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TEACHING LAW TO CHINESE STUDENTS: SOME REFLECTIONS

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There is a large, and possibly increasing, cohort of students arriving from China to study in Australian universities. While some of these students may actually study in a law degree, those who do commercial studies, either at an undergraduate or graduate level, quite often have to complete some form of law type studies as part of their course. The means by which law is actually taught and assessed appears to be a challenge for many of these students who may never have encountered a 'problem' based style of teaching. This paper outlines some of the difficulties that Chinese students appear to have when encountering law studies for the first time.¹ Similarly this paper attempts to consider the debate as to whether Chinese students might be characterised simplistically as surface rote learners, rather than reflective and independent scholars. The paper outlines some of the traditions of Confucian education and ponders on whether this impacts on particular student's mode of learning. The paper proposes some suggestions for consideration, particularly in utilising some aspects of Confucian learning, the main point being that there should be greater sensitivity and awareness for our Chinese students, and hopefully a greater discussion on how their needs might be addressed.

I INTRODUCTION

This paper is based on my quest as a lecturer to deal with, and overcome, the learning difficulties faced by an increasing cohort of Chinese students in our higher education programs. Victoria University now runs a number of higher education programs into various parts of China, so that students may either be taught in China, or, as part of their

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¹ This paper is primarily concerned with Chinese students from China, rather than Chinese from other countries.

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course, in Australia at some stage. Students may do some preliminary studies or use the recognition of prior learning from TAFE to posit themselves in the latter year subjects of corporate law and taxation law.²

While there are a range of 'results' from the Chinese group, some very good, many of these students seem to struggle to fit into or adapt to the highly individualistic and problem based learning system which we law lecturers tend to use in lectures, tutorials and assessment.

How is it that our educational systems are so different? In this presentation I make some observations as to why the Chinese students may find Australian studies difficult, without making any absolute categorization as to this group. In this presentation I will outline the problem as I perceive it, make some statement as to the influence of Chinese culture and philosophy, and how this might impact on their potential for 'deep learning'. Further I will make some suggestions as to how a Chinese student's experience and cultural background might be utilized in learning, and, in doing so, invite some feedback and comment from this.

At the outset I must acknowledge that there is a danger in this presentation that observations may appear very simplistic, ie, that all Chinese are the same, which is not true. Chinese students have different dialects, different experiences, different immersions into Western culture and of course different levels of English skills. Similarly, 'Western students' also have different learning traits and are not a homogenous group. Differences in learning between cultural groups might be quite subtle. Further, any survey of writers and commentators on Chinese learning patterns show a variety of opinions, both as to whether there are perceived difficulties suffered by particular students, and further what

² See an interesting study at Victoria University: Christabel Zhang, 'Valuing Cultural Diversity: the academic adjustment experiences of undergraduate Chinese International Business students at Victoria University': <http://eprints.vu.edu.au/archive/00000229/>. Christabel Zhang, James Sillitoe and Janis Webb, 'Positive Model: facilitating cultural diversity in the first year international Business Students' learning at Victoria University': http://www.fyhe.qut.edu.au/past_papers/papers02.htm

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should be done. It must be recognised also that Chinese students, along with other overseas students, will acclimatize to the Australian learning culture over time.

II CONFUCIANISM

Before commencing any study of Chinese students it is appropriate to make some reference to the impact of Confucianism on Chinese students.

The word Confucius is purported to refer to the name found in an Italian Jesuit missionary's journal as a reference K'ung-fu-tzu Master Jung, an important Chinese civil servant born in 551 BC.³ The name given has evolved into the term Confucianism, an ancient philosophy that has existed for over 25 centuries on mainland China and within various Chinese communities.⁴ Its core values represent a corporate governance system, an ethical system and a moral foundation for business, family and society in general. Confucian principles demand of its citizens an almost doctrinal acceptance of self-discipline, family solidarity, public morality and social responsibility.⁵ Confucius did not start a religion but provided lessons in practical ethics and proposed a set of pragmatic rules for daily life,⁶ a system which has been infused with religious values of Taoism and

³ Xinzhong Yao, *An Introduction to Confucianism*, (2000) 17. Edmond Yee, 'Confucian Education: A Moral Approach "Religion East and West"' *Journal of the Institute for World Religions*, (2002) 2.

⁴ Confucianism has experienced five stages, which are 'Confucianism in formation', 'Confucianism in adaptation', 'Confucianism in transformation', 'Confucianism in variation', and 'Confucianism in renovation'. During the first stage, 770 BCE–221 BCE, Confucius and his faithful disciples established a new philosophy based on old tradition. During the second stage, 206 BCE–420, Confucianism was adapted to the interaction between Confucian schools and the schools of Legalism, Yin-Yang and the Five Elements, Moism and Daoism. During the third stage, the Song (960–1279) and Ming Dynasties (1368–1644), Confucianism was transformed by responding to the challenge from Buddhism and Daoism. It is also known as 'Neo-Confucianism' in the West. The fourth stage is when Confucianism was introduced to other east Asian countries and integrated into local culture and traditions, a process which can be traced back to the earlier Han Dynasty (206 BCE–8 BCE). During the fifth stage, the 20th century, Confucianism was further transformed and developed in contact with other world philosophies, especially European philosophical and Christian spirituality: Xinzhong Yao above n 3: 7–9.

