

Beyond Borders in the Classroom – The Possibility of Transnational Legal Education*

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Chair Ibusuki: We would like to move to our panel session. So let me introduce our speakers. From my right side: Prof. Frank Bennett from Nagoya University [*applause*], and Prof. Kent Anderson from the Australian National University [*applause*], and Prof. Luke Nottage from the University of Sydney [*applause*], and Prof. Kittisak from Thammasat University in Thailand [*applause*], Prof. Leon Wolff from the University of New South Wales, Australia [*applause*]. I will be the host of this panel session. My name is Makoto Ibusuki. I would like to briefly explain the purpose of this session.

In the Ritsumeikan School of Law we have developed several educational programs in order to train international legal professionals, as our Dean talked about in the opening speech. This has been done partly through the support of Monkasho, the Ministry of Education, as a *keisei shien* project since 2004. The Washington Seminar and Kyoto Seminar are two of our major courses in the program. The Washington Seminar is a three-week educational course held in Washington, DC, for the students of Ritsumeikan. It is our off-shore program.

On the other hand, in the Kyoto Seminar, the students from overseas and those from Ritsumeikan University study Japanese law together.^[1] This one-week intensive seminar comparing Japanese law is designed for both international and Japanese students who have a good command of English. The seminar gives participants plenty of opportunities for class discussions. The course introduces students of various backgrounds to practical legal issues in Japan and doesn't require any previous knowledge in law.

We aim for a transnational legal educational program in which international students gather together in one classroom setting to learn the same legal topics in this Kyoto Seminar. International students usually already have a lot of knowledge concerning the law of their own countries by the time they arrive here for the seminar. We teach them Japanese law, and at the same time, by exchanging ideas through discussions, they have a

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[1] <http://www.kyoto-seminar.jp/> .

chance to discover objectively the characteristics of the law of these countries that they are from. That will also lead the students to understand the strengths and weaknesses of their own law systems.

On the other hand, the Japanese students also gain fresh perspectives primarily on the Japanese law they study in the Kyoto Seminar. As well, they discover some key similarities and differences in foreign legal systems. This unique mutual learning is the purpose of the Kyoto Seminar.

What is the significance of such a program? First, the program teaches the students to understand that there are several approaches to look at a single legal problem, and each law has its own cultural, historical, institutional and educational background. Second, it makes the students look objectively at the legal system of their native countries. Third, it enables the students to respect the law of their own countries and at the same time to respect the legal system of other countries. This will lead to improved capacity for cross-cultural communication. Fourth, and finally, learning the different thinking and approaches of students from other countries motivates them to accept new ideas to develop their reflective skills.

These pedagogical outcomes are rarely seen in our usual classroom settings, as you know. We certainly have chances to learn about the legal systems of foreign countries in our ordinary curriculum and these are very efficient in gaining knowledge of the system itself. But usually they do not lead us to discussing the system with foreign students and to being questioned about our own thinking. A transnational educational program broadens the students' minds through two-way communication and learning with others.

Today we would like to discuss ways to further develop this innovative approach to legal education, particularly in a cross-border context. For this discussion the panelists in front of you are expected to speak about the following sorts of issues. What has been done in these types of transnational programs in those schools and departments? Next, what are their other advantages? Third, what are some of the problems in these programs and how can we solve them?

This morning Dean Yamagami honestly explain the issues at our APU campus. It was very interesting for us. We would like to hear from the experience of other pioneers in this field. Of course we welcome your ideas and your experiences from the floor. We would like to conclude at around five o'clock. Thank you so much.

Nottage: Right, well, I'm very pleased to be invited to this session, and to be a guest again at Ritsumeikan working with Ibusuki-sensei on the Kyoto Seminar and teaching again also at the other campus for the Law Faculty over the last few months. And as one of the three Co-directors of the Australian Network for Japanese Law,^[2] we are very pleased to be collaborating in this unique set of events.

[2] <http://www.law.usyd.edu.au/anjel/>

Now I was going to talk for 15 minutes, until five minutes to two, which leaves me two minutes [*laughter*] and I said that Leon was going to keep time for me, so [*laughs*] perhaps I'll just summarize the key points and finish at two, and then everyone else can play catch-up because before the coffee break we'd like to have time for discussion already amongst ourselves and with the floor.

So basically my role is to just sort of outline how we are going to proceed with the panel presentations and then lead into discussion, and to make a few comments from my experience in the Kyoto Seminar and a different type of longer-term course or program, the Kyushu Program.

The structure of this afternoon is going to be, first, before the coffee break, to look at, in some ways, more conventional transnational legal education involving students going across borders. So like the APU experience now done on a big scale and with some important qualitative differences as well, involving students mainly going to Beppu for studies; but focusing on some examples of this happening in the legal education field, especially in Japan. And also look at some programs where students go outside Japan or from Thailand to Germany—and some of that because I think we'll see there's a lot of diversity in these, in what people are doing in Japan, around the world and so on, and it's good to share these experiences about what works, what doesn't work so well, how we can do this better.

But after the coffee break we'd like to talk about some other possibilities—maybe they can be combined or separate—that involve information technology, especially the internet, and then we'll have some interesting presentations about some experiments done in that area.

In my remaining three minutes—no, no, I'm very happy to finish quickly [*laughter*]—I'm going to introduce some programs involving foreign students learning about Japanese law in Japan. I studied at Kyoto University, coming from New Zealand as a post-graduate student, and it took me one year to get enough Japanese supposedly to start the two-year Master's program, so it took me three years to do my LLM here, and it was all done in Japanese—or the best Japanese I could manage at the time. Whereas the new phenomenon since the mid- to late-1990s in Japan has been to offer more intensive one-year Master's courses in law, for Japanese students but also for foreign students.

The first one to be taught in English involving foreign students was from Kyushu University. They set up their International and Business Law LLM course in 1994. And after that they established a small Master's program in English for international politics students because the law faculties here have both political scientists and law professors. They also in 1999 expanded it so that some of the LLM students could stay on and do LLD (doctorate in law) courses, and attract new students to that small program.

And then in 2001 they developed another set of LLM students to study in the so-called Young Leaders Program, especially from Asia-Pacific countries—some of them not

so young but sort of mid-career legal professionals or business people who want to study more law in Japan, and were going to go back and make an impact in their home countries in the Asia-Pacific.

As the expansion of these programs has shown, now involving in total of probably around 30 Master's students every year, this has been quite successful. Prof. Kittisak was also involved in teaching that program. I helped teach in that program from 1997 to 2000, he helped teach after that, so we might have some discussion about this.

But there are three key features of this approach, which is also found in Nagoya University and Yokohama National University. They all involve public universities and a lot of Japanese taxpayers' money, which is very nice for the foreign students and all those other people involved in the programs, but it comes at a cost. And I hope that it's money well spent, but that's one feature.

The second feature is that it's very much focused on the foreign students. The Japanese students—in my time at Kyushu University, when I was teacher there—we tried to involve them, but it was very difficult for the Japanese students to do a whole program or even courses in English. So it was really mainly focused on foreign students.

And thirdly, the bulk of the professors remain Japanese. And initially there were lots of people coming from overseas for shorter times: one year for one colleague, Prof. Kittisak I think two years, myself three years—most of us three years, now there a few who have stayed on as tenured professors. But still it's predominantly run by Japanese professors, and that has lots of advantages but it also leaves some challenges.

