You Can't Get There From Here

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How did we get here?

I am still a relative newcomer to the International Association of Law Schools (IALS), but, in spite of that (or perhaps, in a way, because of it), I am a real IALS enthusiast. 'Founding Father' Carl Monk, in his paper, recalls the history of the IALS,[1] from the inaugural meeting of legal educators in Florence in 2000, to the second gathering in Honolulu in May 2004, to the working group meeting in Istanbul in May 2005, to the establishment of the IALS as an incorporated association in October 2005. I was invited to join the Governing Board on an interim basis in early 2007, when my predecessor and fellow Australian Stephen Parker, an active member of the Istanbul working group and informally the Board Member representing 'Oceania', was elevated in Australia from the humble ranks of Law Dean to the lofty heights of Vice Chancellor. This meant that, later in 2007, I was able to attend what was in fact the first official IALS conference following the IALS's incorporation, the conference hosted by the Kenneth Wang School of Law in Suzhou, China — aptly and alluringly called *Learning from Each Other: Enriching the Law School Curriculum in an Interrelated World*.[2]

The iconic short papers

I was immediately entranced by the array of short papers, written in advance by every participant in the conference and made available in advance for all participants to read, on the theme of 'The Three Most Important Things about my Legal System'. By reading those papers,[3] I learnt more on a single plane trip than I ever have, before or since. What is more, I also learned something about my own legal system. It is a salutary exercise to refine and crystallise one's thoughts on a potentially complex and subtle question into a 3-5 page (or sometimes slightly longer!) paper that aims for accessibility and insight without superficiality or condescension. The choices I made in that paper were a learning experience for me, and enabled me not only to be informed by the other papers but also to read them with empathy.

Difference, and learning from each other

I was not exactly coming to the papers as a comparative law neophyte. As a constitutional lawyer,[4] I long had an interest in comparative constitutional systems, though perhaps a little too narrow an interest in federal systems in the common law tradition. But reading the papers from such a wide diversity of countries, countries at such different stages of economic and political development and often in some kind of transition,[5] I was forced immediately to revisit and question the assumptions on which my legal system was based and which I had internalised.

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[1] See also http://www.ialsnet.org/index.html, http://www.ialsnet.org/newsletter/internationalIALSnewsletteraugust2006.pdf.
[2] See http://www.ialsnet.org/meetings/enriching/index.html.
[3] See http://www.ialsnet.org/meetings/enriching/papers.html.
[4] See, for example, Michael Coper, *Encounters with the Australian Constitution* (CCH Australia Ltd, 1987, 1988); 'Constitutional Law' in Tony Blackshield, Michael Coper and George Williams, *The Oxford Companion to the High Court of Australia* (OUP, 2001) 139; 'Constitutional Adjudication and Democracy: One Voice or Many?', IALS Conference on Constitutional Law, Washington DC, September 2009: see http://www.ialsnet.org/meetings/constit/papers/CoperMichael(Australia).pdf or http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1633210.
[5] See, for example, http://www.ialsnet.org/meetings/enriching/stelina.pdf.

One example that sticks in my mind is that I had taken for granted a certain basic respect for the law and a culture in which citizens were generally law-abiding; a number of other countries could clearly not take this as an assumed starting point,[6] and of course that then colours what is important in one's legal system and what are the most pressing problems to address.

That particular example is not important. What is important is the principle that comparison and attention to difference is a timely reminder that one's own way, the way one is familiar with and has internalised, is not necessarily the only or even the best way.

Of course, comparative law scholars need to be alert to the dangers of superficial comparison.[7] To really understand a legal system, to get under its skin, one has to live and breathe it and to understand the culture within which it operates. And we need to remember that this will typically require multiple viewpoints. Our vision of foreign legal systems is often reduced to a monocular one. If we understand the cross-currents, the undercurrents, and the contradictions of our own legal system, it is but a small step to extend that acknowledgement of complexity and subtlety to every other legal system. Yet it seems a step often not taken. Basic communication needs a level of generalisation; but the real world is messy and unruly and invites persistent qualification.

