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Deane, Felicity, Hamman, Evan, & Liping, Pei
(2015)

Chinese cultural competency and Australian law students: Reflections on the design of short term mobility programs.
Alternative Law Journal, 40(4), pp. 271-274.

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<https://www.altj.org/publications/current-issue/product/955-chinese-cultural-competency-and-australian-law-students-reflections-on-the-design-of-short-term-mobility-programs>

Title

Chinese cultural competency and Australian law students: Reflections on the design of short term mobility programs.

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Key words

Cultural Competency, Legal Education, China, Australia

Abstract

There is an emerging need for Australia's law graduates to better understand the unique challenges and opportunities in our largest trading partner, China. Similarly, as China opens up to the world, its graduates are increasingly well-poised to make an indelible mark on Chinese-Australian relations, particularly in the areas of finance, property, trade and commerce. Chinese and Australian law schools must urgently develop a deeper awareness of each other's language, culture and political systems in their graduates. The purpose of this article is to highlight the importance of Chinese cultural competency to Australian legal education and reflect on projects that enable students to attain a level of cultural competency over a short period. We do this by considering a recent 'short term mobility project' in Wuhan, China. We suggest that such programs can be successful but should include three key aspects: first, an introductory course on the relevant culture; second, a student reciprocation scheme; and third, assessment that requires students reflect not only on the exposed culture but also more deeply on their own cultural lens.

Introduction

Improving cultural competency in Australian university graduates has been on the agendas of a number of institutions across different disciplines for several years. In

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2011, the Australian Government's Learning and Teaching Council, recommended further funding be made available for research into learning and teaching practices across cultures, citing it as an area which is 'crucial to Australia's continuing leadership and international reputation in international education.'² The Council recommended the following research priority areas:

- preparing staff to teach and learn effectively across cultures;
- developing international, intercultural and global perspectives of academics;
- assessment for learning across cultures;
- assessment of intercultural learning; and
- learning across cultures as part of the total student experience.³

Innovative student programs in law and other faculties are needed that attempt to address some or all of these priorities. The purpose of this article is twofold: firstly, to highlight the importance of Chinese cultural competency to Australian law graduates; and secondly, to reflect upon a recent 'short term mobility program' we undertook to Wuhan, China with a view to improving the design of such projects.

What is 'cultural competency'?

The word 'culture' generally describes a set of shared values, beliefs, patterns and communication styles that characterise the social life of a group or a society.⁴ It has also been described as a fluid, ever changing set of values, knowledge and beliefs as well as a 'learned behaviour'.⁵ It encompasses the customs, ideas and social behaviour of particular people or a group.⁶

At its most basic level, 'cultural competency' is having an awareness of another culture. Certainly, to be competent in a particular culture one must first be aware of its presence as well as the unique aspects (points of difference) that may influence the ability to work with a person who demonstrates particular cultural traits. In addition to awareness, however, an individual must also develop 'cultural sensitivity'. Cultural sensitivity enables a person to be aware of their own cultural influences as well as their personal

² Betty Leask and Jan Wallace, *Good Practice Report: Learning and Teaching across Cultures* (Australian Learning and Teaching Council, 2011) 40.

³ Ibid.

⁴ There are various definitions of 'culture' and no one definition has achieved consensus: See for instance, Jalal Ali Belshek, 'The Influence of Culture on the Negotiation Styles of British Students' 3 *Annual Review of Education, Communication, and Language Sciences* 1, 3.

⁵ Johnathon Crowe, *Legal Theory* (Lawbook Co., 2009) xxii.

⁶ Helen Spencer-Oatey *Culturally Speaking. Culture, Communication and Politeness Theory* (Continuum, 2008) 3.

biases and prejudices. Indeed, a firm introspective grasp of one's own culture is essential in order to attain cultural sensitivity and ultimately to develop a higher level of cultural competency. That being said, as Cynthia Pay remarks, the pursuit of cultural competency ought to go beyond awareness and sensitivity.⁷ Achieving competence is an ongoing process that requires a lifetime commitment to understanding perspectives, languages, behaviours and attitudes different from one's own.