By contrast, the Kyoto Seminar is a different model. First of all, as we've heard, it's a one-week intensive course. It's not a whole year-long program. It's part of diversification. Secondly, although it has had some government funding, that ends as of yesterday or probably at the end of this symposium, so if we run this again—and I hope we do because, as we'll explain, it has I think a lot of advantages—it has to be done on a more commercial basis.

So from next time, actually Ritsumeikan University has committed to continue the program and put up some money to keep as an investment in the future, but this will also involve Ritsumeikan students paying course fees and Australian students that we've brought from Australia as part of our Network and our universities paying a little more than they would pay for a course back home.

Our Network has also been involved in a third aspect of the Kyoto Seminar, which is the teaching side, where the teaching is roughly balanced. In fact, in each classroom, each session, we have pretty much a Japanese local professor, mostly from Ritsumeikan—but not just Ritsumeikan, it's more collaborative—and also a professor from overseas, usually from Australia so far but it wouldn't have to be always.

And the students, as Ibusuki-sensei has mentioned, are roughly half Japanese students, half foreign students, mostly from Australia at this stage but some people from

the US up there, Germany (via Thailand), and a very nice mixture of different backgrounds. On the other hand, that creates some challenges for us because everyone has a different background. Some are not even formally enrolled any more in universities. They are working in Japan but are interested in Japanese law. So as teachers it's a challenge for us to try and pitch it correctly.

And finally, another challenge for us is that we have to create some teaching materials, not just in English, even though the discussion is in English, because as you might know, reading in a foreign language takes a lot more time and is more complicated, especially if it's new perspectives that you hadn't thought of. So we're slowly still working on having materials in both English and Japanese —not that they can't be the same, as Yamagami-sensei mentioned—but trying to find some overlapping basis for a better discussion. Thank you.

Chair Ibusuki: Thank you very much, Luke. Next, we would like to hear about another challenging initiative from a Japanese university. Here is Prof. Bennett, who has long experience in the Department of Law in Nagoya University. Could you please introduce your experience and your program, Frank?

Bennett: Yes, thank you, Prof. Ibusuki. Yes. I'm Frank Bennett from the Law Faculty at Nagoya University. I'd like to offer in, as briefly as I can, I'd like to offer just a brief, very brief overview of the programs at Nagoya University, which are really similar to some of the other, many of the other stories that were summarized by Luke just now. And then speak about some of the issues that, or issues that have arisen in the course of our program, just really as bullet points. Perhaps it may provide grist for discussion later in the session. And then make a mention of an initiative that we are pursuing in our faculty, again—I believe I have this right—under a keisei shien grant similar to the one that's just now completing at Ritsumeikan.

Nagoya University's contact with or outreach work to Asia, Central and East Asia, began with a fundraising project on the fortieth anniversary of our university's founding in 1991. This was the Asia-Pacific Project, which provided us with some funds for research for visiting Asian jurisdictions, but didn't really do much more in our instruction environment and make it perhaps a little easier for some of the students who traditionally have come to Asia out of East Asia for education in Japan to come to us, particularly students for China, mainland China, and Taiwan. That fund ran for about a ten-year period. It has now pretty well run its course.

But in 1998 our faculty made a commitment, the timing of which is similar to the other initiatives that Luke has mentioned, into legal technical assistance, and in parallel with legal technical assistance by members of our faculty into Central and East Asia, and a significant number of scholarship-funded students brought in for an English-taught LLM program in our faculty.

The students in these programs came from Vietnam, Laos, Cambodia, Mongolia in the

first round. Later, Uzbekistan was added and we've just recently started taking students from Myanmar. So it's quite a diverse population of students. English is not their native language. But in contrast to our mainland China and Taiwan intake or traditional Chinese and Taiwanese intake, these students do not have English as a native language and Japanese is a difficult language for them to acquire, so the language of instruction is English. This is a common problem faced by many Japanese universities today.

So we have offered an LLM degree since 1998, beginning in 1998. And one of the features of this program or these programs when they started was that the shape of the academic programs had to be wrapped around the scholarships that were associated with it, one from the Ministry of Education, another set of scholarships from the JICA institution. The administrative education scholarship runs for two years. Our JICA scholarships run for two years and six months. The students come to Japan at the same time. Both cohorts of students do six months of Japanese instruction and they graduate in different semesters. Nonetheless they have the same academic requirements, but there's this staggering of schedules which makes things extremely difficult to manage. This is an administrative minor nightmare, which happily I don't have to deal with very much directly but which our administrative staff suffers with quite considerably. We're gradually trying to rationalize the program and get everything on one track. But the sort of funding-driven static in the program due to this difference in the length of the programs is a problem for us.

The LLMs have been running now for better than five years. And recently we've moved to extend, like many other universities, to extend the PhD program, and this has been a very positive experience. We've found that by offering competitive admission posts to the PhD track that it has really raised the level of study in our MA programs. It's given students a very strong incentive to be aggressive and very serious and diligent in their studies. It's worked out very well. I mean, that's where we stand today. So as you can see, the experience at Nagoya is very similar to what Luke has summarized.

I'd like to now mention some of the particular aspects or items that have arisen in our experience that strike me as, that have been particularly meaningful or learning experiences to us along the way.

One is that, the problem of language has been mentioned by several people, the problem of the language barrier and how to bridge over that language and cultural barrier, particularly when we're looking at a population of Japanese undergraduates or Japanese LLM students, Japanese master's students in an English-speaking environment. It's very challenging and difficult for students who have been through the English instruction process in Japan to shift over and deal in a native environment with students from other countries. This is something which at the end of my talk I'll have some words about, how we're trying to use our foreign student population to help enhance the experience of Japanese undergraduates.

Going back to language, it's also a challenge for our overseas students from Asia.

Particularly in the early stage of our program the quality or the English level of some of our incoming LLM students was lower than one might have expected, and there were problems, there were worries, problems. “Problems” is too strong of a word. There were worries by some members of staff when theses came up for review.

And at that point a system was introduced, which I personally have some, some of us have some reservations about, in the early going we were very of two minds about, which was an English tech service for MA papers. That is sort of a review service where a member of staff who is a native speaker would review the paper and do, without touching content, go over and try to make sure that the text was intelligible to all of the reviewers, that it was clear, that there wouldn’t be any misunderstanding about what the thesis was trying to say. It was partly for the benefit of staff reviewing the theses who are themselves not native speakers. There’s a problem of raising the level so that, raising the level of the text so that a non-native speaker can more easily grasp the content. So this service was introduced.

To be honest I had doubts about whether this was appropriate in the early days of the program, but it has had a very important benefit, and that is that the staff member who did the review of the thesis was able to identify common problems which could then be fed back into curriculum. And this led to the deployment of targeted writing instruction, which now has extended to three courses in the curriculum, that steps the students through their thesis-writing process. And I think that has helped to raise the level of writing and of research in the program considerably.

It may seem an obvious thing that a program for overseas students, for whom English is not a native language, would be initiated without a dedicated remedial English program as part of the instruction. But like many programs in many Japanese institutions, many similar programs in other Japanese institutions, ours was opened with limited staff resources. And so we have filled holes where we find them, as we’ve went along. There’s been a bit of troubleshooting in the process.

