

The Changing Faces of Legal Education in China

**The 2012 Sir George Turner Public Lecture
The University of Melbourne**

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I would like to begin by thanking all of you for inviting me to speak this evening at this magnificent university, and at this magnificent law school.

And I would especially like to thank you for inviting me to speak under the mantle of Sir George Turner.

Every great law school understands its mission to entail an admixture of goals that are at once technical and spiritual. The technical goals concern the nurturing of certain intellectual skills within students' brains and the transmission of certain points of information to them that might be analyzed with the aforementioned skills.

The spiritual goals concern the development of certain values, certain public values. We want our graduates to understand themselves to be members of a noble profession. We want them to feel a responsibility not only to serve their clients well, but also to participate in the progressive betterment of human society. We want them to feel that their special powers – no matter whether they are called lawyers, attorneys, advocates, barristers, or solicitors – come impressed with a public trust.

One way in which great law schools convey this sense of public duty is to remind students that they are heirs to a great tradition. They sit in the same seats, and they struggle with the same intellectual problems, as great people, famous people, important people from prior generations. And what better way is there to offer up this gentle reminder than to as-

sign the name of a prominent former student to a professorship, or to a public lecture?

So when I saw that I was to be delivering the 2012 Sir George Turner public lecture, my first reaction was one of happy and familiar recognition. I saw that this law school, like other great law schools, was participating in this enlightened practice of, none too subtly, reminding students that they are the modern heirs to a distinguished tradition.

But then I had a second reaction. You see, I also know from my past experiences at other institutions, that the great names associated with public lectures are sometimes the names of human beings who were in some respects surely admirable, but in other ways, were, shall we say, somewhat more complicated.

Because time tends to march forward with a soothing forgetfulness, these latter cases are rarely sources of deep consternation. Few in the audience are aware of the more troubling dimensions of the long-departed one whose name blessed the gathering. But, still and all, I have witnessed occasions where some members of the audience were privy to the unseemly details. And almost invariably those members of the audience would enjoy a private smirk at the speaker's expense. "If only that speaker knew just whose name they are proudly associating themselves with!"

Well, once I was stricken with that second reaction, I had no choice but to run out and learn what I could about Sir George Turner. And now, having done so, I again say, "Thank you, thank you, thank you."

For as best I can tell, Sir George was genuinely the sort of person a great law school wants to hold up as a role model for current generations of students. He was a good student and a good lawyer. And during a crucial period in the development of the Commonwealth, he found his true calling in public service. He served admirably as premier of Victoria, steering the then-colony past the shoals of a great depression. And he served just as admirably as the Commonwealth's first treasurer. He was not flashy, and he was not wild. He was shy, he was earnest, he worked hard, and he was pragmatic. In the words of the Australian Dictionary of Biography, "Turner's capacity for work, mastery of detail, pa-

tent integrity, frankness, unpretentiousness and geniality won general trust.”

It seems to me, therefore, that the University of Melbourne has shown outstanding pedagogic judgment in naming these lectures after Sir George Turner. And that act of pedagogic judgment leads me naturally to my primary topic this evening: the pedagogic judgment that Peking University demonstrated when it decided to create a new kind of experimental legal education for China.

As Dean Evans has advised you, I am currently serving in the employ of the Peking University School of Transnational Law, which we like to call “STL.” There are many different ways that one might choose to contextualize what China has undertaken in launching STL. One might, for example, choose to describe the event in national terms and in legal terms as a story about China and a story about law. By this account, STL is a small part of a much larger and deeply complicated effort within China to move from the Hobbesian state of nature that it experienced during the Cultural Revolution to a modern society expressing a commitment to the rule of law.

As interesting as that contextualization is, however, I prefer to frame the event in more transnational terms, as part of the story of globalization. I do so largely because of STL’s parentage. You see, STL was not the brainstorm of a law professor or a judge steeped in matters of law and justice. The true father of STL was an economist. An international economist named Hai Wen. [Click].

The economic story of the twentieth century’s concluding decades was significantly a story about globalization. Improvements in transportation and telecommunications technology dramatically lowered the transaction costs associated with international trade. As a consequence, the global economy and global society were completely transformed. And that transformation in turn had implications for the transnational legal regime.

Most notably, globalization intensified the demand for a more harmonized global legal infrastructure. In the first instance, and most powerfully, the demand came from commercial actors – buyers and sellers of

financial capital, goods, and services in the world's marketplaces. But it did not stop there. Demand for a harmonized global legal structure also comes from outside the commercial sphere – from governments, NGO's, and private individuals who want to move around for noneconomic reasons.

