

Peking University School of Transnational Law: A New Venture in International Legal Relations

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In the last week of December 2008, I sat on a bench in Shenzhen, China as 54 first-year law students, pair-by-pair, argued whether the descendants of African-American slaves should receive reparations from the United States government as a matter of law and justice. The site was the beautiful Peking University School of Transnational Law in Shenzhen, opened only a few months before. Sitting with me on the bench was Thomas Weidenbach, a lecturer in residence at the School. We were playing the role of United States Commissioners appointed by the United States Congress to determine whether the United States Treasury should issue such payments in reparations.¹

The students were playing the role of lawyers appearing before the Commission, presenting their points in the form of classic appellate oral

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¹ The issue of reparations in relation to slavery in the United States is of great historical interest. The first plans for reparations were made directly after the Civil War—with contrasting proposals to compensate southern slave owners for the loss of their “property” interest in slaves and to compensate slaves for their years in bondage. The idea of compensating former slave owners was permanently eliminated by the Fourteenth Amendment to the United States Constitution (“neither the United States nor any state shall assume or pay...any claim for the loss or emancipation of any slave”). House Resolution 29 introduced on March 11, 1867 into the first session of the 40th Congress by Thaddeus Stevens, proposed providing former slaves with forty-acres of land as compensation. It was also defeated. The last few decades has seen a growing but controversial movement to obtain reparations for slavery by African-American descendants of former slaves—in private lawsuits against companies that had some connection to antebellum slavery and in public payments from the United States government. See *Should America Pay: Slavery and the Raging Debate on Reparations*, edited by Raymond Winbush (New York: Harper Collins, 2003) for articles in favor and opposed to reparations, and historical and current background on the issue. In 1997, Congressman John Conyers introduced a bill titled “Commission to Study Reparations Proposals for African-Americans” to the U.S. Congress proposing that the government form a commission to look into the proposal for reparations. (H.R. 40, introduced to the first session of the 105th Congress on January 7, 1997). Mr. Weidenbach and I were playing the role of commissioners appointed by Congress to perform that role.

argument, as the commissioners peppered them with questions. It was a variation of a moot court exercise common to American law schools, but in this format—in English, assessing legal and ethical questions of American history, it was almost certainly a first in the People’s Republic of China. The students’ arguments were well-prepared and at times even brilliantly presented. They argued such points as: “Slavery and the slave trade were part of an international phenomenon; there should be an international remedy”; “Reparations have been paid to Jewish survivors of the holocaust and to Japanese American citizens interred by the American government in World War; why not here?”; “The legacy of slavery endured through the Jim Crow era and must be addressed even today. But leading African-Americans, such as newly elected President Barack Obama, themselves oppose reparations as the correct legal remedy to lingering injustices faced by African-Americans.” As I watched the enthusiastic young students, not one of whom I believe has ever been to the United States, debating the role of law in perpetuating, resolving, and repairing the injustices of American slavery, I remember thinking, “Only in China, only in modern China!”

I.

The School of Transnational Law (STL) is largely the work of two men of vision, Hai Wen, Vice-President of Peking University, and Jeffrey Lehman, former Dean of the University of Michigan Law School and President of Cornell University. Both were instrumental members of the Joint Center for China-U.S. Law and Policy Studies Institute (the Joint Center), founded in 2005, whose mission is to “nurture harmony between the Chinese and American legal systems through the dissemination of knowledge.” Hai and Lehman aspired to create a law school that would integrate China’s bold entry into global business

and international diplomacy with a commitment to the rule of law as it has been developed in Western, and especially American, legal systems. The School of Transnational Law was opened in August 2008 as a division of the Shenzhen Graduate School of Peking University. Peking University (commonly known as “Beida”) dates back to the 1898 reform movements initiated during the Ching Dynasty. It has played a central role in most of the new intellectual movements in 20th-century China. Peking University’s graduate school in Shenzhen is its only campus outside Beijing and is located in a specially constructed university town, which also includes the graduate and professional schools of Tsinghua University and Harbin Institute of Technology. Courses at STL take place in six-week modules: the first three modules go from September through January; the second three modules from February through June. Hai is the chancellor of the Shenzhen Graduate School of Peking University. Lehman is the chancellor and founding dean of STL. As the former president of a great American university, and current president of the Joint Center, with an honorary doctorate from Peking University, Dean Lehman is well placed to realize the vision of a Chinese graduate school immersed in a global study of law.