Further developments in the program that have been beneficial. One is a negotiation skills course, which has been run by a colleague of mine, that’s been very successful and involves online negotiation. Perhaps, I understand we’ll be talking about online skills later in a later session. Also a legal ethics course has been introduced, which I, particularly with respect to Dean Grossman’s comments earlier about the importance of ethics, it’s something we found the students responded to very positively because our graduates, when they return home, do face very difficult ethical environments back home. Some of the jurisdictions that our graduates return to have very high levels of bribery in public life, and the legal ethics course has been very well-received by our graduates, by our students.

I’m now a few minutes overtime so I’m going to just make one more comment, point out one more aspect of our program, and that is the involvement of our undergraduates. I mentioned earlier that there’s this problem of getting Japanese students and overseas

students working smoothly together in an English-speaking environment. We have an informal circle in our school, in our faculty, which we refer to as SOLV. They have a small office. They're a circle in our school. SOLV is School of Law Volunteers, some of whom are Japanese students who had their high school education overseas and have returned for their university education, some of whom are Japan-educated Japanese students, but this circle has been providing kind of bridge services and a kind of splice between administration and the overseas student body. And from this year the work of those students is going to be, is going to *taninka sareru* [laughs]. It's going to be recognized as academic work.

We have a set of seminars now which are student-driven for introducing one another's country to one another. In first term it runs Japan introducing to target jurisdiction. The students are grouped into individual jurisdictions. There are a couple of Japanese groups. There's an Uzbekistan group. There's a Myanmar group, which I supervise. In the first term Japanese students introduce to overseas. In the second term, it runs the other way. And during the summer the Japanese students will have an opportunity to go to local jurisdictions and do presentations at local universities.

The aim of the program by its designer, who's our current dean, is to generate a kind of circle of friendship that will continue beyond graduation. The effort is to provide enough common experience, enough bonding experience between the two groups of students that they'll remain in touch after graduation. That's kind of the target of it.

I'm well over time so I'm going to draw a line right there so that they can speak.

Chair Ibusuki: Thank you very much. Our next speaker is Prof. Kent Anderson from ANU. He will introduce especially the INC, a moot competition involving commercial negotiations and arbitration.

Kent Anderson: Following my colleague Luke Nottage's lead, I would like to address the "nuts and bolts" of realizing the "global classroom" in legal education. I leave it to others to explain why this is important;¹⁾ I accept that as self-evident. I will speak to my own personal experiences with three international legal education exercises,²⁾

1) To provide but a few examples of various systems adjusting to this truism see, Catherine J. Iorns Magallanes, 'Teaching for Transnational Lawyering' (2005) 55 *Journal of Legal Education* 519 (describing programs in New Zealand); Craig Scott, 'A Core Curriculum for the Transnational Legal Education of JD and LLB Students: Surveying the Approach of the International, Comparative and Transnational Law Program at Osgoode Hall Law School' (2005) 23 *Pennsylvania State International Law Review* 757 (describing programs in Canada); Tan Cheng Han, 'Challenges to Legal Education in a Changing Landscape - a Singapore Perspective' (2003) 7 *Singapore Journal of International and Comparative Law* 545 (describing programs in Singapore); David S. Clark, 'Transnational Legal Practice: The Need for Global Law Schools' (1998) 46 *American Journal of Comparative Law* 261 (describing programs in the United States).

2) Though I do not draw directly on it in this brief contribution, my comments are also influenced by my experiences as both an organizer and student in other transnational legal education projects such as full-status enrollment in foreign law schools, full-time exchange, short-term or intensive exchange,

namely (1) using video technology to run a cross-border negotiation simulation and course; (2) bringing an Australian team to the Japanese organized arbitration and negotiation moot competition; and (3) hosting Japanese law students at the ANU, which inspired by the Kyoto Seminar and Washington Seminar, I have called the “Canberra Seminar”.

Since 2004 I have been running as part of different courses a negotiation exercise done over video conferencing and email between my students at the ANU and law students at Aoyama Gakuin University. I wrote a longish article following the pilot year of the project,³⁾ so I only focus today on developments over the past two years. The project was originally designed to be a discrete element within a larger class rather than a class unto itself. That has been an enlightened approach. From the ANU side, I have done the project within three different classes: Japanese Law, Advanced Seminar in Japanese Law, and International Arbitration and Negotiation. My counterpart at Aoyama, Professor Yoshinobu Eizumi, has used the course in his Private International Law and International Transactions courses.

One of the original difficulties was technology. Despite what everyone tells you about the infallibility of modern IT, as a practical matter technology continues to be a problem. For example, even in December 2006 we had to delay our project three times and shorten it to accommodate technical difficulties. I do not have the technical background to explain all of the various problems that have arisen and how we have overcome those or how you might avoid them. Rather, I note that I now anticipate the glitches under the old adage that “if something can go wrong it will”. In fact, I firmly believe that the more complexity you add to a process the more likely difficulties will arise; thus, I endeavor to keep our humble project as simple as possible. Rather than becoming flummoxed by the seemingly endless technical malfunctions, I now use the technological hiccups as part of the learning process for students. Part of my assessment of the students is based on how they respond to the technological problems such as poor sound, video, and reduced video time. I view these hurdles as typical in any lawyering environment; thus, learning to “roll with the punches” is a lesson that as a practical matter will make the students better lawyers.

One positive technological development has been its decrease in cost and corresponding proliferation. In our first year, both The ANU and Aoyama were restricted

teaching foreign law to domestic students, video lectures, and so forth. I recently participated at the University of South Carolina School of Law in what was without a doubt the most sophisticated video lecture I have seen as part of the Law and Financial Institutional Partnership, a consortium of a number of law schools. See <http://www.lfip.org/>.

3) See Kent Anderson and Yoshinobu Eizumi, ‘Cross-Border Legal Education: Results from a Pilot Japanese-Australian Video Negotiation Project at Australian National University and Aoyama Gakuin University’ (2005) 46 *Aoyama Law Review* 214, reprinted at 19 *Journal of Japanese Law (ZJapanR)* 101 (2005), available at <http://law.anu.edu.au/anjel/documents/ZJapanR/ZJapanR19-09-Anderson%2BEiz.pdf>

to using specially designated “video capable” conference rooms. We also had to use the much more expensive ISDN connection, rather than the cheaper IP connection, which was not widely distributed in Japan at that time. In 2006 and 2007, because the regular facilities were already booked, both ANU and Aoyama were able to inexpensively purchase new facilities that could be used in standard rooms. We connected through IP, making the session essentially free. There was no loss in quality of video or sound. The benefit has been that we are now much more flexible and do not face the administrative difficulties of coordinating through separate university bureaucracies.

We have tried two types of problems over the years. Originally, we specifically designed the project so that it covered four weeks, with two weeks dedicated to negotiating a contract and two weeks dedicated to resolving a dispute under that contract. Subsequently, we have tried one-shot negotiation problems that provide for longer up-front negotiation time and are more typical of moot negotiation competitions.⁴⁾ Of course, which type of problem is best depends on the course and its goals. Nonetheless, I advocate the longer problem developed more organically over time. My own sense based on our experience is that this structure is less artificial and allows relationships to develop between the parties. The students also take more care in drafting the resolutions gaining drafting experience as well as simple oral negotiation techniques. I caution, however, that the four week project is much more time-consuming and difficult to manage for supervisors.