A harmonized global legal infrastructure is not a uniform global legal infrastructure. The legal world may be flatter than it once was. Certainly the problem of individuals having to deal with inconsistent and irreconcilable national rules is facing. But true uniformity – whether substantive or procedural – is not anywhere on the horizon. The reality of multiple sovereigns, creating multiple legal regimes, is here to stay.

On the other hand, the legal regimes have become just harmonized enough. We have achieved a working consensus in favor of regulated market economies, interacting with one another under the WTO's regime of regulated free trade.

And that is enough to have triggered an exploding number of actors who work across borders and want to be served by a transnational legal profession. I mean lawyers with different databases of primary legal knowledge, but common intellectual skills, and common understandings about what it means to be a lawyer.

This demand has led to a number of rapid changes in the global practice of law. Most significantly, we have witnessed the rapid emergence of huge multinational law firms. There are now about 30 law firms in the world that employ more than 1000 lawyers each. A majority are based in the U.S., but the centers of gravity are becoming more and more dispersed. Last week King & Wood Mallesons officially opened its doors, with 1,800 lawyers in 21 offices worldwide.

To grow this large, the firms departed from prior models of international expansion. Historically, American firms opened overseas branches in the manner of colonial powers: by sending lawyers overseas from the mother country. But since 1990, they have needed to grow more quickly, and, in the words of Carole Silver, they have done it by “going local” – by looking for local lawyers or local firms, following the so-called Baker & McKenzie model.

But these firms have not gone completely local. They have been eager to engage lawyers with substantive expertise concerning the law of the local jurisdiction. But at the same time, the anecdotal evidence I have from speaking with dozens of lawyers in such firms, and in the in-house counsel's offices of multinational companies that hire them, is that they are not interested in merely deferring to local understandings of what it means to be a lawyer.

You see, those local understandings used to be wildly different in different parts of the world. In some societies, the role of a lawyer was historically rather passive and reactive. A client described a situation. And the lawyer was supposed to fit the situation – the facts – into the official rules – the law – and report to the client his conclusion. People in other professions, such as accounting, would play the kinds of roles that lawyers have come to play in the common law universe.

But that passive, reactive role, is not the model of lawyering that has been embraced by the transnational law firms. The transnational firms are being structured to provide the more active kind of service that has traditionally been provided by common law countries. They are doing so because their clients are demanding it.

And that background transformation is what lay behind the inspiration of the economist Hai Wen.

Peking University, also known as Beida, is China's oldest and most prestigious university. Its main campus is in Beijing, and is home to a law school that is one of China's best.

In the 1970's, China had only 2 law schools. After the Cultural Revolution, China had to open and reopen law schools very quickly. And when it did so, it made a crucial bet. It decided to structure them primarily on the continental European model. By that I mean they treat law as an undergraduate subject, whose study is oriented primarily towards the mastery of doctrinal rules, based upon reading and lecture classes.

In 2001, the city of Shenzhen, which is the mainland's twin to Hong Kong and has a population of about 10 million people, gave a campus to three of China's top universities, including Beida, to be used exclusively

for graduate and professional education. [Click]. Today the leader of Beida's Shenzhen campus is Hai Wen.

Hai Wen grew up in China, did graduate economics work in the US, and became a tenured faculty member at an American university before returning to Beijing in the 1990's to help Peking University launch the China Center for Economic Research, the country's first research institute on market economics. The Institute was successful and Hai Wen was promoted to vice president of the university. And in 2005, he was assigned responsibility for the Shenzhen campus.

Hai Wen's philosophy for the Shenzhen campus is to make it as internationalist and Western-oriented as possible, and his goal is to have all six of Beida's Shenzhen graduate schools teach in English, and draw faculty from overseas.

At the end of March 2007, Hai Wen came to see me in New York. For, as an economist, he had noticed something he could not explain. China had opened more than 600 law schools. Some of the graduates of those law schools were exceptionally talented intellectually. He knew them personally. They were brilliant and incredibly hard working.

And yet even the graduates of China's very best law schools were unable to get jobs at multinational firms as real, partner-track associates, unless they first did advanced study – preferably at American schools. It made no sense to Hai Wen that China should be outsourcing legal education to the most expensive corner of the planet. He wanted me to think with him about whether Beida could develop an experimental law school on the Shenzhen campus that could supply more of what multinational firms were demanding, at a more reasonable price.

