

The Kenneth Wang¹ School of Law at Soochow University

Rebuilding a Bridge

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Association of American Law Schools

Educating Lawyers for Transnational Challenges

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In the early to mid twentieth century, during one of the most turbulent periods in modern Chinese history, Soochow University Law School³ became the preeminent educational institution for addressing its country's dire need to train young Chinese lawyers to mediate the crushing onslaught from the West. With a curriculum focused on comparative law with particular emphasis on Anglo-American law taught by the case method in English⁴, its history and the trajectory of its graduates is a poignant lesson on bridging the gulf from traditional Chinese administrative processes to western civil law. This success is one model for how to educate lawyers for transnational challenges. In this short paper, I will discuss the school's history and how its program attempted to address this need. I will also raise an issue of differing perspectives between East and West, in order to stimulate discussion on approaches to such legal training. Finally, I will also describe how that bridge, began almost a century ago, is being rebuilt through the next permutation of the Soochow University Law School as the Kenneth Wang School of Law.

With the forced "opening" of China, beginning in the mid 19th century, and through a succession of "unequal" treaties⁵ which granted ever expanding rights to the Western powers, China's traditional administrative structure slowly collapsed. The Western powers demanded and were granted "extraterritorial rights" in China⁶. This meant that their nationals and commercial enterprises had the right to be tried in their own consular courts applying their own laws⁷. The Chinese system of adjudication was

scorned. This coupled with various territorial concessions (foreign powers granted sovereignty over large areas of land at the treaty ports opened to Western trade), created in China two systems of law and adjudication - one for the Chinese, and another for nationals of the foreign powers.

While China has had a long tradition of law, its organization and emphasis, as well as the institutions for adjudication, were not similar to those of the West⁸. Its highly centralized governmental structure dating back more than two thousand years, which reinforced a policy of stability, did not resonate with Western legal structures. There are many parallels, but the approach and goals were different⁹.

The potent combination of a lack of understanding coupled with a powerful war machine enabled the Western powers to impose their vision of the “rule of law” on China. The Qing Dynasty’s response was mixed – from total rejection (Boxer Rebellion)¹⁰ to those who advocated a total embrace of Western ideas and institutions.¹¹ China looked to the Japanese reformation as a model.¹² However, the intransigence of millennia old values and institutions did not yield easily to change, even to some of the more moderate changes which were proposed¹³.

By the early twentieth century, private university level education was sponsored and seeded by Western institutions¹⁴. Prominent among them was Soochow University founded in 1900 in the city of Suzhou by American missionaries from the Methodist Episcopal Church¹⁵. Its law school, Soochow University Law School (Soochow Law School or Law School), was founded in 1915 in Shanghai by Tennessee attorney and missionary, Charles W. Rankin who was teaching political science at Soochow University¹⁶. Professor Rankin’s vision was inspired and backed by Judge Charles S. Lobingier, judge for the U.S. Court for China during this period. Lobingier was convinced that China’s legal development hinged upon teaching foreign legal systems to Chinese students and then to “...let them later select materials therefrom for their legal system.”¹⁷

This commitment to educating Chinese lawyers to meet these challenges was eloquently echoed by Professor Rankin when he wrote that the motivation for this enterprise was "...a deep appreciation of what the profession of law had meant to mankind in the past", and the "great need of China for lawyers, for leaders".¹⁸ This vision was shared and further fostered by Chinese lawyers, such as Wang Chong-hui, one of China's most illustrious jurists who taught at the law school at its inception. He then went on to serve as Minister of Justice as well as a judge on the International Court of Justice¹⁹. All these forward looking individuals believed in the importance of the comparative study of law. This, they felt, would bring a better understanding of all the systems, enabling China to develop a system of jurisprudence which would resonate with its culture and society.

What developed as Soochow University Law School was the most prominent professional law school of its time. It provided China a cadre of superbly trained legal practitioners fully equipped to mediate the challenges confronting China and the West. There has been much discussion as to why such a program was so successful.²⁰ That is why this experience of American methodology in law school education in China is such an intriguing case. Perhaps it holds some lessons for us today.