Whatever the challenges to acquiring deep knowledge through the comparative method, the benefits of learning from each other do not have to be sold to this audience. To extol the virtues of comparative law and comparative legal education to IALS members is preaching to the converted. We have moved beyond the principle and explored its application, both in areas of substantive law (international business transactions in Hamburg in 2008,[8] constitutional law in Washington DC in 2009,[9] and labour law in Milan in 2010[10]) and in relation to legal education (curriculum issues in Suzhou in 2007,[11] cultural sensitivity in Montreal in 2008,[12] and the role of law schools in Canberra in 2009[13]), and are now returning to the theme of law schools and legal education here in Buenos Aires in 2011.[14] Yet the driving force of the IALS core principle of learning from difference should not be lost sight of. It is the essential starting point, and implicit within the core principle is a set of values which I think we would all embrace: tolerance, open-mindedness, and, with an understanding of the different environments — legal, social, political, economic, and cultural — in which different approaches have developed, empathy.

From difference to commonality

Yet it has always seemed to me that learning from difference is only half the story. I was privileged to have the opportunity in 2009 to host the IALS conference on *The Role of Law Schools and Law School Leadership in a Changing World* at the Australian National University in Canberra[15] and to chair the Planning Committee for that conference. As I said in my Welcome in the book of papers, it was timely, in my view, to 'push a little further and explore not only the differences that illuminate but also the commonalities that unite'. In other words, I asked delegates to consider whether there were any 'universals' that defined our collective mission as law schools around the

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[6] See, for example, http://www.ialsnet.org/meetings/enriching/ferrari.pdf, http://www.ialsnet.org/meetings/enriching/alegre.pdf.
[7] Well noted by Kent Anderson and Trevor Ryan, 'Gatekeepers: A Comparative Critique of Admission to the Legal Profession and Japan's New Law Schools' in Stacey Steele and Kathryn Taylor (eds), *Legal Education in Asia: Globalisation, Change and Contexts* (Routledge, 2009) 45, cited in Michael Coper, 'Recent Developments in Australian Legal Education', conference paper given at Chuo University Law School, Tokyo, Japan, November 2010: see http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715262.
[8] See http://www.ialsnet.org/meetings/business/index.html.
[9] See http://www.ialsnet.org/meetings/constit/index.html.
[10] See http://www.ialsnet.org/meetings/labour/index.html.
[11] See http://www.ialsnet.org/meetings/enriching/index.html.
[12] See http://www.ialsnet.org/meetings/assembly/index.html.
[13] See http://www.ialsnet.org/meetings/role/index.html.
[14] See http://www.ialsnet.org/meetings/teaching/index.html.
[15] See http://www.ialsnet.org/meetings/role/index.html.

world in the early 21st century. The nearly 100 papers from that conference are a wonderful resource.[16] Many address the question of identifying universals, and some took that as their key theme.[17]

If understanding difference encounters the problem of superficiality, identifying universals encounters a whole set of other problems. We are all familiar with the tension between the widely accepted universality of human rights and the persistent claims of cultural relativity. We understand how claims for universality can entail, or seem to entail, arrogance and insensitivity to difference. We have seen how claims for universality can be a reflection of dominant political power.

Yet, in our spheres of influence — legal education and legal scholarship, as well as related outreach and community engagement — I see value in striving for universals. We are engaged in a collective enterprise worldwide. What is it that we have in common? What guides and sustains us? What universal message are we trying to convey?

Commonality in our task of educating lawyers

The 2009 Canberra conference achieved a strong consensus, across 100 delegates from 66 law schools in 31 countries, that, whatever our differences, we are educating our lawyers for something more than the deployment of their technical legal skills. Of course, those technical legal skills — all the familiar skills of the lawyer's craft — are essential, and their competent deployment is an essential cog in the wheel of society. But it was readily agreed that we are educating our lawyers for something more.[18] How one precisely articulates that 'something more' needs a little more work, and the nature of the agreement may depend a little on the level of abstraction with which one states the proposition. The essence, however, of the 'something more', lay in the notion of public service: the use of legal skills, not merely for personal material reward but for the greater good.