⁵ Xinzhong Yao, above n 3, 283.

⁶ Geert Hofstede and Michael Bond, 'The Confucian connection: from cultural roots to economic growth' (1988) 16 *Organisational Dynamics* 5-21.

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Buddhism⁷ and other aspects such as Yin and Yang forces which balances darkness and light, good and evil, male and female.

Confucianism is a structured hierarchical system which emphasises different degrees of power and authority within Chinese institutions, families and society in general. A Confucian hierarchical system thereby creates unequal relationships, while at the same time demanding that superiors demonstrate responsibility, benevolence and justice. Subordinates are to follow without question those in authority and in doing so this promotes collective harmony, and an avoidance of conflict.⁸ This avoidance of conflict indirectly puts pressure on the teacher to give good results as well. In the classroom this means the teacher is the superior who assembles the appropriate information, students are not expected to question the teacher but value, obey and learn,⁹ consequently they are quieter, passive, dependent, uncritical and easier to teach.¹⁰

In terms of education, Confucianism may encourage what appears to be surface learning, particularly rote learning whereby facts are reproduced in an exam; Confucius was the first to introduce an exam system,¹¹ and this now dominates the Chinese education system. Such an emphasis therefore promotes what appears to be rote learning, ideally, students should read the same book over and over: 'There are differences between reading the book once and ten times'.¹² Confucian heritage focuses on the systematic and epistemological transmission of knowledge which is solid, concrete theory and concepts

⁷ Gordon Redding *The Spirit of Chinese Capitalism* (1990).

⁸ Paul Kikbridge and Sara Tang, 'Management development in the Nanyang Chinese societies of Southeast Asia' (1992) 11 *Journal of Management Development* 56-66.

⁹ Note Confucius is suggested to have said: 'A learned man is very careful and timid in every word he says; but in action, he works swiftly and is not lazy'. Look up Sally Chan, 'The Chinese learner – a question of style' (1999) 41 (6/7) *Education and Training* 294.

¹⁰ Brigid Ballard and John Clanchy, *Teaching Students from Overseas: A Brief Guide for Lecturers and Supervisors* (1991). The authors describe students as quiet, respectful of teachers and textbooks and reluctant to ask questions or express their own opinions publicly. They suggest students do not conduct independent thinking, their learning is reproductive rather than analytical or speculative. See also Katherine Samuelowicz, 'Learning problems of overseas students: two sides of a story' (1987) 6 *Higher Education in Research and Development* 121-33.

¹¹ Xinzhong Yao above n 3, 281.

¹² Daniel Gardner, *Conversations with Master Zhu* (2002) 39.

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rather than the abstract or any individual creativity. Good results are getting the answers right, rather than any discussion and speculation. In the classroom students avoid challenging authority by giving an opinion, further to avoid embarrassment, loss of face and offence – the objective is collective harmony rather than individuality.¹³

There is much debate in the literature as to whether Chinese culture stereotypically promotes pure rote learning,¹⁴ and even if so, whether this might still lead to deeper learning through reflection and ultimately understanding.¹⁵

There is suggested to be no settled consensus on what Confucianism means, either by Chinese or Western scholars.¹⁶ The system has changed from time to time, it is not static and is adapting,¹⁷ Chinese students are becoming more individualistic and adopting many contemporary values which would normally be associated with Western values.¹⁸ The influence of Western education and the changes taking place in China through economic growth, prosperity, media and greater openness is inevitably changing the attitudes and adaptability of students. The above observations are suggested influences on the attitudes of students.¹⁹

¹³ Brigid Ballard and John Clanchy above n 10.

¹⁴ John Biggs, 'Asian learners through Western eyes: an astigmatic paradox' (1994) 2 *Australian and New Zealand Journal of Vocational Educational Research* 40-63: disputes that what appears to be rote learning is absolutely wrong.

¹⁵ Sally Chan, above n 9. David Watkins and John Biggs, (Eds.) *Teaching the Chinese learner: Psychological and pedagogical perspectives* (2001): argue that the differences between Chinese learners and Western learners are subtle rather than polar.

¹⁶ Guangwei Hu, 'Chinese culture of learning' (2002) 15 *Language, Culture and Curriculum* 96: argues that 'Chinese conceptions of education have been much influenced by Confucian thinking', his representation of Confucianism is open to question. Drawing on a range of resources, he lists several assumptions about the 'Chinese culture of learning', however, his assumptions can be countered by drawing closely on *The Analects* which is a key Confucian text: James Legge, *Zhu Xi's Reading the Analects: Cannon, Commentary and Classical Tradition* (1893).

¹⁷ Thus, Confucianism is 'more a tradition generally rooted in Chinese culture and nurtured by Confucius and Confucians': Xinzhong Yao, above n 3.