One of the things that amazes me about our video negotiation project is how relatively quiet its acceptance has been among our regular colleagues. The project and its potential excite me to no end and I expected my university, law school, and colleagues would be trying to promote, copy, and join in the project. While I have received support from the university, law school, and colleagues, it has made very little splash. What makes me slightly cautious about this is that organizing and running such a course is much more demanding on a lecturer and accommodates fewer students than traditional classes. Thus, continuity of such a program is dependant on the energy and good will of the organizer. The lesson to take is an important one in light of the theme of this conference: The possibility of transnational legal education is largely dependant upon it being valued by the leaders of an institution, because there are cheaper, less time-consuming, and more tried ways to deliver a standard legal education.

The second transnational legal education project that I have developed involves bringing an Australian team to the Japanese Intercollegiate Arbitration and Negotiation Competition (INC) for the past two years.⁵⁾ I will not explain all of the general benefits of mooted competitions or even all of the unique benefits of this competition in light of its

4) See, eg, International Negotiation Competition, <http://culaw2.creighton.edu/inc2006/>.

5) For details on the competition see, Intercollegiate Negotiation Competition, <http://www.osipp.osaka-u.ac.jp/inc/index.html> .

distinctive format.⁶⁾ I will, however, comment on one important characteristics of the INC that make it a highly relevant pedagogical project and note a few of the hurdles that participation raises. First and most evidently, in contrast to most, if not all, other international student mooted competitions the INC is conducted in Japanese as well as English. In training lawyers to be international actors, ideally I think moving beyond English is important. While English may be dominant in international transactions at present, the deeper we advance into the 21st Century the less this will be true. This is because as the world “flattens”⁷⁾ international transactions will go beyond a country’s elite companies and individuals down to more common people. We already see this happening through internet transactions. At this small and medium enterprise level or consumer transaction level, domestic languages will be dominant especially when matters end up before domestic courts. Thus, foreign language fluency’s importance will grow for lawyers seeking to cross borders. It is extremely difficult to give students opportunities to develop or maintain that fluency. Simply: foreign language fluency is important and mooted is one way to achieve it.⁸⁾

Participation in the INC from Australia has concomitant difficulties. Two primary ones are timing and cost. Coordinating schedules in international cooperation exercises is always a difficult issue. Fortunately, Australia and Japan have similar semester schedules. They are not identical, however. Thus, as the INC is run in the first weekend of December, it puts pressure on participating Australian students since their second semester exams run until mid-November. While Japanese universities may dedicate an entire semester to preparation, we are limited to three weeks. In the long-term, this may be addressed by coordinating Australian involvement in the INC with relevant courses, such as International Dispute Resolution, run over our second semester.

Until then, however, I note that the timing difficulty does have one possibly positive side effect. Because of the limited time, we prepare as if at a “*gasshuku*”. *Gasshuku*, as Japanese readers will know, is the tradition of intensive training camps held in Japan for both athletes and scholars where a group of usually young people live together focusing on detailed preparation in an intensive, all-inclusive atmosphere. Our INC *gasshuku* begins with two weeks in Canberra, but crucially we spend the week before the competition preparing in Tokyo. This acclimatization is essential and we have been lucky to have Sophia University in 2005 and Aoyama Gakuin University in 2006 assist by providing meeting space. The *gasshuku* at the Japanese universities has the additional advantage of creating opportunities for exchange with Japanese students. This hopefully has trickle-

6) For my comments on some of the benefits of the distinctive format used by the INC see my note *Hogaku Kyoshitsu*, and the interview and article by the ANU student newspaper, *The Peppercorn*, <http://law.anu.edu.au/lss/publications.htm>.

7) See Thomas L. Friedman, *The World is Flat: A Brief History of the Twenty-first Century* (2005).

8) Another is language courses specifically for lawyers. At UNSW Leon Wolff teaches *Japanese Law and Language*, and at ANU I teach *Advanced Readings in Japanese Law*.

down educational exchange benefits seen through Aoyama Gakuin students visiting the ANU for the Canberra Seminar described below.

The second problem the Australian INC team faces is one most international cooperations also experience, namely, costs. For equitable reasons, I strongly believe that participation by Australian students in the Japanese moot competition should be subsidized. Because in Australia there are limited government or university funds for this, it has made us reliant on donations. I drop a footnote here to list all of our kind sponsors,⁹⁾ but significant funding from Osaka University's Negotiation Centre in 2005 and from the Japanese Chamber of Commerce and Industry (Sydney) in 2006 in particular, have allowed us to cover student airfares and lodging expenses for the Tokyo *gasshuku* period.¹⁰⁾ In addition, to ameliorate indirectly the expense to students, I was able to have participation in the moot recognized as an LLB course by the ANU College of Law. Thus, while they must still pay tuition, students can partially justify the time and financial expense as part of their overall educational costs. Needless to say, as organizer and coach of the Australian moot team, soliciting funding is the most time consuming and demanding aspect of my involvement.

Finally, I just briefly note a third project that I have organized to realize a global classroom, the Canberra Seminar. Both the name and model of this project borrow, with gratitude and acknowledgement, from the Kyoto Seminar just completed at Ritsumeikan and its related Washington Seminar at American University in Washington, DC. Rather than discuss the general objectives which are essentially the same as the other seminars,¹¹⁾ let me highlight some of the different features. First, in this pilot year the course is primarily aimed at undergraduate law students. One of my concerns with the excitement and effort shown towards Japan's new Law Schools (*hoka daigakuin*) has been the deemphasizing of undergraduate legal education. As I have stated elsewhere, I think this is a mistake. Considering numbers alone, law faculties are still the dominant place of legal education in Japan and I believe should remain the centre of the Japanese legal education paradigm. Nevertheless, while our first year of the Canberra Seminar is focused exclusively on undergraduate law students, I would welcome graduate law students in the future. Indeed, one of my long term objectives for the Canberra Seminar is to reflect the key principle of ANJeL, that is, an open and inclusive network. Thus, hopefully in the

9) In 2005 we kindly received monetary support from: Osaka University, ANU Law Faculty, Nagashima Ohno & Tsunematsu Law Firm, and Matsuo & Kosugi Law Firm; and in-kind support from Sophia University and Blake Dawson Waldron Law Firm. In 2006, we kindly received monetary support from: Blake Dawson Waldron, Japan Chamber of Commerce and Industry (Sydney), Nagashima Ohno & Tsunematsu Law Firm, University of Sydney (DVC-International and Law School) and the Australian National University; and in-kind support from Thomas John, Sonya Willis, Matsuo & Kosugi Law Firm, and Aoyama Gakuin University.

10) The INC covers students' lodging and meals for the three days of the competition with the kind sponsorship of Sumitomo Group, Japan Arbitration Association, White & Case Law Office.

11) See Kyoto Seminar, <http://www.kyoto-seminar.jp/>

future Japanese students from other institutions will attend and a variety of Japanese universities will be willing to recognize the program for credit.

A second characteristic of the Canberra program is its spotlight on language. The first week is dedicated to an 'English for Lawyers' course. This has been more controversial than one might expect. Our experience, with respect, is that the Japanese government and universities' expectation regarding the English fluency of its law students and lawyers is overly sanguine. Also, based on our experience we find the artificiality and occasionally questionable accuracy of relying on translators largely unsatisfactory. Thus, we have addressed this by engaging English as a Second Language professionals to deliver a one-week course specifically targeted at university students studying law. In addition, for the second week of the course taught by Australian law experts, we have provided for "tutors" to attend. The tutors are Australian law students fluent or proficient in Japanese. The idea is that rather than translate the lectures, the tutors will attend the lectures with the Japanese students and afterwards facilitate a question and discussion session with the lecturers to ensure that the key points were comprehended. This is helped by the fact that roughly half of our Australian law lecturers (the ANJeL co- and associate directors) also speak Japanese, though they will first be teaching in English to provide a realistic foreign learning environment for the students. My message here is again that language matters in transnational lawyering and educating.

