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LAW SCHOOLS AND THE MARKET FOR INTERNATIONAL POSTGRADUATE STUDENTS

PETER DEVONSHIRE*

I INTRODUCTION

This article explores the role of law schools in attracting international students for postgraduate study. This is a pressing pedagogical and economic issue that is of concern to many institutions. It is proposed to analyse these dynamics from a comparative perspective, with a view to addressing the elements of a successful positioning for a law school in an increasingly competitive global market.

The enquiry will focus on Master of Laws (LLM) programs, which in many Law Schools account for the largest enrolment of postgraduate students. From the perspective of the education provider, an LLM by coursework is often both efficient and economically viable. This will be explored against the theme of internationalisation, recognising the intense competition among law schools for a cohort of students who are diverse, mobile and discriminating.

Attention will be directed to institutions that do not typically fall in the top echelon of world university rankings and which operate with limited resources. A number of perspectives and strategies will be canvassed, with the obvious caveat that any initiatives will be counterproductive if they compromise academic standards.

This article draws broad qualitative distinctions between different law schools and their LLM programs. General perceptions as to status and reputation are largely impressionistic, although they are formed against the background of leading academic ranking exercises,¹ such as The

* Professor of Law, Faculty of Law, University of Auckland. I am grateful to Anna Wu for her invaluable research assistance. I am also grateful to the Editorial Committee and the anonymous referees for their helpful comments. My thanks are also due to Professor Baris Soyer, College of Law, Swansea University. Finally, I would like to acknowledge the Faculty of Law, University of Auckland, for its financial support. A version of this article was presented at the Association of Law Teachers Annual Conference, Leeds, 13 April 2014.

¹ These ranking exercises typically assess university performance across the core missions of teaching, research and knowledge transfer. The findings are based on standard assessment criteria. For example, The Times Higher Education assessment exercise uses 13 calibrated performance indicators for achieving balanced comparisons.

Times Higher Education World University Rankings² and the QS World University Rankings.³ This article does not purport to draw fine distinctions in matters of reputation and standing, but the views expressed are generally consistent with global university league tables and established affiliations. For example, it is assumed that the Russell Group in the UK and the Group of Eight Universities in Australia fall in the higher echelons and that membership of global networks such as Universitas 21 signifies certain benchmark standards.

It is important to note that the LLM program takes diverse forms in terms of content, specialisation, duration and course delivery. Examples include a general LLM, an LLM with specialisations and subject clusters, nominate Master's degrees taught wholly or partly at law school, cross-disciplinary programs, and cross jurisdictional Masters degrees taught by partner institutions in different jurisdictions.⁴

II INTERNATIONAL DIMENSIONS OF LEGAL EDUCATION

A notable feature of certain LLM programs is the high ratio of international students to domestic students. In some cases the former predominates. This is particularly pronounced in a number of top tier US law schools. The Harvard class of 2013/2014 comprised 181 students, of whom 98% were international students.⁵ Cornell University's LLM program is almost entirely composed of international students, recruiting between 65-75 students from 25-30 different countries.⁶ Other US law schools cite statistics attesting to the diverse international nature of the LLM program.⁷ Some, such as Stanford, offer dedicated LLM courses for overseas students.⁸

Similar trends are evident in law schools throughout the Commonwealth. At the National University of Singapore, over 90% of

² *Times Higher Education World University Rankings* (2016) <<https://www.timeshighereducation.co.uk/world-university-rankings>>.

³ *QS Top Universities* (2016) <<http://www.topuniversities.com/qs-world-university-rankings>>.

⁴ These programs are discussed more fully below.

⁵ Harvard's website states that the LLM program 'typically includes 180 students from more than 70 countries'. The Graduate Program has the stated objective of seeking candidates from a variety of legal systems. See *Harvard Law School* (2016) <www.law.harvard.edu>.

⁶ Cornell's website states that 'the LL.M. degree program has been designed for students holding a law degree from outside the United States ...'. See 'Cornell Law School: Degrees' on *Cornell Law School* (2016) <<http://www.lawschool.cornell.edu/international/degrees.cfm>>. This program was established in 1948.

⁷ For example, in the 2013/2014 academic year, Yale's 23 LLM students originated from 12 different countries, while New York University had 70 percent foreign trained lawyers in its LLM and JSD programs. Again, Columbia University's 250 graduate students came from over 50 jurisdictions.

⁸ Stanford offers four one-year, course-based LLM programs. These are limited to students whose primary law degree was conferred outside the United States. See *Stanford Law School* (2016) <www.law.stanford.edu>.

graduate students in law are from overseas.⁹ At the University of Toronto approximately one half of the graduate students in law hold non-Canadian degrees.¹⁰ In the United Kingdom, the leading law schools post similar statistics. Of the 160-180 LLM students admitted to Cambridge each year, approximately two thirds come from overseas.¹¹ Comparable figures apply for Oxford, where the 2013/2014 BCL/MJur intake of 124 students comprised more than 80% international students.¹²

The benefits of a diverse cohort of international students have been expressed in different, sometimes unrelated ways. In crude economic terms, international students are a source of revenue and – unlike domestic students – the fees are not necessarily controlled by government policy. Fees for international students may be higher than for domestic students.¹³ This may confer positive benefits to the postgraduate program as a whole in providing a means of cross-subsidising domestic students. Universities in the UK have consciously targeted international students for this reason. As one academic manager remarked, ‘on overseas

⁹ The National University of Singapore website notes that its graduate students come from more than 35 countries. See *National University of Singapore* (2016) <<http://law.nus.edu.sg>>.

¹⁰ *University of Toronto Faculty of Law* (2016) <www.law.utoronto.ca>. Although the ratio of domestic and international students studying law is not specifically identified, leading Canadian universities indicate that their postgraduate programs attract a significant number of international students. For example, the University of British Columbia’s website states: ‘UBC values diversity and strongly encourages international students to apply for our graduate programs. 25 percent of our total graduate student body are international students’. See ‘International Students’ on *The University of British Columbia* (2016) <<https://www.grad.ubc.ca/prospective-students/international-students>>. Similarly, McGill’s website states that its graduate students come from over 150 countries, and that 38 percent of its graduate students are non-Canadian citizens. See ‘International Students’ on *McGill* (2016) <<https://www.mcgill.ca/gradapplicants/international>>. Dalhousie records a lower figure of 12 percent international students. See ‘International Students’ on *Dalhousie University* <http://www.dal.ca/admissions/international_students.html>.