¹⁸ Lijing Shi, 'The Successors to Confucianism or a New Generation? A Questionnaire Study on Chinese Students' Culture of Learning English' (2006) 19 *Language, Culture and Curriculum*.

¹⁹ Xinzhong Yao above n 3, 283.

A Blooms Taxonomy

If a student is merely rote learning, then this is often considered a very basic learning stage, particularly if using the classic learning transition proposed by Benjamin Bloom.²⁰ Classic educational theory suggests that students travel through different stages of learning and reasoning for the purposes of education. Take for instance Piaget's stages of development whereby students move from basic understanding of facts to higher levels of abstract thinking and analysis.²¹ More appropriately at a university level Bloom's Taxonomy similarly demonstrates how a student moves from simplistic learning of facts to more critical states of thinking and expression, though how this is achieved may be unclear.²² Bloom actually came up with three domains of educational activities: Cognitive (mental skills and knowledge), Affective (development of attitudes and emotion) and Psychomotor (manual and physical skills). This presentation concentrates on the cognitive skills domain.

Using the analogy of a study of contract law I have applied a summary of Bloom's steps. This is very much my own interpretation and is purely for illustrative purposes. Bloom basically suggested an order of cognitive complexity so that the steps show:

1 *Knowledge* (remembering) – a student observes and can repeat basic information, steps and rules related to the subject matter. Questions that require a student to list, define, describe and label information would fit into this category. A student knows and can repeat the basic steps that make up a contract.

²⁰ Bloom's *Taxonomy of Educational Objectives: The Cognitive Domain*. This came out of a research group of educational psychologists headed by Benjamin Bloom at the University of Chicago in 1956. See Benjamin Bloom (ed) *Taxonomy of Educational Objectives: The Classification of Educational Goals* (1956).

²¹ Jean Piaget, *The Taxonomy of Educational Objectives: Cognitive Domain* (1950) and *Intellectual and Ethical Development in the College Years: A Scheme*. Though most of his work concerned the development of children.

²² Bloom supports the hypothesis that one learns through progressively more complex stages of learning. He believes that every student must go through each of these stages in succession in order to 'know' the subject material. It is not clear how one moves from one stage to the next, however, and that is one of the weaknesses of applying Bloom's taxonomy to teaching and learning tasks.

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2 *Comprehension* (understanding) – a student understands the information received and can interpret it, order the information, contrast it to other areas of law and differentiate its different meanings. In terms of contract law a student demonstrates how they understand the significance of each of the rules, rather than merely regurgitating them.

3 *Application* (applying) – a student can actually use the information as a method of suggesting solutions for problems and conflict. A student can illustrate a problem, examine life situations and apply the law specifically. A student can apply rules of contract to the parties involved in a real life example.

4 *Analysis* (analyzing information) – A student can recognise the pattern and organisation of the subject matter and the subtleties of different meanings. A student is able to explain the actions of parties, take an objective explanation of rules, details and characteristics that a court might take account of in assessing the actions of the parties involved.

5 *Synthesis* (critiquing and hypothesising) – A student can generalize from the facts and knowledge base, can suggest updated ideas, relate the knowledge to other areas of life, predict and draw conclusions. A student in this situation might suggest changes to outdated aspects of contract law and perhaps show some inventiveness in how such problems might be avoided.

6 *Evaluation* (inventiveness and creation of ideas) – A student compares and differentiates ideas, theories and presentations and suggests choices based on some reasoned argument. A student might make some critical statement and speculate on what the law of contract might be, its defects and commentary. In that statement they can actually explain, support and compare different views of the law or even ideas.

University assessment of law topics will often have a range of questions, at undergraduate level mostly at the descriptive and application stages. The difference between asking a student to state the rules of contract, eg, ‘What is an offer and acceptance’ to a question such as ‘Why should authorities intervene in a freely agreed contract?’ is an immense jump in skills and moves up the steps of Bloom’s taxonomy. In some instances it may be unreasonable to expect too much of a student who in only one semester has learnt the basic rules for the first time. However, within the study of law

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there seems little point in learning contract, company or tax law unless it can be sensibly applied and demonstrated by a student to some basic life situations. This indeed may be a challenge for a student who is used to assembling information but not necessarily applying it. Chinese students often have difficulty in moving to the 'reasoning stages' of Bloom's taxonomy. Students, and not just Chinese, when posed with higher order questions will merely seek the answer in a text, or assemble information around the question rather than reasoning through or offering an opinion.

The challenge for us teachers is how we move students through the different stages of learning at least to an application of ideas and some analysis of the law. Challenging a student to move from stage to another can be quite disconcerting if the student does not have the tools and means to do so.

III THE PROBLEM

'If a Western essay is like a train of thought speeding neatly down its track of logic toward its final conclusion, a Chinese essay is more like a bicycle meandering along a dirt road through Szechwanese farmland, proceeding from one concept to the next by association and intuition'.²³

Different commentators show diversity in characterising learning and assessment expectations by Asian students, Chinese in particular.²⁴ There is a suggestion generally that the Chinese approach is a reproductive surface type learning, ie, 'learning in a mechanical way without thought or meaning',²⁵ and this is encouraged through their

²³ A Weber, (2000), 'The Chains of Argument', *Brown Alumni Magazine Online*, Nov/Dec at <http://www.brownalumnimagazine.com/storydetail.cfm?ID=2939> (22/1/07).

