Making Sense of China's Experiment in “Internationalising Legal Education”

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A trend in modern Chinese is to create new words by adding “hua” (化) or “isation” to existing words. We now have neologisms such as internationalisation, globalisation, modernisation, liberalisation, privatisation, diversification, standardisation, digitalisation, popularisation and quintessentialisation. When writing or speaking, as opposed to reasoning and analysing, we unconsciously reach for these clichés. However, in this process of –isation, the word’s very essence is lost. However, the meaning of “internationalization” to China is unquestionably positive.

When we assess the relationship between legal education and the legal profession, internationalisation seems almost to deviate from the very purpose of legal education. Legal education is clearly local, since bar associations control legal education, are by nature closed and exclusive\(^1\). The simple reality is that bar associations will not grant you a license to practice law if you do not hold a law degree from an accredited law school. Regardless of how international legal education is, you cannot invent a degree that allows students to practise law in different countries. Obviously, internationalising legal education is not a response to the calls to relax entry barriers to the legal profession.

The advantage of internationalising legal knowledge maybe evidenced by the evolutionary process of knowledge production, apart from changes in direction, overall the process has never been interrupted. According to Harold J. Berman, the integration of Roman law, canon law and common law ran parallel to the internationalisation of legal education from

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\(^1\) Robert Stevens describes how the ABA established compulsory standards for legal education and forced law schools to accept them, "Law School: Legal Education in America from the 1850s to 1980s" (1983) pg207; Sheppard, S. "The History of Legal Education in the United States: Commentaries and Primary Resources" (1999) pg959; Abel, Richard L. "The Transformation of the American Legal Profession", Law and Society Review (1986) 20 pg7. In this essay the author describes attempts by the ABA to create many systems, such as the recognition of law schools and the bar exam, to control lawyering.
the middle of the eleventh century, which resulted in an expansion of both western legal knowledge and resources. The transplantation of laws, which occurred following Western colonial expansion from the fifteenth century, meant that Western law controlled, replaced and even destroyed local laws. The states concerned acquiesced in this external imposition.

The famous jurist Cai Shuheng said in the 1940s, "At the beginning we copied Japan and imitated the West. This portrayal of China's institutional culture over the past few decades also explains modern China's blueprint for legal education." The arrival of law schools in China accompanied the termination of traditional Chinese law and the transplantation of Western laws. Apart from a period during the 1950s to 1970s, Chinese legal education has always been dominated by Western legal theory, and law schools use western legal theory as a benchmark. As an importer of laws, confusion and lack of confidence inherently follow, with endless arguments over whether common law or civil law is more suited to China, and daily discussions over which new Western theory should be adopted. In the Chinese legal sphere almost all "new concepts" and "new ideas" come from the West. Chinese scholars present the periphery as centre and wish the foreign was the mainstream.

Western scholars assign credibility to the Chinese legal system based simply on the number of Western elements that they can identify -the greater the similarity to Western law, however superficial, the more positive the comments. An awareness that the imitation

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2 Bologna University, established in 1087, was the first law school and according to Harold J. Berman the birthplace of the Western legal tradition. Previously there was no western legal tradition. And no matter which standard we use, eleventh century or contemporary, Bologna University was international at every level: Students came from different areas. There were Germanic people, Franks, Angles, Provencal and so on. They studied ancient Roman law, which had nothing to do with the positive law (church law and secular law) in Europe and was called legendary law; It was said that the textbooks were transcripts of ancient Roman law (Corpus Iuris Civilis, the Digest, Institutes and Novellae); however, people did not carefully verify the origin, preserving, transmission and consistency of the transcripts but just considered them as universal truth which were found suddenly—the abstract and eternal law transcending positive law; Later Bologna University extended from ancient Roman law to church law and secular law, which formed the origin of the western legal tradition. Perhaps we can interpret Professor Harold J. Berman's view in this way—without an international legal education there would be no western legal tradition. See: Harold J. Berman, Law and Revolution: the Formation of the Western Legal Tradition, pp120-143.

is the highest form of flattery meant that Chinese law consciously follows its Western counterparts.

For a country such as China where all laws are imported, the internationalisation of legal education is nothing new. For a legal education probably already over-internationalized for more than one century, what is the sense of emphasizing internationalization again in 21st century? To what extent, do we have a consensus on the internationalization of legal education? What type of international legal education is China experimenting with? How sustainable are foreign law programmes in China? In answering this question, firstly, I would like to share with the audience my observations on three models that represent the trends in China’s elite law schools and secondly, I will make my comments. Although this paper focuses on Chinese legal education in the twenty-first century, when historical similarities and comparison between China and other countries could shed more light, it will also cover other examples, shift between past and present, Chinese and Western.