¹¹ *University of Cambridge Faculty of Law* (2016) <www.law.cam.ac.uk>.

¹² *University of Oxford Faculty of Law* (2016) <www.law.ox.ac.uk>. Similarly the University of Nottingham Law School website states: ‘The diversity of the program is matched only by the cosmopolitan nature of the academic and student body: each year we admit about 150 students, typically from over 40 different countries around the globe.’ See *The University of Nottingham School of Law* (2016) <www.nottingham.ac.uk/law/>.

¹³ For example, in 2014 the domestic and international fees for the University of Auckland taught LLM program are NZ\$7,562-\$8,891 and NZ\$29,700 respectively: ‘Fees and Money Matters’ on *The University of Auckland – Auckland Law School* (2016) <<http://www.law.auckland.ac.nz/uoa/home/for/future-postgraduates/fp-fees-and-money-matters#s2c5>>. Note that in some contexts the term ‘domestic student’ may have an extended definition. For example, fees levied for EU students may be the same as for permanent residents of the UK. In private universities in the US, tuition fees are the same for national and international students. See generally, OECD, *Education at a Glance 2012: OECD Indicators* (OECD Publishing, 2012) 366 <http://www.oecd.org/edu/EAG%202012_e-book_EN_200912.pdf>.

students we make a profit, on undergraduate home and EU students we make a loss'.¹⁴

However, the exploitation of an economic opportunity is not necessarily consistent with wider social and educational ideals. Financial assistance is an important element in attracting the best students, irrespective of their means or background. There is great diversity in the scale and type of funding assistance for postgraduate students. At the apex are top-tier law schools with substantial resources to match these ideals. Speaking of admission policy for the LL.M at Harvard, it has been said:¹⁵

[W]e work hard to maintain a need-blind policy of admission for all our students. This is especially noteworthy regarding our LL.M. and SJD students, particularly as the pool of students applying for admission to the LL.M. has shifted increasingly toward developing countries and emerging democracies and includes a growing number of excellent candidates with limited financial resources. We feel that it has borne much fruit – in the quality of our LL.M students ... I realize that we are exceptionally fortunate to have the means to carry out such a policy ... but I very much hope that other schools will see the enormous value that lies in this type of strong institutional and financial commitment to the LL.M. degree.

While Harvard is sufficiently endowed to implement an admissions policy of this kind, other law schools are less fortunate.¹⁶ Indeed, as noted above, for many the perspective is reversed and postgraduate programs are regarded as a source of revenue rather than an outlet for philanthropy.

From a pedagogical perspective, it has been urged that students must directly experience legal pluralism in the classroom. To this end, some universities actively promote classroom diversity. In speaking to the relationship between domestic Juris Doctor (JD) students and international LL.M students, it has been observed that the latter enhance the learning experience of the former: '[t]he presence of LL.Ms is not only important for them, to get the valuable experiences of American law

¹⁴ Quoted in C Bolsmann and H Miller, 'International Student Recruitment to Universities in England: Discourse, Rationales and Globalisation' (2008) 6 *Globalisation, Societies & Education* 75, 84.

¹⁵ William Alford, Harvard Law School, speaking as a panelist in 'The Globalization of the American Law School' (2007) 101 *American Society of International Law Proceedings* 183, 188.

¹⁶ This includes high ranked US law schools. Georgetown University international LL.M students are limited to commercial loans. The University of California, Berkeley's website states: 'Berkeley Law does not provide full-tuition fellowships, tuition waivers, need-based grants, nor graduate teaching assistantships.' The University of Michigan offers need and merit based scholarships and private loans. Duke Law School states that it has very limited financial assistance to offer international students. Leading Australian Law Schools such as the University of Melbourne, University of Sydney, Monash University and the University of Queensland offer scholarships and funding to overseas students. In the UK, Cambridge offers a range of scholarships and funding for international students while Oxford has over 1,000 fully funded scholarships for new Masters and Doctoral students.

school. It is what they can give to us in changing the culture of the law school'.¹⁷

Some regard these dynamics as an inevitable feature of the future landscape of legal education. Van Caenegem argues that this should be approached as a comprehensive exercise:

Students must be introduced to background differences in legal cultures and attitudes and not just to doctrinal diversity. Students should learn how the fundamental choices in structuring and administering law are made differently in various jurisdictions. Students must be supported in how to deal with all they experience about the law: what they read, see and hear online, on television, in films, radio and through personal interactions.¹⁸

Many consider that the question is not whether to internationalise legal education, but the manner in which it will be implemented.¹⁹ Naturally, opinions vary as to the degree to which this can, and should, be attained. Vai Io Lo identifies four approaches to internationalising legal education: inclusive, integrative, experiential and preferential.²⁰ An inclusive approach involves supplementing the core curriculum with international, comparative and foreign law courses. An integrative approach connotes the incorporation of international materials in domestic law papers. These are syllabus-oriented initiatives, which contrast with the final categories. An experiential approach encompasses the study of foreign or international law in summer programs, exchange programs and dual degree arrangements. Finally, the preferential approach allows students to study abroad and engage more fully in the ethos of foreign legal systems, for example, by participating in internships and running student-edited international law journals.

These models enhance LLM programs by offering insight and, in varying degrees, the opportunity to experience the international nature of law. In this sense internationalisation is a marketing tool that is 'on trend' in its treatment of the contemporary discipline of law. It is submitted that the first category, the inclusive approach, has in fact long been with us, as an accepted feature of most law degree syllabi. The second, the integrative approach, is also well established. In some quarters, the integration of transnational perspectives into the law curriculum is regarded as a given. In proceedings at the Association of American Law Schools annual conference in 2006, a day was devoted to the theme of

¹⁷ 'The Globalization of the American Law School' (2007) 101 *American Society of International Law Proceedings* 183, 191.

