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Chinese Law and American Legal Education

Vincent R. Johnson

Vincent R. Johnson, *Chinese Law and American Legal Education*, 31 St. Mary's L. J. 1 (1999).

Foreword

***1 CHINESE LAW AND AMERICAN LEGAL EDUCATION**

VINCENT R. JOHNSON [FN1]

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During the past quarter century, no change in American legal education has been so profound as the rise of international and comparative law within the typical law school curriculum. The subjects embraced by these fields now receive extensive attention from a dazzling array of courses, symposia, journals, treatises, teaching materials, competitions, and advanced degree programs. The school that does not pay serious attention to international and comparative law topics is at a substantial institutional disadvantage in attracting and retaining students and faculty. The law student who graduates without at least sampling these offerings is increasingly rare. Likewise, the law professor who does not teach an international *2 or comparative course or seminar, at least occasionally, is in danger of being left behind.

This was not always the case. Only a few decades ago, international and comparative law were regarded as little more than quaint backwaters relatively far removed from the mainstream of legal education. When I was a law student at Notre Dame and at Yale in the late 1970s, I felt not the slightest encouragement, let alone pressure, to take a course in these fields. This same sentiment has prevailed throughout much of legal education. When the St. Mary's law faculty voted in 1985 to establish our now well-known summer program in Innsbruck, Austria, [FN1] there was not a single international or comparative law course being offered at the home campus in San Antonio. [FN2]

As international and comparative law gradually rose to prominence during the last part of the twentieth century, the attention of American legal education often focused on Europe and much less frequently on other parts of the globe. In many respects, China was "not even on the map." In retrospect, this is not surprising. During the Chinese Cultural Revolution (1966-76), the law schools were closed, the legal profession was obliterated, and there was no adherence to a rule of law. If one was interested in comparative law, there was little in China to serve as a basis for comparison. With regard to international law, the situation was much the same. At times between the Chinese Revolution (1949) and the end of the Cultural Revolution, China was the most isolated country on *3 earth. If one was interested in studying international law, China was far from the center of attention. [FN3]

However, twenty years have now passed since the Deng Xiaoping's "opening up" to the West. In China, the law schools are back in operation, the legal profession is being rebuilt, and people are thinking about the idea (still far from a reality) that courts might act as an independent branch of government, rather than as agencies that merely administer official policies. Law reform in China is today a priority of the government. [FN4] With a vitality that echos American legislative achievements during the Progressive Era, [FN5] the New Deal, [FN6] and the Great Society, [FN7] China is overhauling the laws *4 that shape Chinese society and govern relations with persons and states abroad.

During February of 1999, St. Mary's University School of Law devoted serious attention to the Chinese Legal System. With the support and encouragement of Dean Bill Piatt, the Chinese Scholar Lecture Series brought to the home campus leading Chinese law professors who were serving as Fulbright Scholars [FN8] in the United States. Over the

course of four lectures delivered to large audiences, the visiting scholars explored a host of legislative developments that have recently taken place in China. Those developments relate to new Chinese laws in the fields of contracts, bankruptcy, and intellectual property, and to reform of China's state owned enterprises. The lectures opened the minds of listeners to the tremendous legal transformation now taking place in the world's most populous nation.

The students and faculty who attended the lectures were undoubtedly impressed by the magnitude of the challenges facing those who are working to build an effective legal system in China and by the progress that has been made in a mere twenty years. The listeners were probably comforted to learn that the contours of the laws now emerging in China are common to lawyers trained in the West. For example, the proposed contract law described by Professor Wang Liming, the Associate Dean of China's top-ranked law school, had a definite ring of familiarity. It incorporates such "Western" notions as freedom to contract, suspicion of standard-form exculpatory language, and choice of remedies. Students who attended the lectures were likely left with the idea that it would be *5 possible to deal with Chinese counterparts while representing an American client with interests or business in China. Well that is so, for many members of the new generation of lawyers will be doing precisely that.

The presentations during the Chinese Scholar Lecture Series provided the genesis for the papers included in this issue of the St. Mary's Law Journal. The papers make a valuable contribution to available legal literature addressing the Chinese legal system. More importantly, they remind us of the opportunities available for transnational cooperation and of the reciprocal benefits that flow from sharing the ideas and experiences of others.

Members of the American legal profession have a special responsibility to support the development of systems based on the rule of law in other countries. This is especially true with respect to the efforts now taking place in China. Those developments will not only directly affect more than a billion persons, [FN9] but they will play a tremendous role in shaping a country that will greatly influence the destiny of the global community during the 21st century and beyond. It is entirely appropriate that the American legal education devote some measure of its talents and energies to understanding, and perhaps even assisting, the on-going transformation of the Chinese legal system.

[FN1]. Professor Johnson has been a member of the St. Mary's faculty since 1982. During 1998, while serving as a Fulbright Senior Scholar in China, he taught two courses in Beijing at Renmin University and lectured at ten other law schools throughout the People's Republic of China (P.R.C.). For more than ten years, Professor Johnson has served as Director of the St. Mary's University Institute on World Legal Problems, a program on international and comparative law conducted each summer at the University of Innsbruck. Recently, he was a Visiting Professor at St. Petersburg State University in Russia.