²⁴ Christabel Zhang, James Sillitoe and Janis Webb, above n 2 who suggest that expectations of teachers were not often clear. Also the contact hours in Australia were much lower than what was originally experienced in China.

²⁵ Edmund Yee, 'Cross-Cultural perspectives on higher education in East Asia: psychological effects upon Asian students' (1989) 10 *Journal of Multilingual and Multicultural Development* 213.

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education system and cultural systems.²⁶ Chinese students find it more difficult to establish deeper learning processes of abstract thinking,²⁷ creativity and originality, much of this due to the conformity of the Chinese system and the emphasis on exams and reproducing knowledge rather than analyzing it. Surface learning has been characterised as an acquisition of knowledge by diligent memorization, the first stages of Bloom's Taxonomy. Knowledge is not necessarily linked or related to each other, nor applied to a problem and have no personal relevance to the learner,²⁸ passing is the object above all else.²⁹

Deep learning on the other hand is characterised as involving a personal interest, the student searches for the meaning behind the task and seeks to apply that to everyday life. The task of learning is more intricate and involves the student who seeks learning for the sake of the skills and meaning acquired. The Australian education system alternatively encourages students to be independently critical, to question ideas and opinions. This is particularly the case for learning of law.

There are many teachers who suggest the Chinese education system encourages what to Australians appears to be a cram and dump with inevitable short term learning. However, there may be both cultural and practical reasons on how Chinese students approach their learning of law. The very nature of learning in the Chinese language does require extensive memorisation and what might appear to be repetitive learning, this is discussed in the following sections.

²⁶ Students regard teachers as the embodiment of knowledge and do not question them. N Liu and W Littlewood, 'Why do many students appear reluctant to participate in classroom learning discourse?' *System*, (1997) 25(3), 371-384.

²⁷ The deep versus surface learning may not necessarily characterize the learning of Chinese students see Lyn Gow and David Kember, 'A challenge to the anecdotal stereotype of the Asian student' (1991) 16 *Studies in Higher Education* 117-28.

²⁸ Ference Marton and Roger Saljo, 'Learning processes and strategies-II. On qualitative differences in learning-II. Outcome as a function of the learner's conception of the task' (1976) 46 *British Journal of Educational Psychology* 115-27.

²⁹ See the interesting study of Maris Martinsons and Aelita Brivins Martinsons, 'Conquering cultural constraints to cultivate Chinese management creativity and innovation' (1996) 15 *Journal of Development Management* 18.

A Memorisation

There are some pre-eminent commentators who suggest that the role of memorization and what appears to be rote learning has been misinterpreted. Repetitive learning in fact enables the learner to attach meaning to the material learned. Many Chinese claim that they adopted repetitive learning styles to assist the understanding of material so that they were better able to remember the information during examinations;³⁰ particularly when you read something several times, perhaps in different ways. The repetition enhances remembering and variation enhances understanding – as the students seem to believe – they will likely remember that which is repeated and understand that which is varied. And when the two are intertwined they will remember what they understand.³¹ Repetition and variation leads to learning and may move the reader from mere memorisation to comprehension, application and analysis.³²

B Learning in English as a Second Language

One of the reasons that leads Western lecturers to conclude that Chinese students appear to be surface learners, apart from cultural factors and learning styles,³³ is that Chinese, and indeed all international students, have to learn in English. Students have to learn the law in a second language which is laden with jargon and cultural inferences, this is a challenge to the individual who must record, absorb and apply the concepts learnt – then further express those ideas in English. Consider the following smattering of terms

³⁰ David A. Watkins and John B. Biggs, 'The Chinese Learner: Cultural, Psychological, and Contextual Influences' (1998) 42 *Comparative Education Review* 544-545.

³¹ Ference Marton, Qiugang Wen and Kam Cheung Wong, '“Read a hundred times and the meaning will appear ...” Changes in Chinese University students’ views of the temporal structure of learning’ (2005) 49 *Higher Education* 291–318.

³² Watkins and Biggs in 2001 above n 15 suggest that memorization can lead to good deeper learning outcomes and this is a paradox. See Kam-cheung Wong and Qiufang Wen, *Ibid*, who describe the chanting method often used in schools to learn materials particularly poetry.

³³ Joseph Kee-Kuok, 'Are the Learning Styles of Asian International Students Culturally or Contextually Based?' *International Education Journal Educational Research Conference Special Issue*, 4 (2003).