¹⁸ William van Caenegem, 'Ignoring the Civil Law / Common Law Divide in an Integrated Legal World' in William van Caenegem and Mary Hiscock (eds), *The Internationalisation of Legal Education* (Edward Elgar, 2014) 171.

¹⁹ Afshin A-Khavari, 'The Opportunities and Possibilities for Internationalising the Curriculum of Law Schools in Australia' (2006) 16 *Legal Education Review* 75, 75-76.

²⁰ VI Lo, 'Before Competition and Beyond Complacency: The Internationalisation of Legal Education in Australia' (2012) 22 *Legal Education Review* 3, 7-10.

‘Integrating Transnational Perspectives into the First Year Curriculum’. One commentator noted:²¹

The discussion that day was not focused on whether American law schools ought to be moving in that direction, or why doing so would be a laudable objective. Most participants accepted the fact that contemporary legal reality supports, and even compels, such a move.

Quoting the views of one delegate:²²

I doubt there is much of an issue in gaining support for internationalizing the law school from our alumni. They are practicing (sic) law in the “real world” and they understand that today, legal matters with an international aspect are growing exponentially.

The final categories (experiential and preferential) are, literally, more expansive in that they contemplate students transferring to another jurisdiction for a portion of the degree program.²³ Such arrangements are usually associated with an undergraduate law degree²⁴ rather than a taught LLM course. A theme common to both is that the attraction of a law school’s degree offerings is enhanced by its alignment with global trends. Some law academics identify ‘transnationalisation’ as the precursor to an all-embracing globalisation of legal education.²⁵ The former gives recognition to the international dimensions of law, which is embedded in the law degree syllabus and reflected externally by initiatives such as exchange programs and recognition of overseas courses. The latter is the next, and perhaps final, phase in a continuum, and manifested by more profound integration of legal education across national boundaries:

The past century saw legal education evolve through paradigms that can be broadly described as international, transnational and now global. Internationalisation saw the world as an archipelago of jurisdictions, with a small number of lawyers involved in mediating disputes between jurisdictions or determining which jurisdiction applied; transnationalisation saw the world as a patchwork, with greater need for familiarity across jurisdictions; globalisation is now seeing the world as a web in more ways than one, with lawyers needing to be comfortable in multiple jurisdictions and dealing with new regulatory regimes that do not fall neatly into domestic or international paradigms ... [t]he world may be

²¹ Rosalie Jukier, ‘Transnationalizing the Legal Curriculum: How to Teach What We Live’ (2006) 56 *Journal of Legal Education* 172, 172.

²² *Ibid.*, 172.

²³ This option is most likely to appeal to domestic students rather than international students for whom the host university represents a ‘foreign’ institution.

²⁴ Depending on jurisdictions and institutions, a law degree may be undertaken as an undergraduate or a postgraduate degree. Commonly the former is conferred as an LLB and the latter as a JD. Reference in this paper to ‘undergraduate law degree’ denotes either of these qualifications.

²⁵ The scale and dynamism of globalisation is aptly captured by van Caenegem: ‘I use the term as signifying greater social and economic integration between sovereign countries, and in a legal sense between sovereign jurisdictions. Globalisation means greater exposure to the culture, social systems and norms, legal, administrative, commercial and political systems of other countries.’ Van Caenegem, above n 18, 158.

a little smaller and flatter, but it is still complex. The challenges posed are in some senses new, but in reality legal education has always been – or should always have been – about preparing our graduates for a changing and dynamic world.²⁶

It has been suggested that the first adaption to globalisation is the move from exchange programs to double-degree programs across jurisdictions.²⁷ This is but one of a number of objectives that can be achieved, typically as a result of strategic alliances between different international institutions. The number of bilateral and multilateral educational agreements has increased dramatically in the last decade or so, encompassing a range of initiatives, including joint research projects, sharing of curricula, conference partnerships, and recognition of transfer credits.²⁸ This exemplifies the growing trend of international legal education and the range of opportunities it presents. In the next section of this paper attention turns to the implications of internationalisation for the taught LLM program and some proposals for a successful positioning for such programs in a competitive global market.

III GLOBAL TRENDS

A Dual and Linked Degree Programs

There are now a number of established double-degree programs that provide a unique study path integrating an undergraduate law degree with a Master of Laws. The arrangement potentially enhances the marketability of both programs. The LLB-LLM scheme at the National University of Singapore (NUS) is a case in point. Students taking the LLB are able to seek early admission to the LLM at New York University (NYU) and commence the latter in their 4th year at NUS. Upon completion of the LLM requirements, the mutual recognition of credits at the two institutions enables both the NUS LLB and the NYU LLM to be conferred. The arrangement demonstrates a further development in globalisation, namely the shared delivery of courses. The NUS/NYU collaboration offers Master of Laws degrees from each of the partner institutions, but is taught entirely in Singapore, with the participation of both NUS and NYU academic staff.²⁹

Increasingly, top-tier institutions are entering into arrangements that expand the range of study options, particularly for the top percentile

²⁶ Simon Chesterman, 'Doctrine, Perspectives and Skills for Global Practice' in William van Caenegem and Mary Hiscock (eds), *The Internationalisation of Legal Education* (Edward Elgar, 2014) 184-185.

²⁷ Simon Chesterman, 'The Globalisation of Legal Education' (2008) *Singapore Journal of Legal Studies* 58, 63.

²⁸ J Knight, 'Student Mobility and Internationalization: Trends and Tribulations' (2012) 7 *Research in Comparative and International Education* 20.

²⁹ NUS Law, *New York University-NUS LLB/Graduate LLB & Master in Law (LLM) Exchange Plus Programme* (2015) <http://www.law.nus.edu.sg/student_matters/llb_prog/nyu_nus_llm.html>.

students. The Cambridge LL.M. class includes a small number of JD students from Harvard Law School admitted through the Harvard-Cambridge Link. Selected students can earn both a Harvard JD and the Cambridge LL.M. in 3½ years.³⁰ Similarly, Oxford has a number of strategic collaborations. For example, high achieving students from the University of Sydney are granted early admission to the Oxford Bachelor of Civil Law (BCL) or the Masters in Law and Finance (MLF). Instead of completing the final semester of law at Sydney, selected students commence either the BCL or the MLF at Oxford. On completion of one of these degrees, the Sydney LL.B. or JD is conferred.³¹

A feature of such arrangements is that students have two host institutions and participate directly in their respective programs. This has aptly been described as an immersion model that reflects the aspirations of global legal education.³² There are corresponding financial advantages in that law school resources are not required to modify its own programs, nor are its academic staff required to teach foreign laws and procedure.