[FN1]. In the past decade, students and professors from more than 80 American law schools, as well as four members of the Supreme Court of the United States (Chief Justice William H. Rehnquist; Justice Antonin Scalia, Justice John Paul Stevens, and Justice Ruth Bader Ginsburg), and the President of the United Nations International Criminal Tribunal for the Former Yugoslavia (Gabrielle Kirk McDonald), have participated in the St. Mary's University Institute on World Legal Problems conducted each summer at the University of Innsbruck. During the fifteenth annual program in 2000, Chief Justice Rehnquist will again (for the fourth time) be a member of the St. Mary's Innsbruck faculty, which will also include professors from Russia, China, Austria, and Italy, in addition to the United States. The St. Mary's Innsbruck program has been mentioned in various media, including a front page article in the Wall Street Journal and a feature article in National Jurist magazine.

[FN2]. However, there were earlier efforts in these fields, notably teaching and research relating to comparative law in the Americas, supported by the Katherine A. Ryan Professorship.

[FN3]. Indeed, it is only in the last four or five years that American media have begun to devote sustained attention to news from China.

[FN4]. The theme of law reform played a prominent role in the fiftieth anniversary celebration of the founding of the People's Republic of China. Fifty official slogans were released by the Communist Party to mark the occasion, including "Promote political restructuring, develop socialist democracy, and improve the socialist legal system!" and "Rule the country by law, and build a socialist country that is ruled by law!" CPC, State Council Release Slogans, World News Connection, Sept. 13, 1999, available in 1999 WL 26441272 (listing all fifty slogans).

[FN5]. Generally, the Progressive Era covers the time period from the 1890's to 1920. See Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 *Stan. L. Rev.* 1189, 1216-28 (1986) (recounting the progressive era legislation). Major Progressive Era legislation included: the Sherman Antitrust Act of 1890 (preventing activities that restrict marketplace competition); the Pure Food and Drug Act of 1906 (prohibiting the introduction of impure foods and drugs into the states by interstate commerce); the Meat Inspection Act of 1906 (allowing the government to inspect meat that is introduced into interstate commerce); the Hepburn Act of 1906 (extending jurisdiction of federal government over interstate commerce to include companies operating railroads, express services, and pipelines); the Farm Loan Act of 1911 (establishing federal land banks); U.S. Const. amend. XVI (establishing an income tax starting in 1913); the Clayton Act of 1913 (restricting mergers between companies); the Federal Trade Commission Act of 1914 (empowering the Federal Trade Commission to police unfair methods of competition); and U.S. Const. amend. XIX (giving women the right to vote in 1920).

[FN6]. Important legislation during the New Deal program of Franklin D. Roosevelt's presidency (1933-45) included: the Agricultural Adjustment Act of 1933 (authorizing payments to farmers not to grow crops); the National Labor Relations Act of 1935 (protecting the rights of workers to organize and bargain collectively); the Social Security Act of 1935 (giving financial assistance to the unemployed and the elderly as a form of insurance from payroll deductions in the form of a federal tax); the Securities Exchange Act of 1936 (creating the Securities and Exchange Commission); and the Fair Labor Standards Act of 1938 (FLSA) (establishing the forty-hour work week, the minimum wage, and banning child labor in interstate commerce).

[FN7]. The Great Society program of President Lyndon B. Johnson (1963-69) gave rise to the following pieces of legislation: the Equal Pay Act of 1963 (prohibiting wage differentials based on sex for workers covered under the FLSA); the Civil Rights Act of 1964 (providing a basis for judicial remedies against racial discrimination); Title VII of the Civil Rights Act of 1964 (barring discrimination in employment based on race, color, religion, sex, or national origin); and the Economic Opportunity Act of 1964 (instituting programs to fight poverty). See generally Robert L. Rabin, *Federal Regulation in Historical Perspective*, 38 *Stan. L. Rev.* 1189, 1272-78 (1986) (discussing Lyndon B. Johnson's reform policies).

[FN8]. "The Fulbright Program, the U.S. Government's flagship exchange activity, was proposed to the U.S. Congress in 1945 by then-freshman Senator J. William Fulbright of Arkansas. Senator Fulbright viewed the proposed program as a much-needed vehicle for mutual understanding that would provide the opportunity for leaders and future leaders to observe and better comprehend the institutions, cultures and societies of other countries and peoples.... Since the program's inception, more than 83,000 American 'Fulbrighters' have studied, taught or done research in 140 countries around the world, and more than 142,000 foreign citizens have come to the United States under Fulbright auspices." Letter from William B. Bader, Associate Director, U.S. Information Agency, reprinted in the U.S.I.A.'s official brochure for the Fulbright Scholar Program 2000-2001.

[FN9]. While teaching for St. Mary's University in Innsbruck during the summer of 1999, Dr. Hao Hongsheng, Deputy Director of the Institute of Population Research in Beijing, stated that the population in China at the end of 1998 was 1.248 billion.

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