

# LEGAL EDUCATION REFORM IN AUSTRALIA AND THE IMPACT OF GLOBALISATION: A COMPARATIVE PERSPECTIVE

*Martin Vranken\**

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*The emphasis on internationalisation of the Australian economy shows no signs of abating. This state of affairs is not without repercussions for its legal system. Internationalisation has now also started to affect legal education in Australia. This short article focuses on the proclaimed European dimension of the Australian globalisation debate. Special attention is paid to the introduction of the so-called "Melbourne model" in the aftermath of the Bologna Declaration. It would seem that policy makers in both the northern and southern hemispheres have entered a brave new world the contours of which remain imprecise.*

*Le processus d'internationalisation de l'économie australienne est en constante progression et ne manque pas d'influencer le système légal australien ainsi que la manière dont le droit est aujourd'hui enseigné dans ce pays. Ce bref article s'intéresse aux conséquences inférées par la mise en oeuvre en Australie de méthodes d'enseignement qui empruntent largement à celles qui sont en vigueur en Europe. L'auteur analyse la portée de la méthode dite de « Melbourne », qui directement inspirée des préceptes posés par la Déclaration de Bologne, a pour objectif affiché de permettre une uniformisation des enseignements universitaires y compris celui du droit, afin de permettre une plus grande mobilité des juristes australiens.*

*Au terme de son analyse, l'auteur sans remettre totalement en cause le bien-fondé de pareille méthode, reste néanmoins réservé sur ses bénéfices à court terme dans la mesure où selon lui, elle n'a pour seul objectif que de tendre vers une harmonisation des méthodes d'enseignement et non pas vers leur véritable unification.*

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## **I INTRODUCTION**

Comparativists face an uphill battle. The practical relevance of their discipline is not always apparent. The need to proceed with such caution as to avoid stepping on culturally sensitive toes can

be demoralizing at times.<sup>1</sup> Even so, legal systems may benefit greatly from the occasional comparison with one another. This is particularly true when grappling with domestic law reform. How else can one find out about international trends? How better to establish whether any proposed reforms domestically go with or against the grain internationally? Knowledge of foreign law then is an invaluable guide in assisting domestic law reform without, of course, ever dictating or controlling it.<sup>2</sup>

The benefits of the comparative approach need not be restricted to substantive law. Rather they can extend to the process of legal education itself. On 19 June 1999 representatives of (initially 29) European governments signed a joint statement that has since become known as the Bologna declaration. The stated objectives of the signatories are the establishment of "a European area of higher education" and the promotion of "the European system of higher education" world-wide by 2010.<sup>3</sup> To this effect the various education ministers have committed to co-ordinate existing national policies and, in particular, to adopt a system of easily readable and comparable degrees based on two main cycles, undergraduate (bachelor) and graduate (master and/or doctorate). Completion of the first cycle requires study for three years or more and is meant to provide an appropriate level of qualification relevant to the European labour market. Access to the second cycle is dependent on the successful completion of first cycle studies. Student mobility is to be promoted further by the establishment of transferable credits for subjects undertaken.

In April 2006 the Australian federal government released its response to the Bologna declaration by way of a discussion paper entitled *The Bologna Process and Australia: Next Steps*. The stated purpose of the paper is to reflect on the significance of Bologna for Australia, including any possible Australian responses to the creation of an integrated European higher education area. The paper postulates that the Bologna process presents both opportunities and challenges for Australia's relationship with Europe as well as with Asia. In particular, it expresses concern about the risk of losing some of the current 32,000 enrolments by European students at Australian institutions to "more attractive" destinations elsewhere. In this regard, the paper stresses the importance of

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\* PhD (Leuven), LL.M (Yale), Associate Professor and Reader, Faculty of Law, University of Melbourne. This paper was completed in 2007. I would like to express my gratitude to Professors Othmar Vanachter and Danny Pieters for their insightful observations during my visit at the Catholic University of Leuven (Belgium) in July 2007.

1 Most outspoken about the limits of the comparative method is Pierre Legrand "The Impossibility of Legal Transplants" (1997) 4 Maastricht Journal of European and Comparative Law 111; see also "European Legal Systems are not Converging" (1996) 45 ICLQ 52.

2 That is also what Otto Kahn Freund meant when he warned about the dangers of "transplantability" in his classic "On Uses and Misuses of Comparative Law" (1974) 37 MLR 1.