What is most intriguing is how an acknowledged gulf in perspectives between China and the West was addressed, particularly given the times. As philosopher Angus Graham observed, the West with its tradition of debate characterizes a people who ask the question, "What is the Truth?" Whereas, those in classical China would ask, "Where is the Way?"²¹

This difference may be best expressed by two contrasting quotes:

"...The most striking difference between the traditions at the two ends of the civilized world is in the destiny of logic. For the West, logic has been central and the thread of transmission has never snapped ..." Philosopher Angus Graham.²²

“...It is precisely because the Chinese mind is so rational that it refuses to become rationalistic and ... to separate form from content.” Philosopher Shu-Hsien Liu.²³

Interestingly, over the years, psychological studies comparing East Asians and Americans reveal, in a variety of ways, a statistically significant difference between the two groups when it comes to perceptions of rules and relationships²⁴. For instance, studies have shown a greater proportion of East Asians tend to organize information about objects by their relationship to each other, rather than by categories devolved from abstract attributes of those objects²⁵. Westerners showed a statistically significant difference in the way they perceive objects in relation to their environment²⁶. Many such studies point to a cultural tropism towards organizing information, developing rules and interacting with the environment which differ from Western and East Asian cultures. Some have argued that these differences stem from fundamental philosophical differences in the foundational philosophies of East and West²⁷. Others believe that these variations stem from the differences in language²⁸. Others cite the traditional Chinese cultural emphasis on hierarchy. Regardless, these deep differences exist²⁹. This is the propensity to organize information by different means. The tilt in East Asian cultures was towards organizing and processing information by their relation to each other, rather than by categories defined by abstract rules. This undoubtedly affects perceptions of law, justice and equity.

Such a perspective has profound implications for a society’s view of the “rule of law”. Western legal systems focus most acutely on principles of law, while the Chinese view is that such abstract principles are too mechanical and devoid of substance. Rather, the emphasis has been on conflict reduction and stability.

As more scholars study the Law School’s committed comparative approach to legal education, several factors emerge as possible contributors to its success. First, is that much of the legal education was in common law (Anglo-American law), using American casebooks, with American law teachers, taught in English³⁰. Obviously, this required a great deal of language proficiency on the part of the Chinese students. In fact,

courses were taught in a variety of languages, French and German being the next most frequently used foreign languages for legal instruction at the school³¹. Was it purely a language facility? Did they attain success because they could communicate with Westerns?

Additionally, not only was Anglo-American law an integral part of the required courses, but French, German and Roman law were required as well³². Did such training stretch the mind of the students not just in language attainment, but by offering two different approaches to legal education – the case method and the “bottom up” common law approach, as compared to the “top down” civil law approach? Perhaps, it’s a combination of the two. This extraordinarily diverse comparative method with the heavy emphasis on common law enabled its graduates to have a wider and more nuanced view of legal issues and problems. And, perhaps their success lay there.

Much work needs to be done in this area. We need to bring these sensitivities to our courses. A comparative view, in this world of American legal hegemony, would serve the next generation of lawyers well in giving understanding and texture to the “rule of law” as we attempt to harmonize our legal systems. It is a vital and necessary ingredient which must be taken into consideration, if we are to train lawyers of all nations and cultures to have a better understanding of the roots and trajectory of the legal process.

In the summer of 2004, the Kenneth Wang School of Law and Pacific/McGeorge School of Law³³ will embark on a program to integrate the case method and clinical approach to the study of law in a workshop where Chinese and American law students will work in a manner not usually seen in a Chinese law school. The course will be a “Workshop in International Business Transactions with Chinese Characteristics.” The workshop will revolve around a hypothetical which will explore through its fact pattern international trade, tax, investment, bilateral trade disputes, dispute resolution and the issues of day to day operations in China. The teams will compete with each other in negotiations, presentations to the client, and dispute resolution. The focus of the program is to have Chinese and American law students work together in a law office setting,

developing not only the legal skills of identifying issues in a transnational business transaction, but also to sensitize them to the skills necessary to work with their counterparts from different countries, cultures and legal systems. We want to make our students aware of the different approaches to problem solving. What better way than to work in close quarters with each other? It is a beginning.