Different permutations are being explored and different international teaching models are evolving.³³ These undoubtedly contribute to the overall marketability of the more innovative postgraduate programs. While the immediate and long-term benefits to an institution may not be precisely quantifiable, it is possible to achieve some direct economies. For example, double degrees across two different law schools can be structured as a JD/LL.M.³⁴ As the JD is a graduate degree,³⁵ this can be

³⁰ Harvard Law School, *Harvard Law School and University of Cambridge J.D./LL.M. Joint Degree Program* (2016) <<http://www.law.harvard.edu/academics/degrees/special-programs/study-abroad/joint-degree-program.html>> and University of Cambridge Faculty of Law, *Intellectual life in the Cambridge Law Faculty* <<http://www.llm.law.cam.ac.uk/why-an-llm/intellectual-life-in-the-cambridge-law-faculty.html>>.

³¹ University of Sydney, *Pathways from the Sydney LL.B. or Sydney JD to Cambridge and Oxford* (2016) <http://sydney.edu.au/law/about/international/international_pathways.shtml>. See similarly arrangements between Oxford and the University of Melbourne (University of Melbourne, *University of Oxford BCL or MLF* (2016) <<http://law.unimelb.edu.au/students/jd/enrichment/international-opportunities/degree-partnerships/oxford>>) and the University of New South Wales (UNSW Law, *Pathway from UNSW JD to Oxford BCL or MLF* (2015) <<http://www.law.unsw.edu.au/current-students/beyond-classroom/international-opportunities/unsw-jd-oxford-bcl-or-mlf>>).

³² D Bentley and J Squelch, *Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice* (Office for Learning & Teaching, 2012).

³³ See, for example, Monash University's initiative of harmonising its programs with other institutions to facilitate wider international linkages. Monash has decided to align its degrees with the Bologna (European) degree cycle, which makes it easier to establish joint or dual-degree programs with European universities. See Monash University, *Aligning Course Outcomes Educational Standards Frameworks* (2016) <<http://opvclt.monash.edu.au/curriculum-by-design/aligning-course-outcomes-with-aqf-bologna.html>>.

³⁴ The introduction of a JD in addition to an LL.B. can expand the range of possible collaborations. For example, Hong Kong University launched a JD program in 2009 as an alternative to its LL.B. The JD has attracted a wide range of graduates from the UK, US, Canada, Australia and Mainland China. In addition, it has facilitated a JD/LL.M. student exchange program with the University of Pennsylvania Law School. See 'Hong

conveniently meshed with an LLM syllabus.³⁶ The JD/LLM combination is particularly suitable for joint study arrangements as both are graduate programs and there is a degree of parity in academic standards. This allows for a range of shared courses for students enrolled in both courses.

There are practical and pedagogical benefits to this model. As a practical consideration, it enables law schools to offer a greater number of courses in the LLM program. This flexibility and range of options enhances the overall program and makes it possible to cluster various papers into subject specialisations. In addition there is an obvious economy of scale where one course serves different programs. From an academic perspective, JD students benefit from learning alongside international LLM students and there are reciprocal benefits for international students participating in the domestic law degree. And more broadly, for both cohorts, the classroom provides unique insight as a microcosm of a globalised legal system.

The above initiatives reflect a trend towards experiential training founded on strategic alliances between partner institutions. Other law schools take a more limited syllabus-oriented approach. The Universities of Melbourne and New South Wales provide a transition course for LLM students who are not from a common law jurisdiction.³⁷ Other institutions

Kong University and Penn Law to Establish Unique JD/LLM Student Exchange Programme', *Hong Kong Government News* (Hong Kong), 27 August 2010.

³⁵ The United Kingdom and New Zealand continue to offer a law degree as an undergraduate program, typically leading to an LLB. Canada and Australia have tended to adopt the US model. In Australia, for example, the JD has been introduced at such leading universities as Australian National University, Monash University, University of Melbourne, University of New South Wales and the University of Sydney. The University of Melbourne and University of Western Australia have phased out the LLB program. Other Australian universities offer the LLB and JD concurrently. The offering of both degrees is not without its detractors. See J Roe, 'A School Divided: Issues with JD and LLB Split System Factsheet' (2013) <<http://www.alsa.net.au/uploads/Education2013/JD%20&%20LLB%20Factsheet%20FINAL.pdf>>, and D Cooper et al, 'The Emergence of the JD in the Australian Legal Education Marketplace and its Impact on Academic Standards' (2011) 21 *Legal Education Review* 23.

³⁶ There are considerable variations with respect to law credits and the prerequisites for admission to the LLM. The University of Pennsylvania-University of Hong Kong JD/LLM program enables students at each Law School to spend their 3rd year studying for an LLM at the partner institution. Admission to the program is administered by the home institution while selection is made by the host university. In contrast, applicants to the LLM program at Cambridge are required to have a JD or equivalent degree prior to enrolment. By way of exception, students at Harvard Law School seeking enrolment in the JD/LLM Joint Degree program can apply to spend their 3rd year reading for the Cambridge LLM. Application is made through the Harvard Law School and admission is decided by Cambridge. Four papers must be taken at Cambridge which will count for 11-13 credits towards the Harvard JD.

³⁷ Applicants for the University of Melbourne LLM are required to complete a 'Fundamentals of the Common Law' paper. See University of Melbourne, *Melbourne Law Masters* (2016) <<http://www.law.unimelb.edu.au/masters/courses-and-subjects/course-details/cid/563>>. International LLM students at the University of New South Wales are generally required to take the Australian Legal System course, which is designed for students from a non-common law background. See UNSW Law, *Master of*

have sought to capitalise more directly on the market for international students by offering a dedicated degree for students from non-common law backgrounds. Since 1991 Oxford University has offered the Magister Juris (MJur) degree which broadly follows the course design of the BCL, except that candidates can take one of a number of courses from the undergraduate degree in lieu of a BCL course.³⁸ This contrasts with the LLM in Common Law at the University of British Columbia. This is a course-based program designed to provide training in Canadian common law for foreign or non-common law trained lawyers. This can be compared with the University of Hong Kong's Master of Common Law, which is targeted to a similar cohort of international students.