Globalisation, culture and Australian legal education

The model graduate paradigm for law in Australia has shifted over the last several decades. During the 1960s and 70s the predominant focus of curriculums was on teaching 'black letter law' through the lens of an individual state's jurisdiction. As Michael Coper writes, the instruction of law back then was traditionally 'dominated by the leading *local* practicing lawyers, who delivered their lectures before and after their working day in court ...'⁸ Instructors would focus on the relatively narrow set of laws that either they themselves had been taught (in the 1940s or 50s), or the more typical localized legal issues which arose out of their everyday practice.

Today, however, it is widely recognised that the teaching and practice of law increasingly requires international perspectives and analysis in many contexts. As Margaret Thornton tells us, there is an increasing need for law students to have not only practical legal skills but also to develop and apply their 'globally recognised talents'.⁹ It is the phenomenon of globalization that has driven this transformation¹⁰ including the desire for graduates to have 'on the job' skills and practical experience before they 'officially' enter the workforce. Law students now have access to various international 'experiences' throughout their degree. In fact, one would be hard-pressed to find a law school that did not offer international exchanges, partnerships, internships or other study opportunities (both funded and unfunded).

Overseas initiatives are necessary and desirable to meet the demands of the modern interconnected world. As Coper puts it, the teaching and practice of law 'has to adapt

⁷ Cynthia Pay, 'Teaching Cultural Competency in Legal Clinics' (2014) 23 *Journal of Law and Social Policy* 188-219.

⁸ Michael Coper, 'Ten Elements of the Internationalisation of Legal Education' (2012). Paper given at the Association of Pacific Rim Universities (APRU) 3rd Law Deans Meeting and International Conference: Doing Business in the Asia-Pacific: Is Legal Education Prepared?, Facultad De Derecho, Universidad De Chile, Santiago, Chile, Nov 2012.; *ANU College of Law Research Paper* No. 13-18.

⁹ Margaret Thornton, 'The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy' (2001) 8(1) *International Journal of the Legal Profession* 37-56.

¹⁰ James Faulconbridge and Daniel Muzio (2009) 'Legal Education, Globalization and Cultures of Professional Practice' 22(4) *Georgetown Journal of Legal Ethics* 1335-1359.

to the realities [of globalization].'¹¹ Yet, an understanding of culture and the practice of cultural competency to prepare students for the 'new normal' is not well taught in Australian law schools (if at all). Moves to incorporate Indigenous competency which is urgently need have been met with some success¹², but understanding and teaching of other cultures, particularly in South East Asia are not prevalent. We argue in this paper that a particular focus on China and Chinese cultural competency must be better developed across the Australian legal curriculum.

The importance of China to Australian education

If globalisation has led to an acknowledged importance of other cultures, and a need to prepare students for an increasingly internationalised world, why then should Australian graduates be particularly concerned with China? The answer is largely self-evident. In recent decades, China has experienced unparalleled economic growth. The social and geopolitical importance of the region and its relations has correspondingly increased in stature. China is now home to over one fifth of the world's population, and will be responsible for much of the world's economic progression, and political and military focus, throughout the mid to latter half of the twenty first century. This is, by all accounts, China's century to shine.

More to the point, however, China is Australia's largest source of international students in higher education.¹³ Education-related travel services remain Australia's third largest export behind iron ore and coal (most of which go to China as well) accounting for about 5% of total export revenue.¹⁴ The June 2015 signing of the China-Australia Free Trade Agreement (ChAFTA) is likely to further drive opportunities and challenges in higher education, including the Australian law degree. Off the back of ChAFTA, the Australian Government predicts an 'increase [in] student and teacher exchanges, providing Australians with the language and cultural skills to more meaningfully engage with China.'¹⁵ The Australian Government has also established the *New Colombo Plan* which offers funded mobility and scholarship opportunities for

¹¹ Coper, above n 8, 4.

¹² Asmi Wood, 'Incorporating Indigenous Cultural Competency Through the Broader Law Curriculum' (2013) 23(1) *Legal Education Review* 57.

