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# The Age of Empire. Again?

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# Globalisation/internationalisation/ transnational law/foreign legal systems

- the drive towards greater international and foreign content in legal education has, ..., pursued its course apparently unabated. Opportunities have seemingly been grabbed as they arose (a faculty member happens to be trained in a foreign legal system, a foreign university is willing to welcome our students, a donor fancies student internships in certain international organizations, etc.) with little attention being paid to whether and how they might fit into some overall, consistent pedagogical vision (Valcke 2005)

## Which universities have the most students enrolled overseas?

Table shows the number of students studying wholly overseas by institution for the academic year 2011-12. Source: Hesa

	Institution	Students enrolled
1	Oxford Brookes University	251990
2	University of London	45680
3	The Open University	42685
4	The University of Wales	16250
5	Heriot-Watt University	14380
6	The University of Liverpool	13220
7	Staffordshire University	12555
8	The University of Greenwich	12100
9	Coventry University	10715
10	Middlesex University	9820
11	The University of Nottingham	9430
12	The University of Bradford	9255
13	The University of Sunderland	7800
14	The University of Leicester	7700
15	The University of East London	5965
16	The University of Northumbria at Newcastle	5915
17	University of Hertfordshire	5685
18	Edinburgh Napier University	3845
19	The University of Lancaster	3785
20	The University of Manchester	3660

<http://www.guardian.co.uk/education/2013/feb/15/surge-in-students-studying-for-uk-degrees-abroad>

# THE TROJAN HORSE OF LEGAL EDUCATION?



# Mixed jurisdictions

- civil and common law;
- civil and customary law;
- civil and Muslim law mixtures;
- civil law, Muslim law and customary law;
- civil law, customary law and common law;
- common law and Muslim law;
- common law and customary law;
- common law, Muslim law and customary law;
- common law, Muslim Law and civil law, and
- Talmudic law, civil law and common law.

Source: Bussani and Mattei (2012)



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# China

- you must know the different attitudes towards Western influence in the 19th century, the often mentioned distinction between *li and fa* and the basic reluctance in Confucianism to accept a binding law or enforcement by legal rules. And you must understand the impact in China still from traditional Chinese thinking. The Chinese like poetry and calligraphy and painting and money-basically they do like these activities better than law and lawyers ... even if on the surface it may appear different. (Ditley Tamm 'From a European to a Global Approach: Reflections on the Position of Comparative Law in Legal Education' (2011) 8 *US-China Law Review* 56)



# India

- You must know about the Vedas, dharmasastras and the law of Manu, you must know of Islam and Hindu law and you must know something of modern Indian history, the British Raj, times of Gandhi and Nehru, the constitution and the basic principle of secularism in order to understand the law of a billion people. And it is very illustrating to understand the role of Great Britains like Thomas Macauley in the making of a specific Indian colonial law. And I think knowledge of a case as the Shah Bano case on the tension between Indian law and Muslim law is very illustrative of Indian society (Ditley Tamm 'From a European to a Global Approach: Reflections on the Position of Comparative Law in Legal Education' (2011) 8 *US-China Law Review* 56)

# The legal flag of empire?

- **Singapore**

- English common law via British East India Co (and now Application of English Law Act 1993) + other common law influences (Australia/NZ/etc)
- English & Chinese, Malay and Tamil
- Chinese, Malay and Hindu law (eg Administration of Muslim Law Act 1966 )
- Law School of Singapore + recognised others

# Cyprus

- Historically Islamic laws, Turkish and Greek law, and French law
- 1935 onwards Common Law + common law from elsewhere eg India (contract)
- Today common law, Ottoman law, Greek and French law (eg in administrative law), religious law (Greek Orthodox Church. Muslim community)
- University of Cyprus (2005), Greek Universities
- Greek and Cypriot + English

# Mauritius

- French Civil law (Custom of Paris and the Napoleonic code)
- English common law (1810-1968)
- Legal authorities in French (eg jurisprudence of the French Cours d'Appel and Cour de Cassation)
- University of Mauritius (1985)
- Bilingual education



# Whither the comparative law scholar?

- ‘even if either civil law or common law seems to have conquered the world, there are many cultural differences which the lawyer should know in order to understand how the law functions in various countries’ (Tamm)
- , ‘the paucity of institutional reflection on comparative law teaching ....stems, at least in part, from an increased acceptance of the model of the law student as consumer. Not only is this model conceptually consistent with the globalization of the market for legal services ... but the timing of the recent flurry of international and comparative offerings in these schools raises doubts about the possibility of their having been brought about for non-consumerist, pedagogical reasons.’(Valke)

Each law subject must account for three aspects of internationalization:

a) evolution of municipal law to account for the new realities of globalization;

a) comparison of specific areas of law in different legal systems; and

b) the extent to which global developments are driving us towards harmonization and a convergence of legal systems, and in some cases, perhaps an international system of governance. (Barker)



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