

Foreword

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The internationalisation of law is especially appropriate for a symposium celebrating the founding of Bond University. Bond's founding coincided not only with the end of one millennium and the start of another but also with a technological transformation that continues to alter and reshape our lives. We already take for granted means of worldwide communication that for many of us were unimaginable when this great university enrolled its first students. Equally transformational have been the political events of the past two decades. Who among us could have predicted two decades ago the reunification of Germany, the collapse of the Soviet Union, the economic re-emergence of China, armed conflict, involving the most militarily advanced nations on earth, within one of the least advanced tribal communities? In the wake of these developments and events, we have also witnessed a global acceleration of evolutionary change or progress without necessarily its positive connotations.

Yet little of what we tend today to label as 'globalisation' or 'internationalisation' is new. Centuries before the emergence of the earliest kingdoms of Western Europe, goods and ideas flowed east and west across Eurasia. While Alfred the Great was uniting England as a Wessex-based kingdom, the Muslim rulers of Iberia were manufacturing silk and cultivating rice introduced from Asia. Long before the Christian faith had reached Lithuania, much of central and Southeast Asia had been successfully proselytised by Muslim traders and evangelists. Only after Magellan's circumnavigation of the world and the establishment of the first territorial colony in East Asia by a West European kingdom at the end of the sixteenth century, were the major continents fully integrated into a global system of trade and governance. Our planet ever since has been subject to ever more expansive processes, what might best be called economic and intellectual 'West Europeanisation'.

We need to speak with similar modesty about the contemporary 'internationalisation' of law. By the end of the nineteenth century only a handful of territories and peoples outside of the Ottoman and Russian empires were not, or had not at some time been, subject to rule by one or

more West European states. In Africa, only Ethiopia, and in East Asia only China, Japan, Thailand, and, for only another decade, Korea were independent polities in 1900. Of these only China had resisted Westernised reforms to its imperial political and legal system. Japan and Thailand had reformed their political and legal systems in conformity with prevailing West European models. A century ago West European law – grounded either in the English Common Law tradition or in the continental European Civil Law tradition – had become universal outside of the Ottoman domains.

The spread of Western law was not simply the product of technological, economic, and military ascendancy. Normative claims of universality are deeply embedded within the Western legal traditions. The mantra of conforming to the legal values and institutions of ‘civilised nations’ justified the imposition of Western forms of government and private law codes. Today, the same mantra is invoked with respect to human rights. Twelfth- and thirteenth-century natural law theory is only one source of this proselytising cast to Western law. Captured in the post-Enlightenment rhetoric of the French Revolution – Liberty, Equality, and Fraternity – are equally evangelical but often conflicting values that permeate our political and legal cultures. International reform efforts designed to improve libertarian, market-based economic performance or to ensure egalitarian distributions of wealth, and similar endeavours to ensure basic human rights or the ‘rule-of-law’ reflect basic legal values that evolved within the Western legal tradition and spread by Western legal missionaries. Not surprising from this perspective is the prevalence of contemporary ideological and armed conflict within the historically most institutionally advanced regions of the world with the least prolonged and extensive interaction with the West.

The internationalisation of Western law does not mean its stagnation. The institutions and structures received in the Americas, Africa, Asia, and Australia over a century ago were not static. Rather they provided common frameworks within which the legal systems of states emerging from colonial rule developed along often very different trajectories. Despite common origins, the political and legal systems even of culturally closely related, neighbouring states – Chile and Argentina, Malawi and Zimbabwe, Canada and the United States, Australia and New Zealand – are remarkably different. Indeed, it is today’s diversity of over 200 national regimes within a world of instantaneous communication coupled with an age-old impetus for universally accepted and enforced norms that pose the greatest challenges.

Many of the transformational changes we have personally witnessed during the decades since the establishment of Bond University have been the product of such diversity and the related tensions produced by the

dynamics of technological advances. No change has been more pervasive than the expansion of law itself. At every level of society we are daily making and remaking legal rules that regulate with ever-expanding scope nearly all aspects of human life. The borders between private and public spheres have blurred beyond recognition. From birth to death, we are enveloped by regulatory controls that order and channel our behaviour. Bargaining in the shadow of the law has largely replaced autonomous private ordering. How to understand and respond to this new world of law is the primary challenge that we as legal scholars and educators face. How do we cope with the volume of law even within one system? What aspects of the legislative and administrative processes deserve our attention and focus? How can the legal profession deal with the need for legal knowledge, not to mention multiple linguistic and cultural skills? What should be learned and taught? What research needs to be done? How do we evaluate the diversity of judicial systems and adjudicatory processes? What alternatives for resolving both private and public grievances make the most sense? This symposium and the papers presented here are a fitting response. For each of the topics covered – legislating, legal practice, teaching, research, decision-making, and arbitration – the diversity and increasing volume of law, coupled with both the explosive expansion of communication in volume and speed, have profound consequences. Underlying each of the papers are concerns and tensions that these changes continue to produce within Australia and the rest of the world. They are indeed fitting for a celebration of the twentieth anniversary of Bond University.