The main challenges for the Canberra Seminar are the same as with other international projects: timing and cost. February is the best month for short-term student exchanges between Australia and Japan as it falls just before first semester in both countries. However, the early part of February can be difficult for Japanese organizers in light of late final examinations and entrance exams. Conversely, the latter half of the month can be difficult for Australian organizers in light of the beginning of the new academic year, and the corresponding unavailability of dormitory space. These difficulties in 2007 have been resolved very favorably by finding dates that thread between the constraints and relying on home-stays for lodging.

The cost issue again. Once again, this project is possible thanks to seed funding from the Japanese government which subsidizes the students' expenses. ANJeL is seeking similar assistance for future years from other sources. In addition, ANJeL and ANU contribute to affordability by lecturing and providing classrooms for gratis, in effect, subsidizing the project. The long-term hope is that by opening the program to more institutions, students fees may be raised to offset the current grants. Only time will tell whether this is a viable model.

I am personally extremely optimistic about realizing the global classroom and the enormous educational benefits of doing so. To conclude, however, let me focus on the chief challenges to these projects suggested by the three case studies discussed above. First and most obviously, a global classroom, in whatever form (including video and virtual), is

more costly than standard classroom instruction. I would argue that the extra cost is offset by the pedagogical gains that can only come through such international settings. Nevertheless, finding the seed and recurring funding to achieve this is a constant trial for organizers.

The second challenge faced in each occasion is timing. Coordinating across borders involves balancing two or more academic calendars, multiple time zones, and conflicting personal commitments. In this regard, Australian-Japanese cooperation is perhaps the most advantageously situated of any partnership. Our academic calendars are very similar, there is only one to two hours time difference, and people willing to cooperate are pleasantly flexible with their own time. Difficulties are still faced, yet experience suggests various accommodating solutions (eg, September and February meetings in the early and late afternoon). I do not have any practical advice for those facing more challenging factual parameters, but note that with the majority of world's population in the Eastern hemisphere abundant partnerships are possible.

The third challenge is more subtle and, thus, more difficult. In light of the timing and cost issues inherent in these global projects, affirmative institutional support and appreciation is a lynchpin. By the multiple references above to the Japanese government support behind our various projects, I think it can be said that this quarter has risen to the challenge. The same has not been the case for the Australian government, which still largely views "international education" only in terms of offshore revenue generation. Signs suggest this may be changing,¹²⁾ but tangible proof has yet to trickle down to the coalface of legal education. Assessment of institutional assistance cannot be generalized. Some Japanese institutions, such as Ritsumeikan Law School, have shown impressive commitment and appreciation for global initiatives. Likewise, my own ANU College of Law and in particular its Dean, Professor Michael Coper, have been overwhelming in their support. Other institutions, however, face different internal balances and have other educational missions, which results in international projects not being proposed, supported, or continued. In brief defense of institutional support for the global classroom, however, I would posit that in addition to the educational benefits and possible long-term financial benefits, global reputation also will benefit from cross-border outreach. As students and staff become more mobile that too will become part of most institutions' self-interest.

Again, I am overwhelmingly supportive of and optimistic about efforts to realize the global law theatre. My three projects outlined above only make me more so. The challenges faced keep me engaged, but more importantly seeing what the students achieve keep me committed.

Chair Ibusuki: Thank you very much. I think we are already in the discussion time but we have to introduce the next topic. So Kent, can you introduce the Canberra Seminar

12) See, eg, Australian Government, Department of Education, Science and Technology, 'Endeavour Programme', <http://www.endeavour.dest.gov.au/>

from Australia?

Anderson: Since I've already given my conclusions I can do it in two minutes, so that will save us some time. [*laughter*]

Inspired by my experience at the Kyoto Seminar the first year we ran it, I had long wanted to do something similar in Australia to introduce foreign students to the Australian system. So again, borrowing from the Kyoto Seminar, I've named it Canberra Seminar, and actually right now we have 20 students from Aoyama Gakuin in our first year who are at Canberra studying for two weeks.

Just a couple of points to highlight. One, this is possible because of a Ministry of Education grant. I think that's the fourth time we've said that already. But it's the Ministry of Education's subsidizing the cost that makes it possible, at least in the first year.

My second point is, again going back to language, our experience is the students come in with less language ability than is represented by the institutions, and so we've addressed that. In the first week we teach English for Lawyers, and then the second week we go into a Kyoto Seminar-type introduction to Australian law. We're hoping that will be a positive development.

Nottage: Maybe one challenge is, this is for undergraduate students . . .

Anderson: If I may, let me pick that point up. It's the pilot year. The reason it's happening is because of Ministry of Education funds that went to Aoyama and that's why it's Aoyama, and those funds are directed towards undergraduates so that's what we have. But, just some characteristics that I think are important.

Right now it's undergraduate students while much of the money flowing is for graduates, *hoka daigakuin*. But my own personal opinion is, undergraduates need to remain the center and the core of the legal education paradigm in Japan and can't be forgotten in the enthusiasm for law schools. So that's one of the reasons why undergraduates are my focus with the Canberra Seminar.

And the second point was that because it's the first year, it's limited to Aoyama Gakuin. We're hoping for next year to make it open and inclusive for any other Japanese universities or anywhere else that wants to do it. So I just had a long lunch talking with your Ritsumeikan University and hopefully one of the results of that will be that we'll get some Ritsumeikan University students in the future.

Chair Ibusuki: The next speaker is Prof. Kittisak introducing the Thammasat challenge in global study involving legal education. Can you start?

Kittisak: With great pleasure, I would like to thank Prof. Ibusuki and Ritsumeikan University for giving me this pleasant opportunity to be among you talking about the topic "Beyond Borders in the Classroom." The topic was "The Possibility of Transnational Legal Education." I would modify it a bit and put it into the "Necessity of Transnational Legal Education." In my perception of the competition of legal systems nowadays, we have realized that legal education as a social force has to take steps when preexisting patterns of

legal understanding and practices are challenged by new markets and new influences stimulated by extra-national, of course regional or global economic and political opportunities and forces. A good response, especially in the sphere of legal education, is therefore a necessity.

This has happened all the time. If you look back in the history of our modern legal system, the international, transnational characteristics in the classroom have always been a substantial part, from the beginning. We can even look back into the study of Buddhism as an elementary part of legal education in Asia from the fourteenth century on, to find a very similar development. The Study of Buddhism in Asia is always international, it was international and transnational from its beginning, and I think these kinds of experiences in bringing different minds together and learning from each other are not new for Asia. The Study of Buddhism might be the first international movement in our intellectual activities.

I would say the second phase of transnational legal education facing Thailand began almost the same time as in Japan, in 1855. You were facing Commodore Perry and we faced our Sir John Bowring. They concluded with us an agreement, they called it the Treaty for Commerce and Friendship, but it was a treaty for extra-territoriality, an unfair agreement, of course in the name of free trade.