¹³ Australian Government, Department of Education and Training, accessed 21 October, 2015 <<https://internationaleducation.gov.au/research/International-Student-Data/Pages/default.aspx>>

¹⁴ Australian Government, Department of Foreign Affairs and Trade, 'Australia's Top 10 Goods and Services Exports' (accessed 21 October 2015) <<http://dfat.gov.au/trade/resources/trade-at-a-glance/pages/top-goods-services.aspx>>

¹⁵ Australian Government, Department of Education and Training, 'Australia – China Free Trade Agreement (accessed 21 October, 2015) <<https://internationaleducation.gov.au/News/Latest-News/Pages/Article-China-Australia-Free-Trade-Agreement%202015.aspx>>

Australian graduates, including law students, in the Asia Pacific including China.¹⁶ It is these challenges and opportunities which Australian universities and Australia's law graduates must rise to meet in the coming years.

Differences in culture: towards developing appropriate competency programs

Acknowledging the significance of Chinese cultural competency is one thing, but designing and implementing appropriate programs is quite another. The problem is confounded, it must be said, by many Australians lacking a basic understanding of mainland Chinese culture, its turbulent history, its notorious language difficulties (Chinese can have four different 'tones' for the same word!) and its many different sub-cultures and geographic regions.¹⁷ By and large, China's legal, political and economic structures differ greatly from the West. This is largely because Chinese societal values and modes of social organisation are significantly different to Western values.¹⁸ For example, the concept of equality that pervades a Western culture with its basis on liberalist ideology is not present in Chinese society, which traces many of its foundations to *Confucianism* as well as *Taoist* ideas.¹⁹

Differences between Chinese and Australian cultures are underscored by Hofstede's famous 'cultural dimension' work.²⁰ Individualist cultures (such as Australia, the United States and Western Europe) are categorised as having a, 'preference for a loosely-knit social framework in which individuals are expected to take care of only themselves and their immediate families.'²¹ At the other end of the spectrum, collectivist cultures (e.g. China, Japan and many Asian nations) generally present a:

*...preference for a tightly-knit framework in society in which individuals can expect their relatives or members of a particular in-group to look after them in exchange for unquestioning loyalty.*²²

Where individualist Western cultures strive for personal achievement, competition and

¹⁶ Australian Government, Department of Foreign Affairs and Trade, 'New Colombo Plan' (accessed 21 October 2015) <<http://dfat.gov.au/people-to-people/new-colombo-plan/pages/new-colombo-plan.aspx>>

¹⁷ China is notoriously misunderstood by Western countries, for a good overview see: Jeffrey Wasserstrom *China in the 21st Century: What Everyone Needs to Know* (Oxford University Press, 2013).

¹⁸ Pan Fan and Zhang Zigang, 'Cultural challenges when doing business in China' (2004) 26(1) *Singapore Management Review* 81.

¹⁹ The World Bank, 'Chinese Culture and Language Toolkit' (accessed 21 October 2015) <http://info.worldbank.org/etools/docs/library/242331/files/culture_values.htm>.

²⁰ Geert Hofstede, *Culture's Consequences: international Differences in Worked-Related Values* (Sage, 1980).

²¹ Geert Hofstede 'Cultural Dimensions in Management and Planning' (1984) *Asia Pacific Journal of Management*, 81-99, 83.

²² *Ibid.*

self-reward, collectivist cultures emphasize relationship-building and harmonious networks. The Chinese concept of *guanxi* (literally 'relationships') is a central aspect of Chinese culture and reflects the interpersonal way in which business and personal opportunities are pursued and key personal networks are formulated.²³

Of course, one must not over-simplify Chinese culture. China is a vast, geographically sparse country with over twenty separate provinces. Han Chinese make up close to ninety percent of China's 1.2 billion people, there are over fifty other ethnic groups in China including the Zhuang, Manchu, Mongol, Tibetan, Korean and the Uighur Muslims. This diversity has led some authors to criticize and challenge any attempts to paint a generalist picture of Chinese culture.²⁴

Because of these noted differences, competency programs need to be specifically designed that can take into account attributes and sensitivities which are not well understood nor are taught at law school. These include some basic foreign language skills, greetings, etiquette (formal and informal) as well as a genuine desire to learn and share insights. Many of these 'soft' skills cannot be taught in a classroom but must be observed through experience and self-reflection. In this next section we consider short term 'mobility programs' as a way of meeting the dual goals of improving cultural competency whilst meeting traditional curriculum requirements.