We spent two days discussing the question intensely. Those two days then led to three more months of intense back-and-forth conversations. And at the end of that period we agreed to launch STL.

By the end of that summer, we had received approval from the Academic Degrees Committee of China's State Council. The State Council authorized STL to offer, as an experiment, a new model for legal educa-

tion in China. We might call it a “Modified Melbourne Model,” or, more simply, the “STL model.”

STL is a freestanding school within Peking University that operates independently of, and side by side with, Beida’s preexisting law school in Beijing. Like all other schools that operate on the Shenzhen campus, STL teaches its courses in six-week modules instead of semesters. So students take 2 classes at a time, rather than 4 or 5.

Our first-year curriculum consists primarily of common law courses standard in the first-year curriculum of American law schools: property law, contract law, tort law, criminal law, and American civil procedure. It also includes three courses that are somewhat less standard in the American first year curriculum: transnational law, professional responsibility, and corporate law.

Alongside these courses that last one or two modules each, our students also take the first year of a two-year-long program that we call Transnational Legal Practice, or “TNLP.” TNLP is directed by Craig Hoffman, a member of the faculty at Georgetown Law Center in Washington, D.C., who specializes in teaching American legal discourse to students who are not native speakers of English. (click)

The central point of TNLP is that attorneys do not speak and write with a single voice. The program pushes our students to be thoughtful about what voice is appropriate for each different context in which a lawyer operates and to give them practice using those different lawyer voices. In the first year, the emphasis is on the context of a lawyer in a law firm that is representing a client in litigation. Students practice drafting emails, memoranda, and court briefs, and have a mock oral argument before a moot court.

In the first half of the second year, the emphasis is on the context of a lawyer negotiating and documenting a contractual agreement on behalf of a client. The students learn about how lawyers in such contexts can create economic value by using contractual devices like representations and warranties to solve some of the economic problems like imperfect information and moral hazard that could be obstacles to contractual agreement.

And in the second half of the second year, the emphasis is on the context of a lawyer writing a scholarly article about a legal issue, in her own independent and authentic voice. This set of exercises launches the students on the work that will culminate in the fourth year in the preparation and oral defense of a 60-page thesis, which is a graduation requirement at STL.

Now I think that all of this is a pretty sound design for a transnational law school. It is a healthy structure. And it reflects a healthy philosophy.

But it does not really capture what has made STL such an exciting venture. Because what has happened in Shenzhen has been far more exciting than Hai Wen or I ever imagined possible. The real story is not about the structure or the framework. It is about STL's emergence as a magnet for talent. So let me show you some faces of the senior leadership of STL and the faculty.

This is STL's Associate Dean, Stephen Yandle. Stephen was the Associate Dean of the Yale Law School for 17 years. He was the Deputy Consultant on Legal Education for the American Bar Association. He and his wife Martha moved to Shenzhen 3 years ago to help launch STL.

This is STL's Assistant Dean, Xu Hua. She was a top graduate of the Peking University Law School in Beijing. She turned down offers from top Shanghai law firms to come to Shenzhen and help launch STL.

This is Peter Malanczuk, C.V. Starr Professor of Law. He was the chair of public international law at the University of Amsterdam and Dean of the Law School at City University of Hong Kong. He moved to STL 4 years ago to help launch the school.

This is Francis Snyder, C.V. Starr Professor of Law. He was the Dean of Law at the European University Institute in Florence, Italy. He was a faculty member at the London School of Economics and the College of Europe in Bruges. He is the Editor-in-Chief of the European Law Journal. He moved to STL 3 years ago to help launch the school.

This is Ray Campbell, Assistant Professor of Law. He was a Supreme Court Law Clerk and a partner in two different transnational law

firms. He and his wife moved to Shenzhen so that he could join our faculty.

This is Mark Feldman, Assistant Professor of Law. He was the Director of NAFTA/CAFTA treaty arbitration at the United States State Department. He and his wife moved to Shenzhen so that he could join our faculty.

This is Sang Yop Kang, Assistant Professor of Law. He is Korean, earned an SJD from Columbia Law School, and was described by the chair of his dissertation committee as the best student he had taught in 25 years. He moved to Shenzhen to join our faculty.

That's the permanent faculty. But at this point they teach less than half our courses. Most of our courses are taught by visitors, and the visitors are perhaps even more dazzling. They include people like these:

Charles Ogletree, Matthew Stephenson, and Jack Goldsmith, all senior tenured faculty at Harvard.