Then about 40 years later, in 1896 we had very intense armed conflicts with the French. At that time the Thai government realized that we could face or limit this kind of expansion of universal values and extension of influence through weapons. We had to take education and modernization as our way out. The foundation of a modern law school in 1896 was therefore one of the factors.

Since then the shift of legal education is going on. It went from the study of sacred scripts into studies of logical and rational argumentation. In 1910, the modern Penal Code was enforced. In 1925 the Civil and Commercial Code came into force. Of course the Code was a revision of the Thai existing law and also a result of comparative study, introducing many new legal figures and institutions through a process of looking west to Germany or Europe and looking east to Japan.

Our Civil and Commercial Code, in its content, has been shaped by the model of the Japanese Civil Code, which was also shaped by the German spirit. At that time the British ambassador protested: it is not international enough [*laughter*], so the drafting committee replied that it has been accepted by Britain in the case of Japan, and therefore Britain had to accept our model too.

The Thais got their judicial sovereignty. But after this interesting movement I would say that the characteristic of the legal education stuck with the national pride through the Codes and authority of the texts, The study of law turned to paying attention no more to problem-orientation but rather to principle-orientation.

Legal studies, more and more were aiming at reproduction of law in the sense of duplication, not regeneration. Only small groups of legal scholars come to speak of and

reproduce the law, where legal studies were not connected to popular legal understanding. In contrast to the understanding of Buddhism, which achieved popular understanding in the fourteenth, fifteenth century, generating knowledge, traditions and cultures all over Asia, the modern legal understanding of the nineteenth century was focused only in small elite groups, alienated from the people, concentrated in hands of the state apparatus. It could not enrich our own cultures and popular understanding.

In my perception, the development of modern legal education in my country has been concentrated too much on teaching quality. We have world-class professors, highly educated scholars, but we did not concentrate on learning quality. We didn't pay enough attention to the learning effect on the students.

So in the past century, legal education was national interest and could not yet transform itself into an international network of knowledge, unlike Buddhism. But of course after the 1990s, after at least 1995 with the WTO and the free trade movement and so on, we are facing the same expansion of trade and powers like 100 years ago, that means opening of markets, the modernization of law or else extra-territoriality in the modern sense.

With the internet and the movement for transnational legal education, the Thais found a way out again. Especially with the 1997 economic crisis, or also known as the Tom Yam Kung crisis —Do you like it? Is it hot? Yes, it is delicious, but sometimes you can get hurt by it! These kinds of economic crises led to legal and constitutional reform in Thailand, especially the takeover and acquisition of firms, and so on in Thailand; this to a networking, a movement of lawyers and legal understanding. Of course not only Thai lawyers are building their own networks, but together with international lawyering industry. This process is very strongly influenced by the American law firms.

And this leads to a shift in the mode of production of legal knowledge to a transnational networking, such that the reproduction of law is no longer focused on the university, but also by practice, and more and more problem-orientation.

I think the same has occurred in Asian countries. We need to understand of course our national law, but more and more comparative law, like Prof. Grossman mentioned this morning, European law and foreign legal systems, not only to understand European legal system as a market, but to understand our reflections among Asians through European Studies. If you look at Asian countries we can see that Singapore, Malaysia, reflect the Anglo-American system. The Indonesian, the Burmese, they have mixed systems. The Thai, the Japanese belong to Civil Law System. Vietnamese, Laos and Cambodian, they are now having more and more new kinds of codification, and especially the same in China. The Chinese, I think, are a very important factor for our transnational legal education. Are we also reflecting a process of coming together in the same way like the Europeans?

Of course understanding of international and business legal affairs is very important.

What Thammasat University, my university, did during this period was to set up multilingual legal studies. Of course we focused on the national legal understanding in Thai. We still believe that we cannot teach and study the Thai legal system in English. You may get an introduction to the Thai legal system in English, but if you want to have a serious legal education, you may introduce a kind of comparative legal understanding to produce lawyers with comparative eyes, who understand their own system in comparison to their neighboring legal systems. To do this, you need students with bilingual or multilingual understanding.

So we decided to have English courses for non-compulsory subjects, such as Anglo-American Law, French Law, Japanese Law and German law. Until 1996 we had German law studied in the Thai language, and up to 2003 we started a project in English and got help from the German Exchange Service. We got a very good lecturer from Germany, and he is with us at this conference, Mr. Georg Schlueter, who gives lectures on German law in English at Thammasat University in Bangkok.

French law and Japanese law are also taught in English. Of course we don't have enough students who understand Japanese, but Japanese is also taught by a Japanese colleague at the faculty. So there are at least every year four or five students who study Japanese. Anglo-American law, of course is taught in English. And Southeast Asian legal systems and Thai legal system are taught in English.

For what purpose are we doing this? To understand our own system by understanding the others. We try to understand more of the Japanese legal system in order to understand how we got this kind of legal content and so on through Japan, and how Japan and the Thais did it in the past, and what kind of development took place in both systems.

And we are planning to have more and more English-language courses like international law. Nowadays international law is still given in Thai, but next this will be given in English. European law, international, intellectual property and so on will go the same way.

How is it with the students, especially international students? There are some international students at Thammasat University. Every year our LLB students number around 1,000. Two programs exist, they are a day-program and a twilight-program, each with around 500 students. And among each 500, there are a few foreigners. They are coming from Laos, the majority of foreign students are Chinese, a few are Japanese. This year we have eight Chinese in first semester. Sometimes we have Japanese. I think in the last two years we have had two or three Japanese in our courses. Mongolians, they are beginning to study Thai law in Thai. And Australians, they came to study Thai law also in Thai. American, German students are coming to take courses but not all the program.

And so we tried to organize a visit program in Asia, America and Europe. And of course we did some visiting to Laos. This is not inexpensive but we try to send our students to study aboard. The idea is that students who take a German law course and get

good grades will be sent to Germany for training for two months, but not all of them; only those who can afford the travel cost can get scholarships sponsored by the private sector and we try to get cooperation in Germany to provide some training posts for them. We also wish to do this with Asian countries.

In the end, I would say that transnational legal understanding and legal education is only possible, when they are based on strong partnerships for the network of legal learning. First of all, I would say that the most important point is the bond between the learner and teacher. No more focusing on the quality of teaching; we have to do more on the quality of learning. And we try to make the student understand that learning and teaching is a love affair. You need to love it. And we say that education has to do more with inspiration than with information, because at the end, it will be clear to you, in the same way that all the professors would have realized, that what they achieve is their own self-study, not what they got at law school. The attitude to legal education and the methodology to realize right and wrong, and the ability to present and proof it to the public are more important than to restate what your professor taught you. And of course, internationalization, transnational legal education and so on have to be more inspired than informed. Money is of course very important but inspiration is more, because through inspiration you will push people, push the students, the younger generation, to develop their own resources.

Until now we at the Law School of Thammasat University have a very good exchange with Wisconsin University. Every year Wisconsin University students come to Thailand and stay for two months. The Thai students may participate-it is not compulsory, but may participate-in these courses and they will get a certificate in working together with the American students in the workshop, and the American students may go afterwards to training in law firms together with the Thais.

With Germany we have a very good relationship with the University and Professors in Frankfurt, Bonn, Munich and Muenster, of course, we also have good contacts with people in the Free University of Berlin and University of Potsdam, in which the German colleagues in the law school come to visit us every year with the Ministry of Economics in Berlin. In England we have Warwick, Birmingham, East Anglia and London University. And in Japan we are in cooperation with Kyushu. And of course Ritsumeikan is one of our partner universities in Japan, but until now, we do not have yet a kind of cooperation at the level of the Faculty of Law.