¹ The school is named after Professor Kenneth Wang, a 1938 graduate of Soochow University Law School (the Law School). After graduation, Professor Kenneth Wang became a member of one of Shanghai's leading law firms and taught at Soochow University Law School. In 1945, he was elevated to the bench of the Court of Appeals for Shanghai and concurrently a member of the Military Tribunal for the trials of Japanese war criminals. In 1947, he received a fellowship to Harvard Law School where he earned an LL.M degree. Upon his return to China, he continued his teaching at the Law School and rejoined his old firm. In 1949, he became President of Aurora College for Women. In 1952, he was invited to join the law faculty of St. John's University School of Law in New York where he taught for over 30 years. At St. John's, Prof. Wang taught not only international law, but also basic American law courses – contracts and corporations. The Law School changed its name to the Kenneth Wang School of Law in 2000 at the hundredth anniversary celebrating the founding of the university. The Law School begins its transformation with new facilities, unmatched in China, for the teaching of law. This was made possible through the philanthropy of the Wang Family, and, in particular, Mr. Charles B. Wang. The Wang Family is appreciative of the fact that this bridge rests upon a foundation of American generosity and determination begun almost a century ago.

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³ The school began as the Law Department of Soochow University (Dongwu Daxue Fake), and over time took on the name of Soochow University Law School (Dongwu Daxue Faxueyuan). It was also known as the Comparative Law School of China. See Alison W. Conner, "The Comparative Law School of China," in *Understanding China's Legal System*, 211, ed. C. Stephen Hsu (2003), also note 5, 252, citing "Shanghai Gaodeng Xuexiao Yange [History of Shanghai Schools of Higher Education] (Xin Fuliang and Zhao Andong, eds., 1992). The Conner article is an excellent, scholarly, in depth treatment of the historical background of this institution and its relevance today.

⁴ Sili Dongwu Daxue Falu Xueyuan Yuanzhang [Regulations of Soochow Law School], Shanghai Municipal Library. Also see, Shanghai Municipal Archives, Q245 which contains 509 files of records from Soochow University School of Law for the period 1915 – 1952.