Of the over 600 law schools in China, STL is the only one that takes the American law curriculum as its operating standard.² American legal education is

² A precursor of STL was the Soochow University Law School (Soochow), also known as “The Comparative Law School of China,” which was founded in Shanghai, China in 1915, shortly after the founding of the Republic of China. Soochow Law School was funded by American lawyers to teach Chinese law students comparative law with a focus on Anglo-American legal systems. Students enrolled in a standard program of first-year American law school courses, with a comparative law curriculum in the upper years. Graduates of the school were deemed to be able to work as lawyers in both Western and Chinese legal systems. By the 1930’s the School had risen to prominence in both Chinese and international legal circles. Although Soochow was closed in 1952, shortly after the founding of the People’s Republic of China, a successor school was eventually founded in Taiwan. The leading historian of Soochow is Professor Alison Conner. See e.g. Alison W. Conner, *Training China’s Early Modern Lawyers: Soochow University Law School*, 8 J. CHINESE L.1 (1994); Alison W. Conner, *Lawyers and the Legal Profession During the Republican*

widely considered one of the most successful—and influential—modes of higher education developed in the last two centuries. Its focal point was the introduction of the case method of education into Harvard Law School by Dean Christopher Langdell Columbus in 1878. The case method—in which law students learn the content, methods, and processes of American law through a “Socratic” analysis of appellate cases—was well-suited to a study of the intricacies of the Anglo-American common law system. By the turn of the century, it was adopted in every leading American law school. The case method helped form American legal education into a method widely perceived to help develop skills of acute analysis, to formulate different approaches to a particular problem, and to discover the common principles underlying a wide array of legal decisions and systems.

China, heir to one of the great cultural traditions of the world, has made great advances in the last decade. Its emergence as an economic superpower is well known. Likewise, the government, aware of the turmoil created in past decades by such extravagant and reckless undertakings as the Cultural Revolution, and the consequent hardships imposed on the Chinese people, has committed itself to a legal system marked by the rule of law—the central principle of the legal systems of western and Anglo-American democracies.³

As a “transnational” law school, seeking to train lawyers who can work across borders with the various legal systems of the world, STL bases its

Period, in CIVIL LAW IN QING AND REPUBLICAN CHINA (Kathryn Bernhardt & Philip C.C. Huang ed., 1994); Alison W. Conner, *The Comparative Law School of China*, in UNDERSTANDING CHINA'S LEGAL SYSTEM (C. Stephen Hsu ed., 2003); and Alison W. Conner, *How I Got the Story (And Why it Took So Long): Legal History Research in China*, 2 WASH. U. GLOBAL STUD. L. REV. 193 (2003).

³ STL is dedicated to providing learning in a spirit of cooperation and freedom necessary for a modern university.

curriculum on the American model. Students take first-year courses in Torts, Contracts, Criminal Law, Property, Civil Procedure, Legal Practice, and Economics. Upper level courses include a wide array of commercial, administrative, and procedural courses. Over the course of a three or four-year program, the students are thoroughly grounded in both the Anglo-American common law and the continental civil law system. In addition, students take a year's worth of courses in Chinese law, including a course in Marxist Political Theory required of all Peking University graduates.

STL's entering class consists of 54 students. English is the language of instruction at the School; students needed to be fluent in written and spoken English to be admitted to the entering class. Given the demands of the school, only top college graduates can matriculate, although their Bachelor of Arts degree can be in any subject.

II.

I taught at the University of Michigan Law School during Dean Lehman's tenure as dean. I was honored when he asked me to teach as a visiting professor at the new school and direct its Legal Practice Program and Summer Writing Institute. I was inspired when he shared with me his heartfelt vision of the school's future—shared with Hai Wen and approved by China's education ministry—of a law school that would train students to participate in the new global economy, while promoting the rule of law in Chinese society. I was moved when he described to me his experiences interviewing all of the prospective students for the first class, learning of their challenges in making their way in Chinese society, studying English, making the remarkable decision to learn legal norms of foreign cultures so that they could become exemplary

lawyers, judges, and public officials in their own, and I was challenged by the thought of establishing a legal practice program that could play a vital role in this new school, taught by western lawyers who could only be novices in Chinese culture.