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commonly used in our language: At arms length,³⁴ Behind the scenes, Sick and tired, Pain in the neck, Up to his ears, Lost his marbles. Or law jargon: Winding up, Windfall gains, Shadow directors, Piercing the veil, Proper execution of documents, Fraud on the minority, Unconscionable behaviour, A meeting of the minds, Coming without clean hands. Language used in lectures may be difficult to comprehend and thereby force the confused student to conduct their own research in order to understand legal concepts – this may indirectly encourage rote learning.³⁵

Similarly case studies presented to students to explain concepts are in a Western style and may not relate to the Chinese experience. Examples in exam papers or materials that refer to factual situations might have little connection to a Chinese student from a one child family, who is used to different food, deference to authority and perhaps has no work experience in any capacity.

Chinese learning styles might also have a lot to do with the way Chinese learn their language, Chinese writing is a point in fact, ie, fully literate persons can master up to 30,000 characters and an average person up to 3,500 – 6,000 characters.³⁶ This requires considerable repetitive learning to absorb this information. Writing characters have two distinct parts and must be learned, ie, a stem provides the sound and the radicals. There are thousands of stems and 214 radicals and this requires repetitive type learning in and out of school. Learning Chinese characters requires students to identify the shape and sound of each character before contextualizing them with another to form a word and then a sentence.³⁷ Neatness and attention to detail in perceptual training are required to combine the radicals into an ideography which could be recognised by other people.

³⁴ See s 70-20: *Income Tax Assessment Act 1997* (Cth).

³⁵ See the interesting exchange between a lecturer and teacher over an example of 'the NRMA' and later 'cyber forensics' in Sam Blay, Angus Young and Grace Li, 'Adventures in Pedagogy: The Trials and Tribulations of Teaching Common Law in China' (2005) *Legal Education Review* 15.

³⁶ Gordon Redding, above n 7.

³⁷ Kam-cheung Wong and Qiufang Wen, 'The impact of university education on conceptions of learning: A Chinese Study' (2001) 2 (5) *International Education Journal* 138, 139: who describe how Chinese is an ideographic and visual language compared to English a phonetic language.

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Some commentators suggest that Chinese students think more in visual/spatial rather than verbal terms, and this is related to the time and effort they have spent learning the written language.³⁸

C Chinese Writing Styles

Do Confucian ideas about harmony clash with western academic requirements that students debate and write argumentative essays? Many commentators would argue that it is not the Chinese way to argue robustly, nor to give opposing views, neither of which is appreciated. By comparison Western norms require acknowledgement of all points of view, even while suggesting one argument is more convincing than any others proffered.

Chinese are suggested to have a different way of presenting information and demonstrating understanding. Consider the comment by one Chinese teacher who described Chinese views of the world as less antagonistic and more integrated than those of the West: 'Thus if westernized writing were to be taken as a black and white landscape graph, a similar piece of Chinese writing might be represented in form of a comprehensive oil painting in which some seemingly contradictory colors are skillfully painted to make a harmonious picture'.³⁹ Another Chinese teacher noted that traditionally, the Chinese favour explanation over argument: 'explanation shows expertise' and involves mostly giving the 'fors' for an argument... [speakers] weight their own version in order to convince but may never actually state bluntly that this is what they believe'.⁴⁰

How might a teacher encourage students to both take on board the possibility of different arguments, and similarly to be more forceful in the classroom and in written work?⁴¹ One

³⁸ Michael Bond, *Beyond the Chinese Face: Insights from Psychology* (1992).

³⁹ Cited in *Good Practice Project for Offshore Delivery of English Language Teaching: Final Report* (2007), Victoria University: 61.

⁴⁰ *Ibid* 61.

⁴¹ Brigid Ballard and John Clanchy above n 10. John Biggs, *Student approaches to learning and studying*. Hawthorn, Victoria: Australian Council for Educational Research (1987).

method suggested is to challenge students with a so called 'cognitive dissonance' whereby a teacher puts to the student situations that do not fit into the student's existing cognitive structures, causing the student to analyse and think about the situation before them. A less confronting method might be to first to realize that some students might not have the equipment to put opposing views which might confront and put them in focus for criticism. Might the teacher set out a map or model of how a problem might be tackled, rather than assuming that this will just happen? This is moving up the stages of Bloom's taxonomy to analysis and synthesis.

IV SOME SUGGESTIONS

The first, and most fundamental approach to the cultural and possibly different learning methods adopted by Chinese students, is very basically to appreciate the differences in students and not to assume that overseas students from different backgrounds will just adapt. The following are observations, suggestions and aspirations that may or may not suit a university situation.

There are a number of basic matters that might be addressed to improve our delivery of education. In one English University study the students suggested the following improvements:⁴²

- Effective bridging programs
- Language support
- Explicit guidance about academic expectations
- Regular feedback
- Training in critical thinking skills
- Cross-cultural sensitivity
- Peer tutoring/evaluation/review

⁴² Lijing Shi, 'The Successors to Confucianism or a New Generation? A Questionnaire Study on Chinese Students' Culture of Learning English' (2006) 19 (1) *Language, Culture and Curriculum*.