It was recognised that this ethic of service to society — service beyond the lawyer as technocrat — could play out in a multitude of ways, but associated ideas saw the lawyer as model citizen and community leader, working for law reform and social justice and standing up for human rights and the rule of law. The challenge for legal education was to go beyond the traditional focus on technical legal skills and to nudge the transmission of these deeper underlying values from aspiration to reality.[19]

Balancing difference and commonality

So we learn from difference and we strive for universals. As in so many things, we must strike a balance. This is well reflected, I think, in the statement of our mission in Section 1 of the IALS Charter,[20] especially in the key first two paragraphs. They bear repeating: 'The mission of the Association is (a) to foster mutual understanding of and respect for the world's varied and changing legal systems and cultures as a contribution to justice and a peaceful world; (b) to enhance and strengthen the role of law in the development of societies through legal education'. I congratulate

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[16] See http://www.ialsnet.org/meetings/role/papers/index.html.

[17] See, for example, http://www.ialsnet.org/meetings/role/papers/ConisonJay(USA).pdf, http://www.ialsnet.org/meetings/role/papers/O'Brien,Molly(Australia).pdf.

[18] These matters are expanded on in Michael Coper, 'Educating Lawyers for What? Reshaping the Idea of Law School' (2010) 29 *Penn State International Law Review* 25-39: see http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1681758, http://www.ialsnet.org/meetings/role/papers/CoperMichael(Australia).pdf. See also Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds" (2008) 39 *University of Toledo Law Review* 233-249, available at http://law.utoledo.edu/students/lawreview/volumes/v39n2/Coper%20I%20Corrected%20Final.pdf.

[19] And, in particular, from specialised courses such as clinical programs into the mainstream: see Linda F Smith, 'Fostering Justice Throughout the Curriculum' (2011) 18 *Georgetown Journal on Poverty Law and Policy*; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1758015.

[20] See http://www.ialsnet.org/charter/index.html.

those who drafted those words. They capture, in short compass, what I have laboured to say above — and with the added idea that the end result of all this, the point of it, is to make a contribution, globally, to justice and peace.

Curriculum, pedagogy, and regulation

As we pursue our mission as set out in the IALS Charter, we do so in three broad areas, and each of the three is the subject of a plenary session at the 2011 Buenos Aires conference: the curriculum, pedagogy, and, for the first time in the IALS context, regulation and accreditation.

Curriculum

The notion of curriculum is very broad, encompassing not only specific substantive course content but also pervasive themes such as social justice, gender, issues relating to Indigenous peoples, values, internationalisation, and more. It also encompasses wider questions of how law programs and legal education are structured and organised around the world — for example, as undergraduate or graduate education. In Australia right now, we are in the process of catching a wave that is propelling the American-style graduate-entry Juris Doctor (JD) degree around the world. Yet, unlike Japan and Korea, Australia has, to a large extent, maintained the undergraduate Bachelor of Laws (LLB) as an alternative path to legal practice. This is giving rise to another debate about similarity and difference: can these two degrees both achieve the same purpose of qualifying their graduates for admission to legal practice, yet be sufficiently different to justify their separate existence?[21]

This debate may tease out some interesting propositions about what should be the same, and what should be different, in the attributes we expect of the graduates of these respective degrees. In this exercise, a worldwide comparative perspective, focusing on our core understandings of the concept of lawyering, the role of law schools, and the impact of different pedagogies on different cohorts of students, will be invaluable, and the IALS may provide a useful forum within which to pursue these questions.

Pedagogy

Curriculum and pedagogy are intimately related, as my example of the JD debate illustrates. Yet pedagogy has its own imponderables, tensions, and contested methods and goals: theoretical versus experiential learning; knowledge versus skills; 'thinking like a lawyer' versus 'doing justice'; logic versus experience; truth versus contingency; and issues around the legitimacy and effectiveness of the transmission of values.

In my view, there is also an intensely political dimension to how we teach. There is a world of difference between the autocratic and hierarchical model of the learned professor transmitting superior knowledge to empty vessels, on the one hand, and, on the other, the democratic and egalitarian model of the teacher as facilitator, encouraging and respecting all views in a shared search for wisdom. No doubt examples of both, and shades in between, may be found within a single legal system and across different legal systems, according to tradition, personality, habit, culture, and perhaps other factors.

[21] See Michael Coper, 'Recent Developments in Australian Legal Education', conference paper given at Chuo University Law School, Tokyo, Japan, November 2010, pp 11-13: see http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715262.

Is pedagogy an area where, predominantly, we should be learning from, and respecting, difference, or is it an area where we might seek a universal in 'best practice'? I would love to have that debate within the IALS, and perhaps we will have echoes of it in the relevant plenary.