In considering the different syllabus-oriented approaches, it appears that the course content for civil/non-common law students is either derived substantially³⁹ from a traditional LLM program, or hived off into a discrete Master's program that provides foundational training in the common law. While the latter may be challenging to students unfamiliar with the common law system, it is submitted that the degree of difficulty that the course does or does not present is an insufficient basis for its place within the scheme of academic postgraduate study. To some extent it is more closely aligned with training. This is a questionable basis for academic study at postgraduate level. While an induction into common law doctrines and principles is a valid objective for introducing international students to an LLM program, it should not be the primary focus of the degree itself.

B Demographics

Any strategy for attracting international LLM students must necessarily take account of the demographics of the marketplace. Students from civil law or non-common law systems represent a significant potential market, so much so that the overall fortunes of the tertiary sector may be influenced by the degree to which it can continue to attract and retain such students. For example, in May 2013, the New Zealand Ministry of Education produced statistics indicating a decline in the number of international university students over the past decade. This was largely due to a fall in enrolments by Chinese students.⁴⁰ Again,

Laws by Coursework (LLM), (2016) <<http://www.law.unsw.edu.au/future-students/postgraduate/programs/master-laws-coursework-llm>>.

³⁸ University of Oxford – Faculty of Law, *Postgraduate Taught* (2016) <<http://www.law.ox.ac.uk/postgraduate/bclmjur.php>>. MJur students may study one 'traditional English common law subject (notably contract, tort, company, constitutional law)'. The Oxford BCL and MJur have a distinct pedagogical focus which distinguishes them from a traditional LLM. The Oxford website proclaims that they are the only taught graduate courses which make use of tutorials as a central part of their teaching.

³⁹ In some cases, subject to studying a compulsory or optional introductory paper on the common law.

⁴⁰ For example, in 2006 almost 25,000 international fee-paying students attended New Zealand universities. Of these, approximately 13,000 were from China. In 2012 the number of international fee-paying students had declined to 19,000, with enrolments of

according to figures recently published by the Higher Education Funding Council of England,⁴¹ European Union and international students made up 74% of all students who started taught masters degrees in 2012-2013. And with respect to all full-time postgraduate courses in English universities, the number of Chinese students is almost equal to the number of British students.⁴² These statistics reveal that English universities are increasingly relying on overseas students to fill its courses, and that a significant number can be identified as coming from a particular country.⁴³

Any decrease in overseas students has economic implications. As previously noted, tuition fees from international students may be appreciably higher than for domestic students.⁴⁴ These factors suggest that the interests of overseas students warrant careful consideration. Strategic decisions are required to effectively compete for a cohort of students who are discriminating in assessing the comparative merits of different postgraduate programs. There are many facets to be considered. With respect to taught LLM programs, fundamentally, the degree should offer an attractive syllabus that is international in perspective and relevant to a global legal community. A choice of courses that is largely directed to domestic law and domestic perspectives may not attract strong interest. Where the syllabus combines domestic and international courses, overseas students tend to gravitate towards the latter because they have less emphasis on common law method. This suggests that a taught LLM should predominantly offer a range of courses that are international in focus and not confined to domestic jurisprudence or procedure.⁴⁵ The LLM program should nevertheless include a compulsory paper on the fundamentals of the common law. Regardless of whether this is required for courses actually studied in the LLM, it is desirable that at least some insight is imparted into the ethos of the host jurisdiction.

approximately 7,000 students from China. Ministry of Education, *International Student Enrolments in New Zealand 2006-2012* (Ministry of Education, 2013).

⁴¹ HEFCE, *Decline in Global Demand for English Higher Education* (2 April 2014) <<http://www.hefce.ac.uk/news/newsarchive/2014/news86922.html>>. According to figures published on 1 April 2014, 23 percent of students studying for masters-level degree courses are from China while 26 percent of students are from the UK.

⁴² See further Richard Adams, 'Almost a Quarter of Postgrad Students at English Universities are Chinese' on *The Guardian Higher Education* (2 April 2014) <<http://www.theguardian.com/education/2014/apr/02/quarter-postgrad-student-english-universities-chinese>>.

⁴³ The actual numbers vary across subject groups, with the highest concentration in mathematics, where Chinese students comprise 58 percent of all international entrants.

⁴⁴ See, for example, n 13, above.

⁴⁵ This statement is subject to qualifications. For example, some courses that could be termed 'domestic' are very attractive to international students. *Indigenous Law in New Zealand* is a case in point. While the course is domestic in the sense that it is taught in New Zealand and relies upon the New Zealand experience, it is also 'international' because its applications are relevant to many jurisdictions. Again, the 'international v domestic' dichotomy is sometimes inaccurate in the sense that some domestic courses have been rigorously re-cast to absorb comparative perspectives. See discussion of the experience at McGill University in Jukier, above n 21.

It is unlikely that this model would detract from the overall appeal of the LLM to domestic students. After all, they have already obtained an undergraduate law degree that addresses key foundation subjects,⁴⁶ together with a number of elective courses, many of which are taught from the perspective of their own jurisdiction. The LLM would give added value to domestic students in addressing the increasing international dimension of legal practice and modern business. Moreover, it is not suggested that every subject should be taught from a jurisdiction-neutral perspective. In some cases it is appropriate to study an area of law from the perspective of one or more major legal systems, particularly where certain jurisdictions are influential in shaping the content of a body of law.

It must be borne in mind that law (or at least common law) is different from most disciplines. In the case of the ‘scientific’ disciplines like mathematics, chemistry and computer sciences, it does not matter where the students are from, providing they are conversant with English as a medium of instruction. The same cannot be said about the study of law. Legal systems are diverse, not only in their substantive and procedural aspects but also in reflecting a distinct philosophical, social and political focus. The most successful LLM programs understand that it *does* matter where postgraduate students come from and that the syllabus should therefore reflect an international focus. This segues into the final argument, that there is a positive case for promoting student diversity in law school.