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- ⁵ John K. Fairbank, et al., *East Asia: The Modern Transformation* 144 – 145, 340 – 342 (1973).
- ⁶ See, Treaty of Nanjing (1842), Treaty of Tien-Tsin (1858).
- ⁷ Treaty of Nanjing, Article III; Treaty of Tien-Tsin, Articles XI, XXIV.
- ⁸ Yongping Liu, *Origins of Chinese Law*, 318 – 322 (1998).
- ⁹ R. Kent Guy, Rule of Law and the Rule of Man in China 88 – 90, in *The Limits of the Rule of Law*, Karen G. Turner, et al. ed. (2000),
- ¹⁰ Ssu-yu Teng and John K. Fairbank, *China's Response to the West* 187 – 193 (1954).
- ¹¹ Id., at 158 – 162, T'an Ssu-T'ung on the Need for Complete Westernization.
- ¹² Phillip C.C. Huang, *Code, Custom, and Legal Practice in China*, 16, 39 (2001).
- ¹³ Yongming Ai, Why Had the Modernization of Legal System in the Late Qing China Failed?, paper delivered at the 2003 International Symposium – Kenneth Wang School of Law (November 2003).
- ¹⁴ Fuwei Shen, *Cultural Flow Between China and Outside World Throughout History*, 312 – 314 (1996).
- ¹⁵ W.B. Nance, *Soochow University* 70 – 71 (1956).
- ¹⁶ Id.
- ¹⁷ C. Sumner Lobingier, "Legal Education in Twentieth Century China," 4 *Lawyers Guild Magazine* 1, 2 (1944).
- ¹⁸ Charles W. Rankin, "China," 2 *A.B.A. Journal* 284, 284 (1916).
- ¹⁹ Diana Xiaqing Lin, The Meaning of State, Society and Profession to Twentieth Century Chinese Scholars, paper delivered at the Association of Asian Studies Conference – Session 73 (1997), Howard L. Boorman and Richard Howard, eds., 3 *Biographical Dictionary of Republican China* 376 – 378 (1979).
- ²⁰ Conner, supra n. 3, at 210.
- ²¹ Angus C. Graham, *Disputers of the Tao*, 3 (1989). Also see, Roger T. Ames, "Thinking through Comparisons: Analytical and Narrative Methods for Cultural Understanding" in *Early China/Ancient Greece*, S. Shankman et al, ed. (2002)
- ²² Id, Graham p. 6
- ²³ Shu hsien Liu, "The use of analogy and symbolism in traditional Chinese philosophy," 1 *Journal of Chinese Philosophy* 314 (1974).
- ²⁴ Richard E. Nisbett, *The Geography of Thought*, 141 – 142 (2003).
- ²⁵ Liang-hwang Chiu, "A Cross-Cultural Comparison of Cognitive Styles in Chinese and American Children," *International Journal of Psychology* 7, 235 – 242 (1972). This early study showed three objects to the children. The first two were a picture of a chicken and the other grass. Then a third picture was a cow. The children were asked which picture would they put the cow together with – the chicken or the grass. The study results showed a statistically significant portion of the American students preferred to group the objects in a "taxonomic" category (chicken and cow – animals) whereas, Chinese children preferred to group the objects by relationship (cow and grass – cow eats the grass). Also, see Nisbett at 140 – 141 for other studies.
- ²⁶ Taka Masuda and Richard E. Nesbitt, "Attending Holistically vs. Analytically: Comparing the Context Sensitivity of Japanese and Americans," 81 *Journal of Personality and Social Psychology* at 922 – 934. This experiment showed underwater scenes to Japanese and American university students. Each scene contained a "focal" fish – one which was larger, brighter and with more movement than anything else in the picture. The scene also contained other fish (though smaller, slower and did not stand out as the focal fish), rocks, plants, frogs, snails, etc. After observation, each group of students was asked to write down what they had seen. American and Japanese students made approximately the same number of references to the focal fish. However, the Japanese students made more than sixty percent more references to the other objects in the picture than the American students. In addition, while each group made approximately the same number of references to the active moving animals in the scenes, the Japanese students made nearly twice as many references to the relationship to the non moving background objects than their American counterparts.
- ²⁷ R.F. Logan, *The Alphabet Effect* (1986); Y. Lin, *My Country and My People* (1936).
- ²⁸ Robert Wardy, *Aristotle in China – Language, Categories and Translation* (2000).

²⁹ The author is not positing that all East Asians coming from a traditional Confucian influenced culture all think one way and Westerns think another. That is patently absurd, and the studies do not support that. The results of the studies do assert that between like groups of East Asians and Americans, a statistically significant difference does exist as to how each group on the whole reacts to relationships, categories and rules. It reveals a tendency in a culture, not in any specific individual.

³⁰ Connor, *supra* n.3, at 219.

³¹ *Id.*, at 221.

³² *Id.*.

³³ Pacific/McGeorge School of Law has one of the oldest summer law programs of any American law school – over 30 years. The program is in cooperation with the University of Salzburg with which it also has a collaborative LL.M. program. Its exchange program in China from 1982 – 1989 was one of the first among U.S. law schools. Under the inspired leadership of its dean, Elizabeth Rindskopf Parker, Pacific/McGeorge has built on its experience, and is now expanding its program reach to Asia and South America. It has been the author's delight to work with so talented a group of educators.