Regulation and accreditation

It will also be fascinating to begin to talk about quality assurance, regulation and accreditation. Inevitably, the initial focus must be on difference and learning from each other; but as that exercise begins to draw out common issues, it may be possible to begin to think about 'best practice', or at least 'good practice', from a global perspective, and to see a role for the IALS in articulating those practices.[22]

Whatever we may think of regulation and accreditation, we do need to be able to satisfy ourselves that we are achieving our objectives and reaching the standards we have set for ourselves. In this sphere of quality assurance, as well as in relation to regulation and accreditation, an absorbing debate is raging in many places, including Australia and the United States,[23] about the relative merits of using 'input measures', on the one hand, and, on the other, assessing 'outcomes'. Inputs may be either objectively measurable (for example, a requirement for a minimum number of full-time staff or of books in the library), or dependent on the discretionary judgment of the evaluators (for example, a requirement that the number of full-time staff or of books in the library be 'adequate').[24] In either case, these input measures are subject to the criticism that compliance with them does not guarantee quality outcomes. For that, so it is said, one must somehow assess whether the attributes said to be essential for graduates to have on graduation have in fact been acquired.

The acquisition of some of these attributes — though not necessarily all — may have been the subject of conventional assessment in the course of the law program (for example, core knowledge and core skills). But what about values? Can the effective acquisition of values be judged other than with hindsight, as they are tested in the course of life experience? And are outcomes only about the achievement of minimum competencies, or should we be concerned to evaluate the differing degrees of excellence with which our graduates have acquired their knowledge, skills, and values? At the ANU College of Law, we endeavour to do the latter through 'benchmarking', that is, peer review of our students' work by experts in comparable institutions. But whether that should have a place in regulation or accreditation is more problematic.

Where to from here?

Our Buenos Aires conference concludes with a plenary session on where we go from here, and I hope, and expect, to hear a plethora of practical ideas. This initial session is on how we got to where we are now. We have arrived at our current destination via many gatherings in many places. I focused, in this paper for the initial session, on the 2009 Canberra conference, but I commend the papers given, and the progress made, at all of those gatherings.[25]

I have tried to extract two major themes that I hope we can keep in view as we embark on discussion of particular aspects of curriculum, pedagogy and regulation and accreditation: first, the

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[22] Another international dimension of regulation and accreditation is the growing recognition by some countries of law degrees acquired in other countries, as satisfying, at least in part, the recognising country's academic requirement for admission to practice in that country: see, for example, http://www.cald.asn.au/slia/Australia.htm#Will, and generally http://www.ilsac.gov.au/www/ilsac/ilsac.nsf/Page/Home.

[23] On accreditation in the US and more generally, see the very thoughtful paper by Dean Jay Conison, 'The Architecture of Accreditation' (2011) 96 *Iowa Law Review* (forthcoming), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1767004.

[24] In Australia, the Council of Australian Law Deans (CALD) *Standards for Australian Law Schools* are predominantly of the latter kind, though still in the main characterisable as input measures: see http://www.cald.asn.au/.

[25] See http://www.ialsnet.org/meetings/index.html.

continuing balance we need to strike between learning from (and celebrating) difference and discovering (and celebrating) universals, and, secondly, the consensus that was evident in Canberra that we have a great common mission in educating not just future lawyers but future leaders. I hope that those themes will provide a backdrop that informs our discussions.

We <u>can</u> get there from here

To get here, we have come a long way; not just from Florence in 2000, but from a time when law and legal education were imprisoned in the local jurisdiction, constrained from moving within countries with multiple jurisdictions let alone beyond countries. The traveller from the past to the present might well have been told that 'you can't get there from here'. Yet, travelling now on the wings of the IALS, we are a part of the astonishing transformation of the discipline of law that has come, and will continue to come, through internationalisation. We have seen the growth of international and transnational practice, the spread of ideas through scholarly exchange, the increasing internationalisation of the curriculum, growing international mobility of students, and the formation of a genuine global community of lawyers and legal educators. Continuing this process of internationalisation, strengthening our global community, realising our aspirations for the achievement of best practice or good practices, and thereby advancing our ultimate goals of promoting the rule of law, justice and peace, is the way of the future.