liberal concepts. The academic liberal may or may not believe in the practicability of his enunciations of absolute ideals. But the Communist revolutionary certainly does not."

<sup>36</sup> Colin Croft, "Reconceptualizing American Legal Professionalism: A Proposal for Deliberative Moral Community", *New York University Law Review*, vol. 67 (1992), p. 1256 at 1296.

<sup>37</sup> Cf. George A. Reimer, "A State of Flux: Trends in the Regulation of the Multijurisdictional Practice of Law", *Oregon State Bar Bulletin*, vol. 64 (2004), p. 19.

This is obvious at the high-end. Commercial giants and the major banks sell products and services across multiple jurisdictions, even as those jurisdictions become more assertive in their regulations. They need law firms that can provide advice across those jurisdictions and help manage the legal risks associated with global commercial activities. In response, a handful of global law firms have emerged, some of which have expanded not only across developed but also developing markets.

But globalization affects the main street lawyer also. A family law specialist would be negligent if he or she was not able to assist a client whose family straddles more than one nationality. Even small and medium-sized enterprises are now typically part of global supply chains, meaning that they confront regulatory issues and potential disputes in multiple jurisdictions.

In addition, as the market in which we practise law is changing, so are the tools *with* which we practise it.

Legal research has been transformed by the Internet. Many of those teaching law today began their own research at a time when looseleaf services were cutting-edge technology, enabling reference books to have updates inserted into folders. Our students, if they can even recall what a book is, regard such pre-Internet technologies in the same manner we might regard the manuscripts copied out by monks in the days before printing presses.

Writers like Richard Susskind have argued that this is only the tip of the iceberg. Facilitating access to information will be followed by fundamental and irreversible changes in the practice of law. Much of what is now charged for will become free — think of the music industry, or the door-to-door encyclopaedia salesman. More fundamentally, the prospect of online dispute resolution may take many disputes out of lawyer's hands entirely.<sup>38</sup> This is far from science fiction: eBay presently resolves about 60 million disputes annually through its online Resolution Center.<sup>39</sup>

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<sup>38</sup> Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford: Oxford University Press, 2013).

<sup>39</sup> Online Dispute Resolution for Low Value Civil Claims: Online Dispute Resolution Advisory Group (Civil Justice Council, London, February 2015), available at <<http://www.judiciary.gov.uk/wp-content/uploads/2015/02/Online-Dispute-Resolution-Final-Web-Version1.pdf>>, 5.



The market has changed, the tools our students need have changed, but our students themselves have also changed. This is not the place for a long excursus on the phenomenon of so-called “millennials”, but there is no question that the manner in which the current generation of students consume and process information is different. Attention spans are shorter, they are more familiar with and reliant on technology, and they are often more comfortable interacting with the world through virtual means.

Let me stress that this does not mean that we should abandon books and chalkboards to run our law schools through Snapchat™. What our students are comfortable with is different from what is good for them. But it does mean that a legal curriculum based on rote-learning and tested by writing answers in longhand bears less and less connection to the practice of law.

And so we must prepare our students for a globalized market in which technology plays a vital role. Some of the skills required have not changed: critical and analytical skills, excellence in communication — both oral and written. Perhaps one thing to supplement is that those students more comfortable interacting with their peers through social media need to learn how to interact with clients of flesh and blood.

None of what I am saying is particularly original or ground-breaking. Much of it could be said at any legal education conference around the world. But the last area of potential innovation I will touch on concerns whether there is something unique about the situation of Asian law schools.

### **3.3 Asian**

I begin with the usual caveat that “Asia” is a fairly dubious category. Indeed, the very word derives from a term used in Ancient Greece rather than any indigenous political or historic roots. Yet there do seem to be some things shared by many of our jurisdictions.

From the perspective of an international lawyer, one of the most interesting aspects is the apparent paradox that Asian states have arguably profited most from the stability and prosperity of a world ordered under international law and institutions — and yet they are the least likely to be parties to those rules or be represented in those organizations. This

does not mean that Asian states are wary of law as such, but it is unusual that the most economically dynamic region of the planet, with increasing political power, consists of countries that were not, for the most part, authors of many foundational rules of the game.

Two consequences follow from this situation. The first is domestic. Many of the highly competitive economies of Asia grew extremely quickly in non-liberal regimes for which legitimacy was more closely tied to economic success than to traditional political processes. In recent years there has been a genuine commitment to the rule of law across most countries, but without a tradition of the rule of law there is a danger that lawyers are seen as instruments of the state rather than servants of the law. This is the modern legacy of the inhibition of legal education, with some states continuing to view lawyers as potential “trouble-makers” — a challenge with which Asia’s law schools must continue to grapple.

The second consequence is regional. Asia is unique for not having any meaningful regional organization. There is no continent-wide framework comparable to the African Union, the Organization of American States, or the European Union. Such regional organizations that do exist — such as the South Asian Association for Regional Cooperation (SAARC), the Shanghai Cooperation Organization (SCO), and the Association of Southeast Asian Nations (ASEAN) — have weak mandates and extremely limited resources.<sup>40</sup> This creates an opportunity in the area of legal research. Given the economic dynamism of the region, there is a clear appetite for integration of economies and convergence of legal regimes. The fact that governments are extremely limited in what they can and will do to facilitate integration means that networks of legal academics can play a role in that process. Initiatives such as the Principles of Asian Contract Law project and the Asian Business Law Institute (ABLI, being launched in January 2016), as well as networks such as ASLI and the Asian Society of International Law, thus have the potential to supplement intergovernmental action.