It is perhaps not accidental that the leading law schools in the United States and the Commonwealth proclaim and enforce a policy of student diversity. This is often supported with evidence of class statistics, a sample list of national origins and individual student profiles. Admittedly, to some extent this may be circular in that a top law school’s reputation will attract intense competition for places, enabling selection from a quality field of international students. Student diversity is attainable without any dilution of academic standards. Often, this is self-sustaining because ‘the rich get richer’ in that there is a self-perpetuating synergy between institutions of similar reputation and standing.⁴⁷ Such entities have higher leverage in negotiating academic alliances and student focused schemes, such as exchange programs and double-degree programs. Again, it is often the case that these institutions are more able to attract external funding and philanthropy.

Different dynamics are at play for universities that do not enjoy the same cachet and operate with limited resources. Nevertheless, it is suggested that even if a university lacks brand power, it is still worth

⁴⁶ These typically include public law and private law subjects such as criminal law, constitutional law, contract, tort, land law, equity and trusts.

⁴⁷ The implicit assumption is that collaborations between leading Law Schools produce a combined effect greater than the sum of their separate parts. The inertia of an established reputation maintains this state of affairs. Colloquially, as noted in the text, ‘the rich get richer’.

enforcing an admission policy of diversity. In addition to the positive revenue implications of attracting overseas students, this can also be justified on pedagogical grounds. This is particularly evident in the classroom setting. First, classroom discussion is facilitated where multiple perspectives are represented - especially so where there is a tutorial or seminar delivery format. In contrast, in a homogenous classroom there may be limited viewpoints and little impetus for dialogue, particularly where comparative or international material is being studied. Secondly, if diversity is not actively promoted, the presence of international students may be misunderstood and lead to social and political resentment.⁴⁸ Thirdly, the dynamics of internationalisation are more credibly represented at law school if the classroom itself is international in composition and perspective. Fourthly, diversity fosters a vibrant intellectual community. It is more likely to attract high-calibre, critical-thinking domestic students. It sets the bar higher and discourages those who do not wish to engage and be challenged by students who think differently or uphold different values.

IV COMPETITION WITH LEADING UNIVERSITIES

It has been argued that student diversity is a key feature of a successful postgraduate law program, both financially and pedagogically. A related consideration is that the internationalisation of legal education enhances LLM programs and reflects the modern discipline of law. Other developments have been noted, including strategic alliances to foster new study paths. It can be added that it is now commonplace for most law schools to offer a variety of subject options within an LLM. Diversity in course offerings takes different forms, ranging from an LLM with subject clusterings, to nominate Masters degrees dedicated to a specific field of law.

The proliferation of nominate Masters degrees reflects an initiative to widen market appeal by facilitating the admission of non-law graduates.⁴⁹ In addition to subject specialisations, some Masters programs appeal directly to non-lawyers by exploring aspects of law or legal practice. For example, Queensland University of Technology has identified and responded to this market by means of a Master of Applied Law for professionals from non-law backgrounds who wish to gain an understanding of certain areas of law.⁵⁰ Nominated Masters degrees are an attractive option for non-lawyers in that they offer specific, and

⁴⁸ Claire Trevett, 'Too Many International Students, Says Shane Jones' on *NZ Herald* (8 March 2014) <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11216048>..

⁴⁹ Examples from an ever-expanding range of programs include Masters in Environmental Law, Banking, Finance, Insolvency, Energy and Resources, International Law, Tax, Health Law, Mediation, Criminology and Media Law.

⁵⁰ Queensland University of Technology, *Master of Applied Law* (2016) <<https://www.qut.edu.au/study/courses/master-of-applied-law>>.

sometimes practically oriented training in a vocational field⁵¹ that is of direct relevance to a student's career. Moreover, technical familiarity with the background subject matter may ameliorate difficulties of receiving instruction in English for overseas students for whom English is not a first language.⁵²

These generic factors are beneficial to most postgraduate courses but they do not completely explain the performance of less well-known LLM programs that successfully compete with global brand law schools. In this regard the narrative of success is more intuitive than formulaic. Two pugilistic metaphors spring to mind: the need to 'box clever' and the ability to 'punch above one's weight'.

Whether they initiate or imitate curriculum and marketing initiatives, some non-brand law schools have proven astute in using their resources and opportunities to best advantage. Interdisciplinary and inter-jurisdictional Masters degrees are a case in point.⁵³ With respect to the latter, a growing number of UK law schools have exploited their proximity to continental Europe by teaching study modules in both domestic and foreign centres. Nottingham Trent Law School, for instance, offers a dual Master of Laws degree tenable in Nottingham and Radboud University in The Netherlands.⁵⁴ The University of Kent Law School participates in the Erasmus-Europe scheme, enabling LLM study at Canterbury and partner universities in Europe.⁵⁵ City University, London, provides diverse modules across a range of LLM specialisations, including an LLM in Maritime Law, which is delivered both in London and Athens.⁵⁶

Some law schools have successfully gauged the market in establishing niche LLM programs. Subject choice and mode of delivery are often significant factors. With respect to the latter, the exponential growth of information technology has fostered a trend of online delivery of

⁵¹ See, for example, discussion below of programs offered by the University of Calgary and the University of Aberdeen.

⁵² See discussion above, 'Demographics'.

⁵³ A high profile illustration of the former is the University of Oxford's interdisciplinary Masters in Law and Finance, taught jointly by the Faculty of Law and the Said Business School. See University of Oxford, *MSC in Law and Finance* (2016) <<http://mlf.law.ox.ac.uk>>.

⁵⁴ This program leads to the award of an LLM at both institutions. See further Nottingham Trent University, *Nottingham Law School and Radboud University Dual LLM* <http://www.ntu.ac.uk/nls_radboud>.

⁵⁵ The University of Kent Law School also offers an LLM conducted at its Canterbury campus and the University's Brussels centre. The University of Kent's website notes that the Law School attracts students from over 80 countries. See further University of Kent, *Law (Erasmus-Europe) - LLM* <<http://www.kent.ac.uk/courses/postgraduate/136/law-erasmus-europe>>.