1. Peking University (Shenzhen) School of Transnational Law: Wholesale implant of American JD system and courses

In 2008, with the permission of the State Council's Academic Degree Commission, the School of Transnational Law at Peking University (Shenzhen) started a new three-year Juris Doctor. Initially, the JD was simply an English translation of the Chinese Juris Master (法律硕士), and later on it evolved into to both an American Juris Doctor (JD) and a Chinese Juris Master (JM) degree. The School of Transnational Law provides “a world-class education and a complete American JD curriculum”. This type of internationalization shows that an America JD program can be offered in China by a Chinese law school with a faculty mainly composed of American law professors.\(^5\)


The existence of Peking University (Shenzhen) School of Transnational Law indicates that among the many experiments of internationalisation, Chinese law schools that aim to import the American system of legal education and train American-style lawyers can also find space to develop.

However, such internationalisation is overseas expansion of the American system of legal education. How can one country's legal education find room to develop in another country? On one hand this relates to the exporter's advantage and the importer's preference; on the other hand it is a response to market demand. For example, the name JD implies that Chinese students may take the American Bar Examination without studying at an American law school, and this in itself is a marketing strategy that stimulates demand. However, its effort to get ABA accreditation seemed more difficult than anticipated.

Tsinghua University School of Law and Temple University Beasley School of Law set up an LLM programme in 2002⁶. Graduates receive a Master of Laws (LLM) degree from Temple University and a Certificate of Completion from Tsinghua University School of Law. Even with an LLM from Temple University, Chinese students are not automatically eligible to take the American Bar Examination without satisfying other conditions, they are still far away from gaining access to the market for American legal professionals. Since the ABA has neither accredited the LLM nor set up compulsory standards for the curriculum, there is more flexibility to adjust the curriculum in accordance with the need of Chinese students⁷. More exactly, American LLM programmes do not normally have a separate curriculum, but generally share classes with the JD.

2. China-EU School of Law (CESL): Double Master


⁷American Bar Association website, "Overview of LL.M. and Post J.D. Programs" (http://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d.html). An ABA-approved law school may not establish a degree program in addition to its J.D. degree program unless the school is fully approved, and the additional degree program will not detract from a law school's ability to maintain a sound J.D. degree program. The school must obtain the Council's acquiescence prior to commencing such a program. The ABA does not formally approve any program other than the first degree in law (J.D.)
In 2008, the Ministry of Education approved the first law school to be established under the "Sino-foreign Jointly Operated Schools Agreement" — CESL. CESL's basic structure consists of a consortium composed of thirteen European and three Chinese law schools. Students spend three years studying the CUPL LLM or Juris Master and the University of Hamburg Master of Europe and International Law (MEIL).

The MEIL is comprised of several modules taught by professors from 13 European partner institutions. Each European partner is in charge of one module. The main courses are: "Law and Politics of the EU", "European Legal Traditions", "the Rule of Law and Human Rights", "Government and Market Control", "European Private Law" and "WTO Regulations".

On its surface, we can regard the curriculum of the MEIL as independent from other existing curriculums taught at CUPL. However, essentially, MEIL courses form an integral part of the three-year CUPL Juris Master or LLM. Students no longer take compulsory and elective courses such as international law, comparative law, foreign law and a foreign language, but instead take the more international MEIL courses, which are taught in English. CESL MEIL courses do not emphasise the legal systems of particular European states, but give a broad overview of the main European legal traditions, thereby precluding the possibility of one particular country expanding its legal system through the MEIL.

The Double Master's programme has the following characteristics:

(1) Courses on international law, foreign law and comparative law are compulsory for double masters’ students (the Chinese master of law was not offered separately to Chinese students until 2012) and represent the entire curriculum for international students, (few international students study for the Chinese master of law). (2) Work is divided between Chinese and international professors: the former concentrate on Chinese law

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courses and the latter on international and foreign laws.

3. Tsinghua University School of Law: English LLM programme

The Tsinghua English LLM programme only admits international students. Chinese professors teach Chinese law in English. This programme represents a new approach whereby foreign law is not imported, but foreign students are taught Chinese law. The creation of the Tsinghua LLM in many ways set precedents.

As previously mentioned, many American law schools started Chinese law courses from the 1980s. These courses are just one part of the American LLM and not an independent programme. The Tsinghua LLM offers a systematic introduction to Chinese law and includes a series of 12 courses for 24 credits on: constitutional and administrative law, civil law, civil procedure law, company and bankruptcy law, environmental law, international trade and investment law, criminal and criminal procedure law, contract law, banking law, Chinese practice of international law, intellectual property law and Chinese society and Chinese law.