Michael Klausner from Stanford, George Fletcher from Columbia, and Bill Allen from NYU.

Paul Stephan from Virginia and Whitmore Gray from Michigan.

Given how exciting China is today, it is perhaps not surprising that these people and others want to teach once at STL as a visitor. But just about everyone who has taught once at STL, including all these people, has asked if they can return to do it again and again and again.

Why that should be is not so obvious. I have three possible answers to suggest.

The first is the excitement of offering something new. Our teachers are not teaching new subjects for themselves, and they are not teaching them any differently from the way they teach at home. But this way of teaching is new for China.

The STL model of legal education is graduate, rather than undergraduate education. It combines a Juris Master degree program in Chinese law, taught in Chinese, with a new experimental degree that is certified in the English Language as a J.D. degree. The Juris Master program is

not new for China – it is like the traditional undergraduate Chinese legal education program, but offered at the graduate level for students who studied something other than law as undergraduates.

The new, experimental program is the Juris Doctor program. It is different from undergraduate legal education. It is what the State Council asked STL to develop by reference to the J.D. curriculum at American law schools. Classes in the J.D. program are taught in English. And like American J.D. programs, the mission of STL’s J.D. program is not to offer students a theoretical introduction to law and legal institutions, in the way that one might study history or political science. Instead, it is a graduate-level program of professional education designed to help students develop the intellectual skills, the ethical values, and the practical knowledge that are characteristic of outstanding transnational lawyers.

Our program emphasizes two intellectual skills in particular. The first is what Elizabeth Mertz describes (with some irritation) as living in an “acontextual context” (p. 52-54). The ability to generate abstract structures of classification and categorization on demand, and then to describe any given situation by reference to categories that are doctrinally salient. The second skill is what I have for a long time called the capacity for “sympathetic engagement with counterargument.”

How do we develop these skills? Our core pedagogy is the case-dialogue method developed by Christopher Columbus Langdell at Harvard, more than a century ago, sometimes described as a Socratic method. [Click]

The key feature of the Socratic method is actually not what the professor is doing at the front of the class, but what the students are doing.

Instead of passively receiving information – whether data or theory – they are actively practicing the skills that they will be called upon to deploy as lawyers. They are speaking, they are inferring principles from patterns of decisions and applying them to new situations, they are describing rules in terms of the policy values that they promote and the policy values they frustrate.

[Click]

They are attacking problems in teams. [Click] And they are having the experience of standing up and defending a position to a professor / judge. [Click]

Why is this important?

Well, in the first instance it is important because as a matter of pedagogy I think the best learning is active, not passive. Jeremy Lin did not learn to play basketball by reading a book by Kobe Bryant, or taking notes on lectures by LeBron James. He learned by studying and also by practicing. And I guess I am persuaded by the theories of Jeff Hawkins, which holds that our brains learn intellectual things in a remarkably similar way to the way they learn athletic things.

Teaching with the Socratic Method is not new for our professors. But it is new for our students. Very, very new. Completely different from the pedagogies to which they had been exposed in high school and in undergraduate schooling. They love having the opportunity to be taught in this way. And they make their excitement obvious. They participate actively and enthusiastically in class. They come to see the teachers during office hours. Our professors say that they are enjoying teaching these students as much as any they have ever taught, because their intellectual curiosity is infectious. It is a key part of why they want to return.

The second reason why our professors keep coming back, and tell their most distinguished colleagues to come as well, is that the students are enormously talented. When we started out we did not know whether we would be able to get excellent students to come, since we are so very nontraditional as a Chinese law school. But our identity as part of Peking University, together with the quality of that first group of very famous professors, was enough to trigger fantastic buzz for STL among the top undergraduate schools. And so we are able to attract the very best students in China. And in a country of 1.3 billion people, the very best students are really outstanding.

That quality is the second reason why the professors want to come back. To have the chance to teach truly exceptional students and to have them highly engaged and curious – what more could a teacher want?

So we have effectively now created a virtuous cycle. Spectacular students attract the best teachers. And spectacular teachers attract the best students.

But the third reason may be the most important of all. That third reason has to do with what STL is not.

Have a look at this slide: [Click]

March 12 is Arbor Day in China. This is a picture of us planting trees on campus a couple of years ago. And this image made me think of how tempting it is to believe that the metaphor for STL is that of transplanting a fully grown tree, into an environment that accepts the tree without change. An American law school plopped down in South China.

But that really is not what STL is. And every professor who teaches with STL quickly discovers that reality. And every professor who discovers that reality finds it to be tremendously exciting.