⁵⁶ City University London, *Maritime Law (Greece)* <<http://www.city.ac.uk/courses/postgraduate/maritime-law-greece>>. The University's website states that approximately 80 graduate students from around the world are admitted to its LLM programs: City University London, *Master of Laws* <<http://www.city.ac.uk/courses/postgraduate/master-of-laws>>.

academic programs.⁵⁷ This presents an opportunity for mid-tier and smaller law schools to develop attractive study options for web-based programs.⁵⁸ For example, Bond University's Faculty of Law has entered into a partnership with the Swiss International Law School (SiLS) that enables students to study at both institutions and to graduate with two LLM degrees with different specialisations.⁵⁹ The Swiss International Law School is an online university that offers a global LLM comprising modules on international commercial law, dispute resolution and cross-border issues.⁶⁰ The Bond-SiLS partnership combines different delivery modes, with students completing one semester on campus at Bond and the other semester online through SiLS.

In developing LLM programs in an intensely competitive environment, it is advantageous to identify and cater to a target sector and specialised demands. For example, the University of Technology, Sydney was the first Australian university to offer a Master of Intellectual Property program that fulfils the educational requirements for qualification as a registered trade marks attorney and patent attorney.⁶¹ In other cases, the structure of LLM programs has been strongly influenced by the institution's geographical location, local infrastructure and economic factors. Some have developed into niche specialisations of international standing. The University of Calgary is a good example. The Faculty of Law has drawn on the Province's oil and gas industry and developed a well regarded LLM specialisation in Natural Resources, Energy and Environmental Law.⁶² The program attracts students from within Canada and around the world. In 2007 the curriculum was expanded to include a course-based LLM to better service the needs of lawyers and others who are already in the workforce. The course-based option also has appeal to international students from civil law backgrounds who are seeking an introduction to the common law while gaining expertise in the oil and gas sector.

Again, the University of Aberdeen capitalises on its proximity to major oil and gas fields by offering several LLM study options for oil and

⁵⁷ See, for example, LawStudies.com, *Search 52 Online Master of Laws Degrees* <<http://www.lawstudies.com/LLM/Online>>.

⁵⁸ See, for example, the University of Law's recent announcement of new LLM degrees specialising in conflict resolution and intellectual property, which currently are only taught online: University of Law, *Master of Laws (LLM) in Legal Practice* (2016) <<http://www.law.ac.uk/postgraduate/llm>>.

⁵⁹ Bond University, *Bond Partners with Swiss International Law School to Deliver Dual Degrees* (29 April 2015) <<https://bond.edu.au/news/46535/bond-partners-swiss-international-law-school-deliver-dual-degrees>>.

⁶⁰ Swiss International Law School, *SiLS LL.M. International Commercial Law and Dispute Resolution* (2016) <<https://swissintlawschool.org/sils-ll-m>>.

⁶¹ University of Technology Sydney, *Master of Intellectual Property* (2016) <<http://www.uts.edu.au/future-students/find-a-course/courses/c04251>>.

⁶² University of Calgary, *Master of Laws* <<http://law.ucalgary.ca/graduate-programs/llm>>.

gas law.⁶³ This includes a taught LLM on Oil and Gas Law with Professional Skills, which provides students with the opportunity to develop key practical skills for the legal management of exploration and production. The course includes classes based on simulated practical exercises and the submission of a portfolio of works.⁶⁴ The presence of a core field of study that is directly relevant to a major regional industrial sector has undoubtedly fostered the success of these LLM programs.

Although not every law school can draw on unique local conditions to bolster the focus of an LLM syllabus, the program can be enhanced by other factors, such as distinct specialisations, a strong teaching and research profile and established student support services. The Postgraduate Legal Studies Department of the University of Swansea offers an LLM in related aspects of international commercial law.⁶⁵ The Department has professional and industrial links and offers support for graduates through its employment initiatives. These factors, in conjunction with a core of academic expertise, contribute to an LLM program that attracts a large number of international students.⁶⁶

In the competitive legal education market, law schools strive to add value by promoting innovative and distinctive programs. This breeds a 'first in market' mentality⁶⁷ where non-brand law schools in particular have reconceptualised the LLM as a vehicle for ongoing professional training and enhancing the skill-sets of those who are in the workforce. An LLM in Legal Practice is instructive in demonstrating different formats that directly appeal to distinct sectors of the market. In the UK, Northumbria University offers an Advanced Legal Practice LLM designed for qualified lawyers seeking professional development in a specialist area of law. This is a distance learning program that offers flexible learning options centred around the individual needs and interests of each student. The sole assessment is a written project on a topic of the student's choosing that is closely related to his or her intended or current area of practice.⁶⁸ Similarly, the LLM in Legal Practice from Oxford Brookes University is directed to professional graduates and is designed to complement a legal career. It seeks to attract the domestic market and

⁶³ University of Aberdeen, *Oil and Gas Law with Dissertation (LLM) - Taught Programme* (2016) <http://www.abdn.ac.uk/study/courses/postgraduate/taught/oil_gas_law>.

⁶⁴ University of Aberdeen, *Oil & Gas Law with Professional Skills (LLM) - Taught Programme* (2016) <<http://www.abdn.ac.uk/study/courses/postgraduate/taught/ogpls>>.

⁶⁵ International Maritime Law, International Trade Law, International Commercial Law, International Commercial & Maritime Law, Oil and Gas Law, Intellectual Property & Commercial Practice.

⁶⁶ Swansea University, *LLM Degrees* <<http://www.swansea.ac.uk/law/shipping-trade-law-department/llmdegrees/>>.

⁶⁷ See, for example, the University of Strathclyde's LLM in Advocacy which was launched in 2012 as the first graduate level course of its kind in the UK. See University of Strathclyde, *Law School* <<http://www.strath.ac.uk/humanities/lawschool/>>.

⁶⁸ Northumbria University Newcastle, *Advanced Legal Practice LLM* (2016) <www.northumbria.ac.uk/study-at-northumbria/courses/advanced-legal-practice-llm>.

students from other common law jurisdictions.⁶⁹ The School of Law's appeal is no doubt enhanced by its location in a world renowned centre of learning.