In the coming years, such opportunities are likely to grow. With the likely adoption of the competing Trans-Pacific Partnership (TPP) and China’s “One Belt, One Road” initiatives, there will be growing demand for coherence across Asia but without a formal intergovernmental framework for delivering it. In such a situation the role of academics

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<sup>40</sup> See further Simon Chesterman, *From Community to Compliance? The Evolution of Monitoring Obligations in ASEAN* (Cambridge: Cambridge University Press, 2015).

becomes more important in areas from formation of contracts and data protection rules to enforcement of awards and cross-border insolvencies.

## 4 Conclusion

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Let me conclude with some suggestions on what all of this might mean for our educational and research missions. I am acutely conscious that we each operate in a distinct environment and it would be pointless to prescribe one model for each law school. Yet I would also like to be concrete enough to avoid mere platitudes. I also note that I am not speaking about the very basics of a legal education, which are well covered in the International Association of Law Schools' Singapore Declaration,<sup>41</sup> and about which Frank will speak later this morning. My aim, rather, is to suggest three areas in which we can magnify the impact that our law schools have on our students, on the global practice of law, and on our region.

First, in terms of our students, I believe we have a responsibility to educate them not only about their home jurisdiction and the jurisdiction of the former colonial power, but also about their region. It is natural that Singaporean students, for example, read English and Australian cases, but we need to encourage them to become more familiar with Indonesian and Thai cases also. Students in common law countries need a deeper understanding of the civil law tradition and vice-versa. Our graduates should be known not only for their intellectual abilities, their professional skills, their ability to analyse problems and communicate answers, but also for their sensitivity to the context within which they operate.

Secondly, and in relation to the global practice of law, it is time for us to be more ambitious. Our students and our professors are now among the best in the world, operating in its most economically dynamic continent. Even as we continue to serve our national and regional missions, we should aim to see our alumni practising at the very highest level. To pick just

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<sup>41</sup> Singapore Declaration on Global Standards and Outcomes of a Legal Education (International Association of Law Schools, Singapore, 26 September 2013), available at <<http://www.ialsnet.org/wordpress/wp-content/uploads/2013/09/Singapore-Declaration-2013.pdf>>.

one area of global practice, investment arbitration: by various counts there are between fifteen and two dozen key individuals who dominate the field — none of them is from Asia.<sup>42</sup> It is merely a question of time before this changes,<sup>43</sup> but our law schools should all be working to ensure that it happens sooner rather than later.

Thirdly, in terms of our region, we as leading law schools have an opportunity to shape the convergence of many of our legal regimes. This has already begun to take place in areas like data protection, where the global imperative is perhaps most obvious and networks of legal scholars have helped to craft guidelines. But it is also possible in other areas, perhaps most simply in the area of commercial law. For too long, comparative law in Asia has tended to focus on comparing individual Asian jurisdictions with their Anglo-American or continental European counterparts. Moving forward, initiatives like the ABLI will be calling on academics from across the region to explore what commonalities there are across jurisdictions, laying the foundations perhaps for convergence of those laws.<sup>44</sup>

The colonial shadow cast across many of our jurisdictions is long. Yet the days of foreign powers inhibiting legal education are in the past. In the wake of those retreating powers, the rush to develop legal institutions necessarily entailed a degree of imitation. But with the economic and political rise of Asia there is an opportunity and, I would argue, a responsibility to be more bold. This does not mean change for change's sake, but as we each look to be the best national, global, and Asian law schools that we can be, our educational and research mission must evolve. The three fairly modest starting points I have proposed are a recommitment to comparative law that has an emphasis on Asia, the creation of more

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<sup>42</sup> See, eg, Michael Waibel, *ICSID Arbitrators: The Ultimate Social Network?* (EJIL Talk, Florence, 25 September 2014), available at <<http://www.ejiltalk.org/icsid-arbitrators-the-ultimate-social-network>>. Cf. Chiara Giorgetti, "Who Decides Who Decides In International Investment Arbitration?", *University of Pennsylvania Journal of International Law*, vol. 35 (2013), p. 431.

<sup>43</sup> KIM Joongi, "International Arbitration in East Asia: From Emulation to Innovation", *The Arbitration Brief*, vol. 4(1) (2014), p. 1.

<sup>44</sup> Cf. Sundaresh Menon, "Roadmaps for the Transnational Convergence of Commercial Law: Lessons Learnt from the CISG" (35th Anniversary of the Convention on Contracts for the International Sale of Goods, Singapore, 23 April 2015), available at <[http://www.supremecourt.gov.sg/data/doc/ManagePage/5941/CISG%20speech%20\(Final%20-%20230415\).pdf](http://www.supremecourt.gov.sg/data/doc/ManagePage/5941/CISG%20speech%20(Final%20-%20230415).pdf)>.

opportunities for our graduates to practise law at the highest levels, and taking up the mantle of regional convergence of laws so that Asia's influence on economics and politics is matched by its influence on the law.

There is much to be done.

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