3 The full text of the Bologna declaration can be found at <http://www.bologna-berlin2003.de>.

developing an "effective multilateral dialogue with Australia's key Asian education partners about future directions in higher education".<sup>4</sup>

In May 2006 the council of Australia's university presidents, the Australian Vice-Chancellors' Committee (AVCC), published its own response to the government's discussion paper.<sup>5</sup> The AVCC acknowledges the importance of understanding the changes occurring in Europe and the need to consider the implications for Australia. But the paper warns against assuming too readily that "full compatibility with the Bologna Process is the only option". The Australian government then is urged not to throw out the proverbial baby with the bathwater in that:<sup>6</sup>

Any engagement by Australia with Europe through the Bologna Process must not result in a diminution of the diversity of the Australian university system ... its collaboration and cooperation with countries around the world especially those in the Asia-Pacific region, nor in any approximation to a one-size fits all approach.

The discussion below looks at the experience to date as regards legal education reform in both Europe and Australia with special reference to the Catholic University of Leuven (Belgium) and the University of Melbourne. Both tertiary institutions represent the author's former and current *alma mater*. Both claim to have adopted a pro-active stance to legal education reform for purposes of the twenty-first century.

## II LEGAL EDUCATION REFORM IN EUROPE

Implementation of the Bologna "model" for higher education in Europe has started to affect curriculum development in some 45 participating countries. Not surprisingly perhaps, especially given the non-legally binding nature of the Bologna declaration itself, no uniform scheme has emerged so far. In fact, some variations can be expected to continue to exist between countries and even between individual universities within countries. Rather than adopting a *tabula rasa* approach, which would have meant starting afresh completely, it appears that each educational institution is making an attempt at revamping its pre-existing *modus operandi* as best as possible. A case in point is the Catholic University of Leuven in Belgium.

Leuven is one of the traditional, established centres for higher education in continental Europe. Founded in 1425, the roots of its University are squarely in medieval times. In the pre-Bologna era a law degree at Leuven typically consisted of five years' study over two cycles. During a first period of two years, the focus was on acquiring general background skills deemed necessary to succeed as

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4 Australian Government, Department of Education, Science and Training, (2006) *The Bologna Process and Australia: Next Steps* (text available on <http://www.dest.gov.au>).

5 Australian Vice-Chancellors' Committee, (2006) *AVCC Response to Discussion Paper on The Bologna Process and Australia: Next Steps* (text available on <http://www.avcc.edu.au>).

6 Ibid.

a law student. Subjects compulsorily undertaken during the first cycle ranged from philosophy, psychology and sociology to logics and even economics. This broad focus on, in essence, non-law subjects made perfect sense in the Belgian context. University entrance in that country is generally open to anyone with high school qualifications. No special law-school admission test applies. In these circumstances the early years of university study were meant to be more in the nature of acclimatisation and intellectual leveling among students. At the end of this first cycle, a non-professional degree of Candidate in Law (*Kandidaat in de rechten/Candidat en droit*) was awarded. It gave access to the second cycle, comprising three years of law study proper and dominated by compulsory subjects but with some scope for studying electives towards the end of the degree. Upon completion of this second cycle, the degree of Licentiate in Law (*Licentiaat in de rechten/Licence en droit*) was awarded.

At Leuven only a handful of students traditionally were encouraged to undertake further post-graduate studies for a Master, let alone a Doctorate in law. Typically, students tended to go abroad (usually to the UK or USA) for their Master's degree whereas doctoral studies were undertaken at the home university under the direct supervision, effectively a form of tutelage, of a full professor in the chosen area of specialisation.

Restructuring of the law degree in the wake of the Bologna declaration *prima facie* has resulted in a reduction of the time required to obtain a professional law degree. The new Bachelor degree (*Bachelor in de rechten/Bachelier en droit*) is henceforth obtained after only three years' study. That may be one year longer than the old (non-professional) Candidate in Law degree, but it also is a full year shorter than study for the old Licentiate in Law. A further two years of study now leads to the new Master degree (*Meester in de rechten/Mître en droit*) being awarded.