Looking back at one hundred years of legal education in China, it was always Chinese students who went abroad to study foreign law. By recruiting foreign students (who have already obtained a first degree in their own country), to study Chinese law in China, Tsinghua does the opposite. In the West, the first law degree, such as the American JD, is designed to cultivate domestic legal professionals; while the LLM is used to promote international exchange. The Tsinghua LLM is an attempt to redefine the function of the LLM in China. If the relevant authorities understood the profound significance of this redefinition, it would trigger a period of major reform.

Teaching Chinese law in English may lead to a change in the way law is taught. When

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giving a lecture to Chinese students, Chinese professors talk about foreign law. For example, when teaching civil law, professors talk about German law, French law and Roman law; when teaching company law, professors introduce American law. If this situation persists, research on Chinese law by Chinese professors will fall behind. From another perspective, a western centric approach dominates the law; yet it is hard for Chinese professors who teach foreign and international law in Chinese to be successful. It is inadvisable for Chinese teachers to teach foreign students foreign law. Therefore, Chinese professors need to consider challenges such as: how to Chinesify courses and how to teach them in English. Interestingly this leads us to the conclusion that internationalisation may drive Chinese professors to specialise in Chinese law.

Following Tsinghua's and Peking's\textsuperscript{10}, the Shanghai Jiao Tong KoGuan Law School\textsuperscript{11}, and Renmin University of China Law School\textsuperscript{12} all set up English LLM programmes. This paper will not discuss these courses in detail accept to say that the purpose, content, teachers and organisation differ.

CESL has not yet developed a Master of Chinese Law in English. This is an area currently constrained by limited applicants and teachers, but where although the future is uncertain there is room for development. If we wait until sustainable development is possible, it will not be too late. As a trial, in autumn 2011, CESL offered six Chinese Law Taught in English (CLTE) courses for 12 credits, including "An Introduction to Contemporary Chinese law", "Chinese Business Law", "Chinese Law and Society", "Chinese Labour Law", "Chinese Criminal Justice" and "Chinese Legal History"\textsuperscript{13}. The course lasts one semester and is open to students currently enrolled in foreign law schools. Credits earned


\textsuperscript{12} Remin University, Master of Chinese Law, http://www.law.ruc.edu.cn/eng/ShowArticle.asp?ArticleID=23031.

\textsuperscript{13} CESL, Chinese Law Taught in English, http://www.cesl.edu.cn/eng/prcclte.asp.
at CESL can be transferred and count towards the students' original degree. In the first semester of 2011-2012 academic year, twenty-six students from eleven countries enrolled in the first CLTE course.

4. Integrating international and comparative law into traditional courses

A different approach is to integrate one or a series of international or comparative law courses into existing courses. Harvard Law School (HLS) promoted the "International and Comparative Law" programme from the beginning of the twenty-first century. This programme includes compulsory courses for first-year students, foundational courses, advanced courses, seminars and “capstone” seminars. For example, in 2011-12, William P. Alford's "Why Law? Lessons from China"\(^\text{14}\), is one of the international and comparative law courses first-year and LLM students can take to fulfill this requirement. It is a new course designed to be integrated with traditional courses (civil procedure law, contract law, tort law, property law and criminal law). Public International Law, Global Law and Governance, International Human Rights, Comparative Constitutional Law, European Law and International Finance are foundational courses available to second and third year law students. New courses are integrated with traditional courses. The route taken by HLS can be roughly classified as "integration".

International and comparative law programmes at American law schools often regard a body of foreign laws as an object of research, which is not only theoretical. For example, Chinese law is part of the International and Comparative Law programme. By 2006, 36 law schools offered courses on Chinese law\(^\text{15}\). HLS has offered courses on Chinese law for thirty years. We can see that the experiment of internationalising by integrating new and traditional courses proved to be sustainable


\(^{15}\) [Chinese Law Courses Offered by North American Law Schools](http://law.wustl.edu/chinalaw/clcourse.html), Washington University in Saint Louis, Internet Chinese Legal Research Center.
In Chinese law schools, traditional courses already include compulsory and elective courses on international public law, international private law, Roman law, Western legal history, history of Western legal philosophy, comparative law, international economic law and international financial law. Moreover, even when professors teach Chinese law, they will make international law, comparative law and foreign law part of the lecture. For example, when Chinese professors give a lecture about civil law, they will definitely talk about Roman law, German civil law, French civil law and Japanese civil law.

5. Conclusive remarks

The internationalization of legal education in China is just a natural response to the reality of world.