[Click]. This is a scene from our orientation week. We begin by having everyone read *Antigone*, by Sophocles, in English translation. This is a picture from one year's orientation when we had the students conduct a mock trial of *Antigone* for treason for violating Creon's law. Creon is on the stand, being cross-examined by *Antigone*'s lawyer. Even people who had read the play many times over had to think again about Creon and his claims to sovereign legitimacy when the basis for everyone's shared vocabulary was not Greece, or America, but rather China.

[Click]. Have a look at this picture. At STL we like to have parties. We celebrate holidays at STL that are celebrated in the U.S. Here is St. Patrick's Day. You can see our students dressed in green, with green shamrocks painted on their cheeks. But none of our students wore green hats (I can explain later if you don't understand). And this was the only place I have ever seen Irish stew eaten with chopsticks.

[Click]. This was a Halloween party. At this party the prize for best costume went to the young man in the middle, who wore his pants with the waist up around his armpits. When he walked into the room everyone was absolutely convulsed with laughter. Why? Everyone in the room

knew that he was dressing up as a caricature of former president Jiang Zemin.

I find there to be something very moving about these scenes. I think they capture an important truth about where the transnational legal profession is heading. And ultimately they offer us some insights into where legal education elsewhere in the world might go as well.

As an American, I believe that during the twentieth century American law schools advanced the state of the art enormously. We improved the way the world helps lawyers to develop skills of critical thinking, of sympathetic engagement with counterargument, of effective problem solving. We strengthened our focus on how we prepare lawyers to be ethical professionals.

But I think that in the twenty-first century we all stand to learn from experiments like the one going on at STL.

For starters, we need to help our native English speakers to be more sophisticated about language. In an era where the English language has become the lingua franca of commerce and law, we need to teach our students who are native speakers of English how to understand statements in English by people who are not native speakers. Often they are using English words to express ideas that have their origins outside of Anglo-Saxon culture, and a listener whose frame of reference is limited to Anglo-Saxon culture may miss subtleties and nuances that are important.

But the importance of deeper cultural understanding goes well beyond language. We need to do more to help our students understand that there are multiple legal systems in the world, and multiple legal cultures. We need to help them appreciate the relationship between approaches to law and deeper cultural attitudes – such as the way individuals are taught to react to ambiguity, contradiction, and risk.

Over the course of the past decade, books like Richard Nisbett's *The Geography of Thought* have motivated much deeper attention to the ways in which people who are born with the same wiring can end up with different cognitive frames as adults, by virtue of the cultures within

which they are raised. Those different cognitive frames can lead people to be aware of, and focus on, different dimensions of reality. In the twenty-first century, the people who are deeply aware of those differences will be the ones who are most adept at bridging cultural differences and facilitating more powerful and creative multicultural teams.

Permit me to close with one final, simple example of a cultural difference that I stumbled on accidentally in the course of my work in Shenzhen. The example has to do with how Westerners and Chinese people deal with units of time.

If you were to ask a Westerner what day tomorrow is, 99% of them would say, "It's Tuesday." If you were to ask a Chinese, 99% of them would say, "It's the 6th." For Westerners, the most important time interval is the week. For Chinese, it is the month.

So if one of my Chinese colleagues says to one of my Western colleagues, "Why don't we get together for coffee on the 8th?" no calendar will pop up in the brain of the Westerner. The Westerner will probably respond, "Do you mean Thursday?" The Chinese colleague will think and then say yes. Only then will the American see a calendar and say, "No, how about next Monday?" And then it will be the Chinese colleague's turn to pause and only see a calendar after confirming that the American is really asking about the 12th.

I love this example because neither culture attaches any moral significance to which period of time you use most. Once people understand the difference, it is easy to overcome it. Westerners can learn to frame things according to the day of the month without any emotional anxiety, and Chinese can learn to frame things according to the day of the week in the same way.

In the twenty-first century, this kind of understanding of cross-cultural difference will become ever more important to people's private lives. But I want to conclude by stressing that it will become even more important for people as they work in the public sphere. Autarky is extinct. All the peoples of the world are now indissolubly dependent upon one another. Pursuing the public good means pursuing a global good.

Those of us who participate in the design of legal education need to think hard about the implications of this reality. We want to ensure that the next Sir George Turner will have the skills needed to make the same kinds of contributions that the last one made. We want to be confident that we are still helping leaders develop the capacities they require to lead in their own times.

Thank you.