Out of the classroom: Fostering competency through 'mobility programs'

Cultural competency has traditionally been taught in the classroom with particular goals and learning outcomes in mind. More sophisticated training techniques involve those who practice the relevant culture facilitating role plays and case studies to enable students to consider the position of the 'other'. Existing cultural competency courses for law students generally have learning outcomes that fall into one or more of three categories. According to Hark and DeLisser, these include: developing knowledge of culture and demographics of specific ethno-cultural groups; the ability to use introspection and self-awareness to identify cultural differences; and the evaluation of anti-racism theories and the practical application thereof.²⁵

As Ward and Miller remark, well-designed programs that include an overseas

²³ Jun Lin and Steven X. Si 'Can *guanxi* be a problem? Contexts, ties, and some unfavorable consequences of social capital in China' (2010), 27(3) *Asia Pacific Journal of Management* 561-581.

²⁴ Ryh-song Yeh 'On Hofstede's Treatment of Chinese and Japanese Values' (1988) 6(1) *Asia Pacific Journal of Management*, 149-160, 157.

²⁵ Lisa Hark and Horace DeLisser (eds) *Achieving Cultural Competency: A Case-Based Approach to Training Health Professionals Hoboken* (Wiley-Blackwell, 2009).

experience will achieve a degree of cultural competency that cannot be replicated in the classroom.²⁶ Recent empirical work supports this claim.²⁷ The majority of students in Dwyer and Peter's study reported that the experience continues to influence their interactions with people from different cultures. A similar proportion suggested that the experience resulted in greater diversity in their friendships and to explore cultures different from their own.²⁸

Further research has been published in Australia where business students undertook a three week immersion course of China's business, cultural and social practices.²⁹ Students in that program were given five pre-departure briefing sessions before embarking on a 17 day tour of China. Hutchings, Jackson and McEllister concluded that the experience gave students the opportunity to develop a cross-cultural understanding in the Chinese context and a more practical view of the effects of globalization. However, the authors did emphasize that a three week experience, on its own, was not a 'panacea for intercultural competence'.³⁰ This underscores the importance of 'pre-departure' sessions which operate to accelerate learning outcomes and enable the students to move more rapidly through feelings of 'culture shock' to 'cross-cultural adaptability.'³¹

Observations from our program

The QUT-HUST program was a joint initiative of Queensland University of Technology (QUT) and Huazhong University of Science and Technology (HUST). Now in its second 'pilot phase', the program involved a two week intensive (i.e. short term mobility program) to Wuhan, China during November-December 2014. Five QUT law students partnered with four HUST law students to research and report on legal responses to air pollution in China. The project was mainly funded by HUST and QUT with some additional funds (spending money etc) provided by the students.

Wuhan is not traditionally a tourist destination in China and consequently the language and cultural barrier was more pronounced than it would otherwise have been in other

²⁶ Cynthia Ward and Nelson Miller 'The Role of Law Schools in Shaping Culturally Competent Lawyers' (2010) 89 *Michigan Bar Journal* 19.

²⁷ Dwyer and Peters (2004) 'The Benefits of Study Abroad: New Study Confirms Significant Gains' *Transitions Abroad* <www.transitionsabroad.com/publications/magazine/0403/benefits_study_abroad.shtml> (accessed 21 October 2015)

²⁸ *Ibid.*

²⁹ Katherine Hutchings, Pamela Jackson and Robert McEllister (2002) 'Exploiting the Links between Theory and Practice: Developing Students' Cross-Cultural Understanding through an International Study Tour to China' 21(1) *Higher Education Research & Development* 55-71.

³⁰ *Ibid.*

³¹ Hutchings et al., above, n 29.

more 'Western' cities like Shanghai or Beijing. One might argue that cultural adaptation would be more difficult in a city with such a pronounced language and cultural barrier; however we observed rapid cultural acceptance, adaptation and post-trip insight from the students. We believe this was largely the result of three key aspects of the program: first, the inclusion of pre-departure cultural immersion training; second, partnering with students from the host institution; and, third, reflective assessment to enable students to 're-analyse' the world through their own cultural lens'³².