So I think the basics are there and the inspiration is there. Of course money or financial support is still a question, and I don't think that people in such a country like Thailand will be able to support themselves So we try to have a kind of 50/50 partnership support so that we will try to get donations from our alumnis, and we pay, the alumni pays for 50 percent and students themselves for the rest, they will have to try to get support from their family and so on.

However, what is very important for the students and for our ideas is to make it clear that going abroad is very important, but more important is to develop an international network, because going abroad will make sense if you have found good people, promising people whom you will work with them in the future. Like in the 1980s I went to Germany and my friends became professors and came to be high-ranking officials, and at the end I can send my students to work with them.

So transnational education will give more, will offer more perspectives in the sense that people who would like to get much more understanding work together in building up a kind of network of knowledge, and this is our experience in Thailand. Thank you.

Chair Ibusuki: Thank you. So the second part of the afternoon session introduces virtual teaching and learning. We will introduce two programs, two challenges. The first one involves Ao-Gaku, (Aoyama Gakuin University) and the Australian National University. The second one is the University of New South Wales Asian Law LLM program. First, Kent, could you please start?

Anderson: Thank you very much—This is the third project that I'm talking about. I've been working on it for the last three years. Actually, 2007 is my fourth year to be doing it. The project involves a video negotiation between my students at the ANU, Australian National University, and students in Tokyo at Aoyama Gakuin University.

Let me explain a couple of characteristics about the problem. The negotiations are different from models that other people are condescending. First, my project is not a full semester course. On the other hand, it is not a one-day or a one-hour negotiation. It is a four-week module. In the first two weeks the students form a contract, and then normally we have a break, and then in the last two weeks they negotiate a problem that happens virtually with the contract that they've negotiated. What we're trying to do is create a more naturalistic problem-solving process rather than an artificial one.

We've done it with three kinds of teams each year. One team negotiates in English. One team negotiates in Japanese. And one team negotiates in what I call *chanpon*, [laughter] so a mixture of whatever language they want. The documentation though, for the English team is in English, for the Japanese team is in Japanese, and for the mixed team the documentation is in English. So much of the process actually is negotiating the specific terms of the contract, which is different than one-off kinds of negotiation competitions because they're doing it over two weeks. They have to negotiate all of the specific things.

Again, I think this emphasizes the point that I was trying to make earlier that language is important. One of the reasons I've introduced this into my curriculum is because I'm trying to train people to be fluent or familiar with the Japanese language and that's hard to do when you live in country where everyone speaks English. So this is one of the ways we can do that and hopefully my counterpart in Tokyo thinks the same.

Some quick comments or reflections on the experience, now that we've done it three

years, and I'm sure other people who talk on this subject will go into more detail than I will. The first point is to note that technology is always a challenge. The more technology you introduce, the more likely it will fail and it *will* fail. Rather than being worried about that though (actually I make it part of my assessment package), is how the students respond to the troubles or difficulty.

I know there are going to be technical problems so I've actually worked that aspect into the problem. And my experience as a lawyer was that such problems happened all the time. You would go into court and something would fail and you would have to respond to that. So I hope I've created an environment that will train or develop the student's very practical skills as lawyers as well.

My second point is cost. There is very good news on the cost scheme, as the video negotiation now costs very, very little. When we first began doing it, the first two years we had to use ISDN lines and that was relatively expensive; someone had to pay for it. Fortunately, our partners in Tokyo said that they would pay for that, but now, last year and then this year, we have used IP (internet protocol) and essentially it's free. So the cost has become much better.

The second thing about cost is when we began doing this four years ago, there were limited places on both campuses where you could do a video conference. There were only five or six places at ANU where you could set up a video negotiation, but now, the technology has been essentially distributed throughout both schools, and so we're doing it in our local building with very high-tech stuff that costs very little now. So cost is actually a very good story.

Timing, as I say, is always an issue. We have two different semesters. This is part of the reason why we designed it as a four-week module rather than a separate course or a one-off, and it's actually been one of the great successes of the design of the program. I've used the module in three different courses. I've used it in my Introduction to Japanese Law course. I've used it in an Advanced Japanese Law seminar; and I've used it in my International Negotiation course. On the other hand, my counterpart in Tokyo has used it for private international law and used it for international business transactions. If we were doing it as an exact match we would have to teach the same thing, which might be difficult to get it approved through the different faculty systems, but because our approach uses just a module it makes it much more useable on both sides.

My final point is really the point that I hope you walk away with today from my comments. It is about commitment. One of my biggest surprises when I first did the video negotiation was the lack of enthusiasm of colleagues. I thought it was a fantastic idea when I first did it and I expected great accolades to come down from the vice-chancellor, the dean and my colleagues. In contrast, my vice-chancellor, dean and colleagues were very polite and said, "oh, yes, that's nice", but there wasn't a lot of enthusiasm for it. I was surprised by that, but it goes to the point I'm trying to make which is you need

commitment to do projects such as this, because for me it takes more time to do such teaching than it does to lecture in my other courses.

Not only that, it costs more for the school to have me teach that way because I can only take a small number of students to do it. I also teach bankruptcy and I teach one professor to 100 students. And it's very easy. This class I cannot do with 100 students, and so you need that commitment and that support from the institution.

I've got 30 seconds and so I'll add a piece to that commitment and that is commitment is also a personal commitment that has to go on for a very long time. We were talking at the break about how many of these ideas are very good, but the individual who's responsible for them gets tired and exhausted in a very short time. So you need to be able to build, you need to have the institutional commitment so that the next person can take it the next part of the way. That kind of relay race is the only way to make a true impact, because doing it once or doing it twice has a very limited impact. So that commitment needs to be there so that others get involved and take it for the long way. I'll stop there. Thank you very much

Chair Ibusuki: Thank you very much. The next speaker is Prof. Leon Wolff from UNSW, please.

Leon Wolff: Thank you. I would like to thank Professor Ibusuki and Ritsumeikan University for the invitation to this conference and the opportunity to speak about transnational legal education. It is very exciting to share our research on teaching and learning. This is quite rare and something that should be valued. After all, part of the university's mission is to teach students.

I would also like to acknowledge the great efforts of our interpreters who are hiding there in the booth. I teach interpreting and translation in the Faculty of Arts at the University of New South Wales ("UNSW") and I know what a demanding job it is, and although they are very quietly located away from the speaker's podium, I would like to acknowledge the wonderful work that they are doing.

What I am going to talk about today is a little bit different from my colleagues. Actually, I will apply a slightly different spin—a darker spin—on the topic. I do not mean to be entirely negative about transnational legal education; if anything, I think it is very important and, as part of my presentation, I will describe my own contribution to transnational legal education by outlining my online program in Asian law at UNSW. However, the main argument I want to make in my presentation is that sometimes it is too easy to get excited about the technology that makes transnational legal education possible. We have already discussed a number of available options—offshore classes, student competitions in negotiating and arbitration, online learning, video conferencing and so forth. But often the biggest challenge to transnational legal education is not necessarily the *practical* issues that confront us but the *attitudinal* or mental problems: the failure of imagination.