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- Mentoring by people from two cultures
- Allowances for nonstandard English expression - Design of examinations and assignment questions carefully - using standard English
- Repeat tutorials
- Lectures that are easy to follow
- Lecturers who speak clearly avoiding the use of slang and idiomatic expressions - and explaining terminology clearly
- The provision of lecture notes, summaries, and on-line support
- Delivery of lectures at an appropriate speed - speak more slowly and clearly
- Attendance of background seminars on issues such as preferred modes of address, aspects of religious practices, and cultural differences in approaches to learning

Some of these suggestions would cost the university, for instance with repeat tutorials, however some requests might be incorporated quite easily into teaching.

We, as teachers of law, have a mind set in the way we set assessments and tasks, which is foreign to not only Chinese students but sometimes to our own. Just because we were taught that way does not make it the ultimate and only way to teach and examine. If students are having problems with practical problems, then there needs to be some build up and practice before hitting full scale practical type assessment. Or if there is limited time or other constraints within a subject, lecturers might still show some sensitivity to the needs of Chinese students in terms of delivering lectures and administering assessment.

A Peer Learning

Peer learning involves learning within groups of students, either in one or a mixed cultural group with local students. Students assist each other and toss around ideas and certainly many Chinese students do this naturally given the collectivist nature of the group. Groups could be used to work for discussions on tutorial questions and answers,

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assignments and class presentations or projects, perhaps even a work in progress. It might even be possible to use peer assessments where assignments are first marked by fellow students and then the mark or comments are discussed. The justification of marks awarded is a valuable learning experience for both parties.⁴³ This might be guided by the teacher who gives extra time for this type of interaction or gives good guidance as to what is expected – perhaps through good support materials.

B Tapping into the Repetitive Learning Method

It is easy to dismiss the repetitive learning method as mere surface learning and inappropriate to a tertiary level where the aspiration is application of law with critical analysis. Repetitive learning may not necessarily be mere mechanical rote learning.⁴⁴ It may in fact be the first stage in a strategic progression of first remembering, deepening understanding to a more analytical mode, which may facilitate critical learning⁴⁵ and creative learning. Some observers suggest this is the paradox of the Chinese learner,⁴⁶ that rote learning can in fact assist deeper learning.⁴⁷ Understanding may come through what appears to be memorization but in fact what is reading in different ways.⁴⁸

If memorisation and repetitive type learning is a tool, then it may be utilized by providing some kind of hierarchical and spatial view of the subject. Such a view of the subject, while of course at a basic level, may allow a student at least to reach a first base of

⁴³ David Boud, R Cohen and J Sampson (eds) *Peer Learning in higher education: learning from and with others* (2001).

⁴⁴ Barry Cooper, 'The enigma of the Chinese learner' (2004) 13 (3) *Accounting Education* 289–310. Barry Cooper conducted a 2 year study at RMIT in accounting and suggests that while there can be mechanical learning, there can be good learning as well and enhanced by the repetition.

⁴⁵ Ference Marton, Qiufang Wen and Kam Cheung Wong, 'Read a hundred times and meaning will appear... Changes in Chinese University students' views of the temporal structure of learning' (2005) 49 *Higher Education* 291.

⁴⁶ David Kember and Lyn Gow above n 27. See also Kam-cheung Wong and Qiufang Wen, above n 37.

⁴⁷ Sally Chan above n 9.

⁴⁸ Ference Marton, Gloria Dall'Alba and Lai Kun Tse, (1993b) *The Paradox of the Chinese Learner* (Occasional Paper 93 (1). Melbourne: RMIT, Educational Research and Development Unit. David A. Watkins, and John B. Biggs (eds) *The Chinese Learner: Cultural, Psychological and Contextual Influences* 69–83. University of Hong Kong, Comparative Education Research Centre and Australian Council for Educational Research.

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understanding and to visualize connections which may lead to better overall understanding of the basic principles, connections, alternatives and even nuances of a topic.⁴⁹ Even the use of recorded materials might assist. Many students do record lectures and some lecturers are using recordings that can be downloaded to an ipod to allow students later reflection on materials.

In many Asian cultures, the expected writing structure is like an inverted triangle where you start with the broad picture and then move to specifics. Jean Brick⁵⁰ suggests Asians have different ways of structuring information. Various English language resources show students how to write an argumentative essay but few professional development programs critique this as an activity or consider the cultural differences between educational traditions in China and Australia.

V CONCLUSION

There are a range of steps and activities that a lecturer might utilise to make their teaching more user friendly for Chinese students. These range from specialised and intensive teaching to minimal changes. Suggestions that require minimal modifications might be:

- To do a cultural audit of materials – is there the use of jargon, what examples are used in materials – would they make sense to another culture?⁵¹
- Do you have an open book exam – might a closed book or strictly limited notes allowed into the exam be more effective in achieving more reflective reading?

⁴⁹ Ference Marton, Gloria Dall'Alba and Elizabeth Beaty, 'Conceptions of learning' *International Journal of Educational Research* (1993) 19 (3), 277–300.