The program was preceded by a week long course at QUT's *Confucius Institute*. The Confucius Institute learning experience included basic Chinese language skills coupled with cultural awareness training (basic etiquette, geography, culture politics etc). This was not a traditional cultural competency course, but rather more like 'a cultural competency preparation course'. This meant the travel period was essential to achieve the desired learning outcomes. However, it also meant that less time was needed for students to accept cultural differences as they were aware of these prior to arrival. Further, the students were able to overcome cultural shock relatively easily as the workshop had given the students basic tools to operate within the foreign environment. We found this to be consistent with the work of Rust and Morris in 2013.³³

QUT students were partnered with HUST law students allowing them to identify, discuss and respond to any cultural gaps straight away. This was an important period of transition also observed by Hutchings, Jackson and McEllister's (see above):

*[The] initial experiences of culture shock were managed partially through ... introducing of students to local Chinese students who could help build the cross-cultural links required.*³⁴

Several student-led discussion forums took place over the two weeks, with students responsible for organizing, presenting and generating discussion on the issues relevant to their trip (i.e. air pollution). The 'natural authority' of academics supervising students was not present and students were observed relating well to one another including, largely through sharing and swapping of popular culture. In this regard, the inclusion of Chinese students in the group learning activities was a vital feature of this project.

³² A lens is the way in which we view the world. We might also be able to think about it as a 'frame'. See for instance: Mario L. Small, David J. Harding, and Michele Lamont, 'Reconsidering culture and poverty.' (2010) 6(29) *Ann. Am. Acad. Political Soc. Sci.* 6-27; and Erving Goffman *Frame Analysis* (Harvard University Press, 1974).

³³ Kathleen Rust and Christine Morris 'Intercultural Competency Development in Conjunction with a Short Term Study Away Experience: Changes in Undergraduate Students' (2013) 12(8) *China-USA Business Review* 796-803.

³⁴ Hutchings et al., above n 29, 67.

Without partnering, cultural adaptation would have necessitated a far greater period than the program allowed, thus negating the initial part of the student learning experience.

Finally, the program was also conceptualized to enable the students to see the Chinese cultural experience through their own cultural lens. The assessment methods were constructed to include 'goal setting' for individual students ('what do you hope to get from this trip?' 'How do you plan to achieve those goals?') as well as post-trip reflections (How well did you achieve your goals? What did you learn about Chinese law and culture and how is it relevant to your future career?). Reflective assessment is a critical aspect to development of resilience and insight into the practice of law. It particularly seeks to develop the softer 'introspective' skills of law students which traditional 'black letter' classes often ignore. As Kelley Burton and Judith McNamara remark:

*The ability to engage in reflective practice is an important skill for legal practitioners who are faced with the constant stressors of legal practice...*³⁵

Final thoughts

Our intention in this short article was twofold. Firstly, to underscore the importance of improving cultural competency in Australian law graduates, with a particular focus on the relevance of China. And secondly, to draw some observations about the design of a recent program experience we had in Wuhan, China. We have argued that techniques for developing cultural competency in law students can and must move outside of the classroom, including towards the development of short term intensive experiences overseas. The QUT-HUST project was designed with specific cultural competency objectives in mind and with a view to provide the students with an experience they could draw upon throughout their professional lives.

The program design was of course not all positive, identified challenges for the establishment and continuation of the scheme include: the need for several consecutive years of university funding; a willing partner institution; avoiding high levels of staff turnover, differing academic calendars between host and home universities, and other risks - which are often easier to manage - such as insurance, travel, personal liability, and conflicts between the students involved.³⁶

³⁵ Kelley Burton and Judith McNamara 'Assessing reflection skills in law using criterion-referenced assessment' (2009) 19(1-2) *Legal Education Review* 171-188.

³⁶ A more thorough evaluation of the benefits and challenges of mobility projects could be the topic of a longer

Nevertheless, the observations from our experience, together with supporting literature have led to three suggested inclusions in the design of such schemes: begin with a cultural immersion workshop of some kind to accelerate cultural adaptation and prompt moments of reflection whilst overseas; include partnering with corresponding university peers to develop rapport and facilitate the exchange of cross cultural and legal ideas (at the peer, rather than supervisory level), and finally; design reflective assessment to explore and challenge the many changing facets of culture through the student's own cultural frame.