Again, some Australian law schools have created distinct Legal Practice programs tailored to particular markets. Bond University has effectively established an outreach to Canadian students at both undergraduate and postgraduate levels. Its website records that there are currently over 150 Canadian students studying law at Bond University.⁷⁰ The Canadian market is vigorously promoted, with information sessions held in major Canadian centres twice a year. This is reflected in the unique offering of an LLM in Canadian Legal Practice.⁷¹ Another distinct version of a Legal Practice LLM is available from the University of Wollongong, which offers an LLM in Criminal Practice.⁷² This specialised program attracts students from diverse backgrounds and different jurisdictions who are seeking to develop practice skills in the criminal prosecution process. This is the only Australian postgraduate qualification in law specialising in this area.

The programs discussed in this section are but a selection of offerings by law schools in different jurisdictions. Some common trends emerge. Non-brand law schools have enjoyed significant success by exploiting consumer needs or actively promoting market awareness. Usually the LLM program provides a distinct subject-driven package, including practical course content, flexible learning options, an identifiable core of teaching expertise and effective relationships with the employment sector.

At a macro level, competition for international postgraduate students may be influenced by national standards for tertiary education. In Australia, for example, the Tertiary Education Quality & Standards Agency ("TEQSA") was established in 2011 as Australia's regularity and quality assurance agency for higher education. TEQSA evaluates the performance of higher education providers against the Australian Qualifications Framework ("AQF"). AQF specifies benchmark standards against which higher education institutions are judged.⁷³ The AQF enhances the marketability of Australian programs to international students by contributing to the worldwide recognition of Australian qualifications. For example, qualification titles are the same throughout

⁶⁹ Oxford Brookes University, *LLM in Legal Practice* (2015) <<http://www.brookes.ac.uk/studying-at-brookes/courses/postgraduate/2015/llm-in-legal-practice>>.

⁷⁰ Bond University, *Information for Students from Canada* (2016) <<http://bond.edu.au/future-students/study-bond/search-program/law/information-students-canada>>.

⁷¹ Bond University, *Choose the Right Degree or Program for You – Postgraduate* <bond.edu.au/future-students/study-bond/search-program#postgraduate>.

⁷² University of Wollongong *Master of Laws (Criminal Practice)* (2016) <<http://www.uow.edu.au/handbook/yr2015/pg/H15000032.html>>.

⁷³ Qualifications are ranked by reference to 10 AQF levels.

Australia and it is immediately apparent what level of education a given qualification represents.⁷⁴

Perhaps most fundamentally, the AQF provides assurance as to the quality and consistency of Australia's education sector.⁷⁵ The AQF Specification for the Masters degree informs the design and accreditation of Masters degree qualifications.⁷⁶ The AQF Specification for the Master's degree includes the traditional LLM categories of a Masters degree by research and coursework (level 9). The AQF specifies relevant learning outcomes for level 9, encompassing knowledge, skills and the application of knowledge and skills. This scheme has positive implications for marketing an Australian LLM and provides a competitive edge to programs in jurisdictions that have not introduced transparent national standards.

V CONCLUSION

For many law schools it is commercially prudent to target international students for an LLM program. From an entirely different perspective, there are significant pedagogical benefits to diversity in the classroom. How this is achieved will depend in part on the status of the institution itself. Top tier law schools are oversubscribed and can espouse a policy of diversity without compromising academic standards. However, institutions that do not enjoy the same brand power must compete for a cohort of students who are discerning in their search for value. It has been argued that the attractiveness of an LLM program is enhanced by its alignment with global trends. In this regard it must be recognised that the international nature of legal education is a subset of the wider phenomenon of the globalisation of law itself.

There are a range of strategies which can place law schools at the forefront of these developments. This includes strategic alliances and partnerships with law schools in other jurisdictions, enabling students to undertake postgraduate studies in two countries. The degree structure of each law school may assist that process, particularly if it is possible to align an LLM in one institution with a JD in another. As students from both the host and visiting institutions are studying at postgraduate level, economies can be achieved with shared classes and an expanded offering of courses. The latter is conducive to creating subject clusters in the form of specialisations.

There are variations in the format of the LLM itself and different approaches are being adopted to raise the profile and marketability of the

⁷⁴ Overseas and AQF qualifications are assessed by Overseas Qualifications Units which determine whether an overseas qualification satisfies the entry requirements for Australian courses.

⁷⁵ See further the *Education Services for Overseas Students Act 2000* (Cth). See also the Commonwealth Register of Institutions & Courses for Overseas Students (CRICOS): Department of Education and Training, *CRICOS* <<http://cricos.education.gov.au>>.

⁷⁶ *Australian Qualifications Framework* (Australian Qualifications Framework Council, 2nd ed, 2013).

syllabus. It has been suggested that a taught LLM should predominantly offer courses that are international in focus. Mirroring this, an admissions policy that promotes student diversity is beneficial not only from a marketing perspective but also to enhance the learning environment. The latter reflects the common view that a diverse cohort of international students is the catalyst for a transformative educational experience.

It is apparent that less well-known law schools have made significant headway in attracting international postgraduate students. In recent years, LLM programs have assumed a protean form, meeting diverse academic and professional needs. Some have successfully expanded the student market by offering specialised LLM courses or nominate Masters degrees that appeal to non-law graduates. Others provide niche programs catering to distinct and quite narrow sectors. Initiatives have been taken to seize the market for ongoing professional training by enhancing the skill sets of those already in the workforce and providing pathways to further accreditation.

There is growing evidence that non-brand law schools are astute in using their resources to best advantage and exploiting the needs of target cohorts. For example, inter-jurisdictional Masters degrees coincide with the predilections of a generation of students who are highly mobile and receptive to different cultural experiences. An overriding theme is that current LLM programs, in different and distinct ways, strive to add value to a package that traditionally offered a limited educational experience. Some non-brand law schools are in the vanguard of these developments. Their success can be understood not only in economic and pedagogical terms, but in the wider context of re-defining the standing of their law school in a competitive global environment.