⁵⁰ Jean Brick, *China: a handbook of intercultural communication* (1991). 'Teachers need to assist students to analyse examples of both inductive [tend to be privileged by Chinese students] and deductive [tend to be privileged by Australian students] argument and to identify the characteristics of each. Once this is done, students are in a better position to appreciate the demands of essay writing in an English-language tertiary environment'.

⁵¹ See Appendix 2 and the highlighted jargon contained in that law question.

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- A list of possible exam questions might prompt some focused study prior to the exam.
- Check, have the students done any law materials at a university level before they reach your subject? Have they been exposed to the problem based method of teaching? Get to know the background of your students.
- Do students actually understand what is expected of an essay? Do students know how to map or plan an essay? Can this be shown spatially? Can this map show the possibility of alternative ideas and criticism?
- Do not assume every student has the same level of English ability.
- Integrate into lecture time and tutorials how law problems are to be tackled and analysed. Teach the thinking and problem solving process, don't assume it. Demonstrate how answers might be given.
- Do not give out solutions to problems if they are likely to be merely copied.
- Can lectures be recorded, or even 'podcast' so students can listen or watch the instruction and give them a chance to reflect on what was outlined in class? Might this assist students to move to a more analytical mode?
- Consider whether students may wish to ask questions outside of the class situation so they do not lose face.
- Consider the effect on some students of challenging them with questions in class, perhaps give them warning the previous class or pair them together to answer.
- Can materials, summaries etc be set out in some hierarchical visual system such as charts and lists so that students can have a global and spatial view of how different parts connect?
- Can problem solving be demonstrated by some reference to a hierarchical mapping system established in the subject? Would a spatial view assist in learning establishing subject parts?⁵² This might potentially prompt students to reflect on

⁵² See for instance two texts that do some mapping of materials: Daniel Khoury and Yvonne Yammouni, *Understanding Contract Law* (7th ed 2007). See also Clive Turner, *Australian Commercial Law* (25th ed).

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and apply the connections to move to 'deeper learning' under, eg, Blooms taxonomy?

- Are the students actually using textbooks or relying on the lecture notes? Do they have access to readable texts? Is there a progression of texts from simpler to more detailed that could be utilized?
- Consider the mode of writing assessment questions, particularly in exams – will a foreign student actually understand the irony or double meaning in the question posed?⁵³ What is to be achieved by each question – description or comment? How does the assessment task fit into Bloom's taxonomy?
- Could the class learn from a comparative analysis of what happens in China, how might a legal problem be solved in a different legal environment? This might allow us to all learn from each other while perhaps assisting a Chinese student to analyse Australian law and its differences.

Can students somehow be orientated to the needs of individual and problem based learning? Summer school, introductory programs and some induction might assist students in understanding what is expected of them. This would of course require significant university resources in time and organisation. Getting students to attend might be challenge. However, if credit points were given, this might prompt better participation.

Modularising the subject might assist a student to reach progressive goals. Can the subject be segmented so that progressive examination can be given so that a student reaches a certain standard in one part of the subject before progressing to the next level? This might encourage more consistent work, one module building upon another. Modules might incorporate some steps such as a first step of descriptive skills moving through successive stages of application, analysis and comment. Might the exam be better earlier in the subject to test basic knowledge with the essay later requiring commentary and criticism in the higher realms of learning?

⁵³ See Appendix 2.

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Teachers have many demands on them that can make it difficult to devote large chunks of time organising special activities for Chinese students. However, at a minimal level we can implement gradual changes that reflect a greater sensitivity and thoughtfulness when preparing and presenting materials to cross cultural students. Victoria University, like other universities, values diversity. By integrating even minor changes over time everyone can be the beneficiary, including our local students who we similarly universally assume as having the ability to understand classic critical law teaching methods.

Appendix 1

Carolyn Woodley, Good Practice Project for Offshore Delivery of English Language Teaching, Victoria University : Cultural Audit Checklist

The checklist below has been adapted for English Language teaching from a resource developed in *Quality Matters* (2006). This checklist can be applied to all documents before they are presented to students. Ideally, it will be used by the ELT Resource Advisory Group. From pg 49 of Woodley Report

Target audience

Does the target audience include:

- culturally and linguistically diverse (CALD) students
- offshore teachers (local Chinese teachers and managers)
- offshore students who have probably never travelled outside of China
- students from one-child families
- students who live with at least 3 others in a dormitory
- students who have never had a part-time job

Cultural content

- Have you removed material that makes inappropriate assumptions about the readers' nationality, cultural background and life experiences?
- Have you ensured a balance of "global" examples from a range of authors and sources?
- Do some assessment tasks and learning activities encourage students to choose examples from their own cultural background?
- Do you know about the host country's perspective on all of the topics?

Document structure

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- Is there a document title?
- Does the title explain the document's purpose?
- Are the learning outcomes clearly linked to the topic:
 - What are students going to learn?
 - How are they going to learn it?
 - How are they going to demonstrate their understanding?
 - Why - why this topic, why these teaching and learning strategies, why this assessment?
- Is there space for students to write responses in the work book?