In principle, a Bachelor degree suffices to enter the labour market for all but the traditional "gown" professions at the bar or the bench. It can be speculated, though, that on-going competition among law graduates will result in a Master degree *de facto* becoming the new professional requirement. In any event, the contents of the new "Ba-Ma" programme continues to be fairly prescriptive, especially in the Bachelor degree where only six out of 180 study points have been set aside for electives - to be undertaken during the second year of study. The situation changes somewhat in the Master degree where students must choose their subjects by reference to one out of six majors. The first Bachelor-in-law degrees at Leuven were awarded in July 2007.

There exists a remarkable similarity between the list of actual subjects offered before and after Bologna. In terms of their contents, however, a careful restructuring of all subjects on offer may very well result in the European dimension of each subject obtaining greater prominence henceforth. Query, though, how the Leuven "translation" of the Bologna model is likely to fit with the situation in neighbouring Holland where a Master degree can be obtained after just one additional year of study. If, as some Belgian commentators suggest, the new degree structure fosters international student mobility especially at the Master level, Leuven students may be tempted to undertake their Master study in the Netherlands. These students thus effectively end up graduating one year ahead

of their fellow students who elect to undertake all of their law study in Belgium! Only time can tell how Belgian employers will respond.

### **III LEGAL EDUCATION REFORM IN AUSTRALIA**

#### **A Antecedents in Asia**

The focus on a multi-cycle, undergraduate-graduate approach to education in the Bologna declaration resembles somewhat the educational system in the USA where undergraduate college attendance is followed by graduate professional training at university. The American JD programme has become a direct source of reference for the efforts at legal education reform by several countries in Asia.

Japan was the first Asian nation to move towards a graduate law school model. Under discussion since 1999, enabling legislation was passed by the Diet in December 2002 and took effect in 2004. The Japanese graduate model is non-exclusive: it co-exists with undergraduate legal education based on European models in place for over a century.<sup>7</sup>

A US style law school system is expected to commence in South Korea from 2008 onwards. Another country contemplating the move to a JD system along American lines is Taiwan.<sup>8</sup>

#### **B The "Melbourne Model"**

The higher education environment in Australia is in a state of flux. Changes in the domestic environment include a steady decline in public funding for student places, greater reliance on student fees and more intense competition for the best students. Internationally, the emergence of a global market for higher education, in particular, has been identified as a further trigger for change.<sup>9</sup> In response to these evolving environmental factors, the University of Melbourne developed a strategy known as "Growing Esteem".<sup>10</sup> The so-called "Melbourne model" arguably constitutes its most pivotal component.

The "Melbourne model" stands for curriculum reform aimed at aligning teaching at the University of Melbourne with "the best of European and Asian practice and North American

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7 Masahiko Omura, Satoru Osanai, Malcolm Smith "Japan's New Legal Education System: Towards International Legal Education?" (2006) 20 *Journal of Japanese Law* 39, 44.

8 Chang-fa Lo "Possible Reform for Legal Education in Taiwan: A Refined 'JD System'?" (2006) 1 *Asian Journal of Comparative Law* 1 art 7.

9 Peter McPhee *The Melbourne Model: New Generation Undergraduate Degrees*. Summary Statement of Presentation at AAGE Graduate Recruitment Conference 2006 (text available on <http://www.aage.com.au>). Professor McPhee is vice-chancellor (academic) at the University of Melbourne.

10 See the University of Melbourne's own "Growing Esteem" website at <http://growingesteem.unimelb.edu.au/index.html>.

traditions".<sup>11</sup> From 2008 onwards six "new generation" undergraduate ("bachelor") degrees, each three years in duration, are created in the fields of arts, bioscience, commerce, environments, music and science. Completion of an undergraduate degree at a sufficiently high level of distinction becomes the stepping stone for a further three year period of professional study at the graduate ("master") level. Nine "new generation" degrees cover such wide-ranging yet hands-on fields as Master of Animal Science, Master of Architecture, Master of Forest Science, Master of Nursing, Master of Property and Construction, Master of Public Policy and Management, Master of Social Work, Master of Teaching, and Master of Urban Horticulture. The tenth "new generation" professional graduate degree is the Juris Doctor in law.