So the thesis I will advance is that in order to succeed with transnational legal education, we need to create “space” for borderless learning. By “space”, I mean first of all an *intellectual* space, that is, to provide a compelling rationale for doing the projects that we are doing; and second, a *teaching and learning* space. As Kittisak mentioned in his presentation, sometimes we become so obsessed with teaching — what we do *as teachers* — that we sometimes lose sight of the fact that it is *our students* who are doing the learning. So we need to create a space where the teacher has a de-centered place in education and the student is put at the center of the experience.

In short, before we can concern ourselves with the practicalities, we need to address the theoretical concerns. After all, without an overarching theory of transnational legal education, we cannot hope to create a meaningful and coherent learning experience for our students. I am going to take tentative step forward to realizing this theory by offering some ideas I have developed about how to create the “spaces” necessary for transnational legal education, and illustrating them by reference to a specific teaching and learning project I have implemented at UNSW.

The project I refer to is an online Master of Laws program in Asian Law. In 2002, I introduced a suite of online courses in Asian law to create a new specialization in the UNSW LLM degree. The courses were originally focused on Japanese law, reflecting my own research interests and experience: *Japanese Law in Context*, *Japanese Law and Politics*, *Japanese Law and Society* and *Japanese Law and the Economy*. As their names might suggest, these courses differ from those typically offered in Japanese law schools: they are not content-based but interdisciplinary. Thus, *Japanese Law and Society* interrogates the relationship between law and social justice; *Japanese Law and Politics* is concerned with which legal institutions most directly shape public policy in Japan; and *Japanese Law and the Economy* explores the relations between law and Japanese-style capitalism.

The program has grown since this modest debut. It now boasts 11 courses. I have incorporated subsequently two new courses which deal with generic Asian law and Asian law theory (*Themes in Asian and Comparative Law* and *Issues in Asian and Comparative Law*); three courses in Chinese law (*Chinese Law in Context*, *Chinese Law and the Economy*, and *Tutorial in Advanced Chinese Law*) reflecting growing interest in China; and two new specialist courses in Japanese law (*Tutorial in Japanese Law* and *Language and Tutorial in Advanced Japanese Law*).

The main innovation with this program is that it is delivered online. So students do not have to be located in Sydney to take the program. In fact, I have had students based across Australia, in Singapore, Hong Kong, New York, Tokyo and Osaka, including many foreign lawyers working in Japan who wanted to make sense of their experience. So it has allowed for a diverse student body to participate in my program.

One of the main reasons for delivering the courses online is that it allows for what I

call simultaneous delivery. One of the problems facing many universities, and it is very true in Australia, is funding. And if a course does not attract sufficient numbers, then it may be simply cancelled. Some of my courses, for example, *Japanese Law and Politics*, can sometimes attract only five students. Ordinarily, that would be cancelled. But what I do through online delivery is run several courses simultaneously—usually two but sometimes three a semester—so that I can aggregate the student numbers and therefore avoid the risk of cancellation.

Having just briefly outlined the Asian law program, let me now turn to explain how I have created the “spaces”—the intellectual space for the program and the teaching and learning space—for this program.

First of all, I should acknowledge that in Australia, despite general enthusiasm for transnational legal education, there is considerable ambivalence about Asian law. I will not go into a long history about this, but unlike Japan which has long looked at other jurisdictions for inspiration about law reform, Australia has a tradition of looking to the English example or, more recently, the American example. Likewise, Australian law schools tend to be fairly conservative insofar as their curriculum is based on eleven prescribed practice areas—contracts, torts, constitutional law, criminal law and procedure, evidence, civil procedure, property, equity, administrative law and company law—which creates very little space to look at law in its broader context, especially since many students tend to take vocationally-oriented electives, such as intellectual property and corporate finance.

This ambivalence has been further entrenched by over eleven years of conservative rule by the Howard-led Liberal Party. According to some scholars, this ambivalence is simply complacency: an expectation that Asia will deal with “us” and “we” can respond if and when we choose. This position holds that, as Australians, we do not have to make an effort to engage with Asia ourselves. Other scholars have raised more disturbing explanations of ambivalence, including those rooted in racism and xenophobia.

So how to overcome this problem of ambivalence or indifference, both at the national level and within law schools themselves? By creating a content-rich program of 11 courses, supported through online delivery, I am basically repudiating the assumption that Asian law is just one niche course that can be offered on an occasional basis. By running a sequence of 11 inter-linked courses, my aim is to elevate Asian law to a similar status as, for example, international law and corporate law. It is not an occasional commitment, a one-off course taught every summer; the program represents an intellectual commitment elevating it to the status of a stream.

I also get the students at the beginning of all of their courses to actually explain why they are studying Asian law (or Japanese law or Chinese law as the case may be). The purpose of this is to get the students to “own” the course—to treat it as one that is intellectually important, not something that is exotic, fun or merely interesting, something

that is worth taking seriously.

Second, I create a teaching and learning space by attempting to put the students at the center of their learning experience, rather than being obsessed with how I teach it or how I deal with resource problems. As a result, I deliberately keep the technology very simple. I do not use video streaming, flash animations or other resource-intensive, complex computer applications. I run the course through a basic course management system, Web CT, which is a basic, secure platform for delivering course materials and which contains a discussion board where students can interact with the course content and with one another. The discussion board is an especially important component of the course. I am not interested in replicating a passive learning model where students just listen to a presentation or watch a video; I want them to read the material and engage with the material on their own terms, mostly through discussion and collaborative problem-solving.

The readings that I assign also privilege debate over description. So rather than giving readings that are positivistic, that is that describe what the law is or provide a settled account as to how law functions in Asia (or Japan or China), instead I give them multiple perspectives, both from Japanese and Chinese writers, as well as Australian and American scholars. And I get the students to discuss amongst themselves as to which perspective they find most convincing based on the evidence so that they are engaged with the idea that Asian law is an intellectual exercise of discovering and evaluating how law functions in society, often requiring a re-appraisal of prevailing assumptions about what law is and its purported ends.

So just to conclude there, one of the challenges I think that face us beyond the practical ones when dealing with transnational legal education is that we need to develop a rigorous rationale for delivering such an educational program and a theory for explaining how to put this into effect. Without this, our efforts will come to nothing or will remain marginal. Further, we must find a way to ensure that students are at the center of any design or they will not be adequately equipped with the skills to navigate Asian legal systems independently, intelligently and creatively. Thank you.

Chair Ibusuki: I have to stop the discussion time because already the time we planned is over. Finally, I would like to make a short comment about the panel session. I don't want to make any conclusions for this panel session but we are so happy to pick up so many ideas and challenges in the world, not only this panel's but also in other universities. Unfortunately we couldn't invite them today, but we know so many universities and many departments towards similar goals. So I would like to pick up some keywords for this panel session.

Prof. Kittisak mentioned "education is inspiration". I love that comment. I believe that education must be inspiration. In this way, teachers can confidently provide good education to the students. In the future it must inspire their thinking and skills in law firms.

I love also the “law tourism”. Georg gave us that phrase. I am not sure that the Kyoto Seminar business model can be exported in the future, but we will be so happy if some other university in Asia or any other part of the world learned from our experience. If that happened, we should assert copyright [*laughter*] of this business model by Ritsumeikan University.

Finally, I would like to say thank you so much for attending this symposium for a full day. It’s a long time. First, wonderful panelists, thank you so much for your speeches. And thank you, audience. Thank you, wonderful interpreter team. Thank you to the rest of the team providing backup support. Thank you for everything.