Collaboration and feedback

- Has any student or partner feedback been considered and incorporated?
- Have you sought input from partner staff on specific topics, readings, etc?
- How you sought input from a plain English expert?
- Have you sought feedback from offshore staff on the language used and the cultural assumptions of the document?
- Has at least one other member of your team reviewed the document?

Document design

- Have you used the current department template?
- Does the header include the document title and current VU logo?
- Have you considered breaking up long slabs of text?
- Have you used visual cues (numbering, headings, capitals, bold, italics, fonts) consistently?
- Have you considered the use of white space?

Language

- Have you removed unusual, archaic or colloquial expressions ?
- Have you removed unnecessary jargon (including edu- and TAFE-speak)?
- Have you considered reducing long sentences?

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- Have you considered shorter paragraphs?
- Does the document address the reader as “you”?
- Have you written in the active voice?
- Have you removed unnecessary capitals and underlining?
- Have you checked the spelling?
- Have you checked the grammar?
- Have you properly referenced any quotations?

Appendix 2 A Sample Exam Paper

Consider the highlighted jargon in the following example.

Consider from the point of view of a foreign student whether some simpler use of language might be more appropriate.

Should students be expected to practice on similar questions before the exam?

Are the issues to be discussed clear within such a question?

Leslie is an up-and-coming young manager at Widgets Pty Ltd. He is very anxious to please his boss, Kathleen, and has even named his first daughter after her.

Leslie, of course, lets Kathleen know that he has done this and invites her to be a **god-mother** of the child at the **baptism**. Kathleen is a very strict religious person, and is very particular about how things are done. “**Cleanliness is next to godliness**” is one of the many mottoes **by which she likes her staff to live**. She is very pleased that Leslie is having his daughter baptised, and even more pleased that she is **being baptised into Kathleen’s own denomination**.

Kathleen therefore gladly accepts Leslie’s invitation to become a god-mother and his invitation to the traditional post-baptism function at Leslie’s house after the baptism itself. Leslie’s house, unfortunately, is desperately in need of a new **coat of paint** on the external walls. The existing paint is peeling off the walls. It looks dreadful. Leslie therefore resolves to have the outside walls painted before the **post-baptism function**. He knows what Kathleen would say if she saw it in its current state.

He accordingly contacts Malachi, who runs a painting firm. Malachi has a very good quote. He offers to paint the outside walls of Leslie’s house for \$800. Leslie accepts the quotation. Malachi accordingly sends him a form which says, ‘My quote is \$800. Please

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sign this form and return it if you agree. My usual conditions apply (as printed on the back)'. Apart from the conditions on the back and Malachi's letterhead, there is no other printing on the form.

Leslie does not read the conditions on the back. However, he rings Malachi, explains the circumstances set out above and asks, 'Can you paint the house on the 3rd of November? The baptism party is on the 6th'. Malachi says, 'Yes, of course'. Leslie asks, 'Is that an absolute guarantee? Lots of important people, whom I want to impress, will be at the function on the 6th. The paint must be dry by then.' Malachi says, 'It is an absolute guarantee'. Leslie is reassured. He signs Malachi's form on the spot, and sends it back to him, still without reading the conditions on the back.

Leslie would have been less reassured, however, if he had read the conditions on the back of the form sent to him by Malachi. There, it says, 'Malachi reserves complete discretion as to the date of performance of this contract'. It also says, 'Because of variations in the work-force available to Malachi, and other factors, Malachi cannot be held responsible for additional expenses (such as increases in the cost of paint or labour) which are due to minor delays in the commencement of operations pursuant to this contract'. Finally, it says, 'Malachi has complete discretion to choose what sort of paint he wants to paint the house with'. All this is printed in perfectly **legible 12-point type**.

Leslie is alarmed when, on the 3rd of November, Malachi does not appear. Leslie accordingly rings Malachi and asks, 'Where are you?'. Malachi says, '**Sorry, mate**, I drove past your house last night, and I just don't think we can paint it for the sum that I quoted to you. There is a shortage of workers, and the contract you signed says that I can choose when I paint the house. I could do it for you tomorrow, but only if you paid me another \$400 so that I can cover the overtime I shall have to pay to the workers'. Leslie has no choice but to agree to pay the additional sum.

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Malachi consequently arrives on November 4th and begins to paint the house. He uses the wrong sort of paint, however, with the result that, when it rains lightly on November 5th, all the paint washes off, and the house looks even worse than before.

Leslie now has no choice but to hold the baptism. Things go well at the church, but on arrival at the house Kathleen is shocked. She says, 'I will not have a god-daughter of mine **brought up in a slum like that!**', and storms off. The following day, **she sacks** Leslie, using, as a pretext, his theft of one paper-clip from the office stationery cupboard six years ago. She lets it be known, however, that her real reason is Leslie's '**filthy, unhygienic, pig-sty of a house**' and the insult she feels at being asked to be a god-mother in such circumstances. Leslie does not find another job for six weeks, and his claim for unfair dismissal is unsuccessful.

Can Leslie recover the sum of \$800, the additional sum of \$400, and/or the lost wages for the six weeks' unemployment?