The first, legal trends from the middle of the twentieth century show an integration of international law into domestic law: international treaties on trade, investment, intellectual property rights, services and remedy for some kind of tort damages, not only to a certain extent preclude the application of the member states' own laws, but also oblige member states to amend their corresponding national laws to ensure consistency with external international systems. For example, China committed to abolishing or modifying national laws that were inconsistent with the principle of "national treatment" when it acceded to the WTO16. Harmonising national laws with international conventions is a type of automatic internationalisation.

The second, the intensive mobility of goods, service, investment, intellectual property dramatically increased the situations demanding the interpretation of national law from an international perspective. Regardless of whether students intend to practise overseas or not, they still need basic knowledge of international, foreign and comparative law for the purpose of understanding or interpreting domestic laws.

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16 In the working document about China's WTO entry, the Chinese representative declared that, by accession, China would repeal and cease to apply all such existing laws, regulations and other measures whose effect was inconsistent with WTO rules on national treatment. Sec. 22, Working Party on the Accession of China, WT/ACC/CHN/49 (2001).
The third, as law schools cultivate future legal professionals through the generation of legal knowledge and the production of legal knowledge is not bound by borders, it is natural for legal education to have some aspects of internationalization in the sense of openness, diversity, critical thinking and academic freedom.

There are various types of internationalisation. Each one undoubtedly has its own rationality for existence; otherwise it would cease to do so. However, the author is concerned about whether a certain type has the possibility and universality to develop sustainably. Before passing judgment, it seems that an analysis of the limits of each type is more important than appreciate its merits.

Looking back, we can see that introducing an entire system and all its courses from an American Law School is not an innovation at all, and is similar to the earlier twentieth century model of Soochow University. In 1915, the American missionary Charles Rankin set up Soochow University Law School with the help of American missionaries from the Methodist Episcopal Church, South. The organisers held the ambition that the school would reach the ideals and standards of the best American Law Schools. However, they also realised that the mission of the school was to offer legal education suited to the needs of the country. The Soochow curriculum was adjusted to meet both needs. At first, the curriculum mainly focused on American common law. Until the early 1930s, a third of courses were comparative law taught in English and two thirds were Chinese law taught in Chinese. The case of Soochow University Law School indicated that only in an environment where internationalisation and localisation coexist can law schools develop sustainably.


The complexity of a degree programme such as the CESL MEIL, which was outsourced from UHH to CESL and is taught by flying faculty from 13 partner universities, is beyond comprehension. Many questions remain unsolved: what is the legal status of MEIL students, are they students of CUPL or UHH? Do the regulations of CUPL or UHH take precedence? How can quality and efficiency be guaranteed when coordinating between sixteen partner universities? Behind the program, there is a complicated structure composed of a network of contracts, financial arrangements involving dozens of stakeholders and regulations crossing several sovereign nations. Such a programme is therefore only possible when the cost remains to be affordable.

Establishing a Chinese LLM taught in English for foreign students is very creative. International students who know Chinese may have no interest in Chinese law and international students who are interested in Chinese law may not know Chinese. Therefore, it was hard to attract international students to the original LLM programme and it is hard to reform it into one that recruits both Chinese and foreign students. Although setting up an English course to meet the need of foreign students is very innovative, we can not ignore its limitations:

Much time and energy is required from professors to prepare courses which are unlikely to bring them academic prestige. With a few exceptions, it is much harder to express legal thinking accurately and elegantly in a foreign language than it is in your mother tongue. Shrewd legal professionals will not usually accept tasks where the working language is not their native language.

Even if English was not an obstacle, it would not necessarily mean that a professor was competent to teach law courses in English. Some Chinese legal terminology was translated from Japanese, and the Japanese was originally translated from German or French, such as: jus in re or real property rights (Dingliches Geschäft) (物权行为), obligatory rights, creditor rights (债权行为), abstract cause (无因行为), actual juristic act (事实行为), juristic act (法律行为), financial group with legal person status (财团法人),
corporation with legal person status (社团法人) and subject matter of the litigation (诉讼标).
To accurately translate these terms into English requires a profound knowledge of several
gle traditions and linguistics.

Extending the openness of law courses is the most convincing foundation for
internationalising legal education. This means integrating international and comparative
law into traditional courses, and showing the potential for sustainable development. This
does not automatically lead to a change in structure and will not interfere with the
evolution of the system itself. Schools are in charge of how courses are opened and
developed, they can change as much or as little as they wish and can also reverse
changes if needed. Integration does not mean changing the original target group; but is a
response to the needs of that group. If the course is the basis then there will be room for
development. If, however, new programmes are invented paralleling with the creation of
new institutions are invented without a concrete curriculum and a competent faculty,
besides an impressive start, the programme is more likely to be an overnight wonder that
in the end fades.