*1 Access to law study under the Melbourne model*

From 2008 the new JD becomes the sole option for students wishing to study towards a law degree at the University of Melbourne. Admission depends on the applicant's results in a newly established law school admission test. In the past, access to university study – including law – depended primarily on exam results achieved during the final years of high school. While interpretation of the test scores is a matter for the Melbourne law school itself, the new admission test is the same LSAT (Law School Admission Test) required for those seeking to be admitted to law study in North America. It may be recalled that the LSAT is administered by the LSAC (Law School Admission Council), a non-profit organisation whose members comprise some 200 law schools in the U S and Canada. Aspiring JD students at the University of Melbourne are referred to the web site of the LSAC.<sup>12</sup> They are expected to register for the LSAT (an application fee applies) and sit the test, in Melbourne or elsewhere, before they lodge their application for admission to the Melbourne JD. In addition to LSAT scores, a newly established Melbourne law school admission committee will take into account each applicant's grade point average on the basis of all tertiary study undertaken, whether at the University of Melbourne or elsewhere, with all subjects weighted independently of year level or discipline. Finally, as the new type of law student is no longer simply a high school leaver, all applicants are required to provide a statement about their personal circumstances, including any work and life experience.

For the time being, the University of Melbourne is the only academic institution in the country to go down the above road. Other universities within the Melbourne region and elsewhere in the country have adopted a wait-and-see approach. As a result high school graduates wishing to study law continue to have plenty of opportunities in the immediate future. Of course, that in turn means that Melbourne risks losing out, unless it somehow can persuade 18-year olds to postpone their law studies by a minimum of three years. To this end the brightest school leavers are being offered a

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11 This quote has been taken from the web site of the University of Melbourne at <http://www.futurestudents.unimelb.edu.au/courses/melbmodel/>.

12 LSAC.org Homepage.

guaranteed place of sorts in the JD programme early, provided they do well – required is a minimum average of Second Class Honours or H2A – in their undergraduate university degree.

## *2 Structure of the new JD degree*

The structure of the new law degree requires students to undertake 24 subjects comprising 17 compulsory and seven optional subjects. The list of compulsory subjects reflects the results of an earlier review followed by a decision to semesterise the LLB curriculum so as to bring the LLB in line with a former, small-scale (in term of student numbers) graduate law degree (also known, with the benefit of hindsight somewhat confusingly, as JD) that briefly operated side-by-side with the undergraduate law degree at Melbourne.

The new JD programme starts with the introductory subject of Legal Method and Reasoning and this is followed by Principles of Public Law (taught separately from the later year subjects of Constitutional Law and Administrative Law), Obligations (taught separately from Torts and Contracts), Dispute Resolution (again, taught separately from Remedies), Criminal Law and Procedure, Property, Corporations Law, Legal Theory, Trusts, Evidence and Proof, Legal Ethics and Legal Research. All, except for Legal Method and Reasoning which is to be taught intensively at the start of the JD degree, continue to be one semester in length. The benefits of semesterisation, in allowing for flexibility in international exchanges for both incoming and outbound students, are thus preserved.

The optional programme has been organised around a series of subject groupings that are meant to assist students in deciding whether to pursue depth and/or breadth in their study of electives. The official grouping headings are Asian law, corporate and commercial law, criminal law and justice, dispute resolution, indigenous issues in law, intellectual property, media and information technology law, interdisciplinary law, international and comparative law, labour law, law and the family, legal theory, land and resources law, public law and taxation law. None are meant to be mutually exclusive.

## ***IV IN CONCLUSION***

Australian students love to travel overseas and law students are no exception. International exchanges with academic institutions in Asia, Europe and the USA are increasingly popular opportunities to spend a semester or so away. Once graduated and having entered the workforce, there may be less occasion for this to occur. Some of the larger law firms (Mallesons Stephen Jaques or Minter Ellison, for instance) have offices outside of Australia, and self-proclaimed global law firms such as Clifford Chance or Linklaters, while they may have no offices in Australia as such, are equally well known for employing Australian law graduates whether in London or elsewhere. This situation is unlikely to change in the near future.

Whether the recent educational reforms in Europe and Australia will prove an effective boost for the internationalisation of law and law study remains to be seen. The jury is still out. Be this as it

may, it must be borne in mind that, even in Europe, the overall goal of the Bologna reforms is harmonisation rather than unification. Differences between legal education institutions are therefore bound to continue to exist well into the future. Once this is accepted, the reputation of individual institutions may come into play more than ever before. No doubt the law schools of Leuven and Melbourne count on it.