Legal practice is the first-year law school program that trains students in the rudiments of legal research, writing, and advocacy. Students learn to write memoranda, briefs, and the other legal documents central to a lawyer's practice. They learn to conduct legal research in the library and through commercial online databases such as Westlaw and LexisNexis. They learn the art of common law analysis, how to write predictive and persuasive legal arguments, and how to conduct an oral argument before a panel of appellate judges. By its nature, a legal writing program requires instructors who are well versed in legal practice, who are experts in writing, and who are eager to lavish individual attention on the students. In thinking through the elements of constructing a legal practice program for STL, Dean Lehman and I were immediately faced with two problems.

First of all, I am a full-time Clinical Assistant Professor at the University of Michigan, and was only able to develop and teach in the Legal Practice Program during my vacation breaks from Michigan. Second, every legal practice or legal writing program I know of in the United States is staffed by several instructors to facilitate the close individual contacts with students that this course demands. These demands include correcting and grading student memoranda and briefs, conferencing with students, and judging their oral arguments.

In solving these problems, I was fortunate to be able to draw on outstanding colleagues from Ave Maria School of Law (AMSOL) to staff STL's

Legal Practice Program. Anne Burr had been an outstanding professor in AMSOL's Research, Writing, and Advocacy Program and had just become Director of Wayne State's Legal Writing program. James Parry Eyster is a clinical professor at AMSOL; Eyster and I worked closely together in helping to build AMSOL's Asylum and Immigrant Rights Law Clinic. Dean Lehman agreed that we would constitute STL's legal writing faculty. We all had to plan carefully during the 2008 summer break, and teach in condensed units during our 2009 vacation breaks; during the regular academic year we had to give our first priority to the American law schools where we teach. Fortunately, we would also be assisted by Christine Han, Julie Johnson, Andrea Shaw, and Christopher Yap, four top graduates of American colleges who were spending a fellowship year of teaching and residence at STL.⁴

Professors Burr, Eyster, and I met throughout the summer of 2008 to plan our curriculum. The Legal Practice course at STL would meet in the third and sixth six-week module. We decided to follow a somewhat conventional first-year curriculum in legal writing—predictive writing and production of office memoranda in the first six-week module, and persuasive writing and production of appellate brief in the second—but adapted for the purposes and unique situation of the students. To accomplish this we decided against using a standard legal writing textbook. Instead we prepared our own materials designed to accentuate the roots of the common law and the American legal experience while getting directly to the heart of writing the modern legal memoranda and brief.

⁴ The four teaching fellows work closely with the STL students throughout the year on English writing and expression.

STL was launched in the latter half of August 2008 with a week-long orientation. Dean Lehman had decided on a dramatic beginning for the school—a staged reading of the great Greek play *Antigone* by Sophocles. The play is ripe with questions that go back to the basis of Western Civilization and its concept of law. Following the staged reading, we put on a moot court involving the characters in the play, with roles played by the STL students. It was an ideal medium for a bonding experience in the school, for raising legal and moral questions embedded in the roots of Western culture, and for introducing the practice skills component of a legal education. Professor Eyster conducted the orientation week.⁵

The actual Legal Practice course began in December 2008, with Professors Eyster and Burr in residence; I arrived in mid-December. We began with a series of cases on the development of the tort of intentional infliction of emotional distress (IIED) in Florida. This series of cases was chosen to accomplish several purposes. They illustrate the rise of a new cause of action under the common law. IIED was not a clearly recognized cause of action in Florida until mandated by court decisions in the decades between 1965 to 1985. The cases also present difficult issues of common law analysis ideal for first-year students. We set the students' first memorandum assignment in this area of law; the hypothetical facts of the problem concern a little league baseball player who is subjected to severe reprimands and mockery by his coach. Does the coach's tirade constitute intentional infliction of emotional distress of the young player? To address this

⁵ Eyster, who also has professional experience in drama, is writing an article on his experience teaching orientation week through the staged reading and moot court of *Antigone*.

issue, the students need to carefully apply several common law rules and factors that are embedded in the line of Florida cases.

Throughout the year, Mr. Weidenbach, the teaching fellows, and I also conducted a one-credit course in “The Lawyer Across History.” Taking off from the *Antigone* moot court in orientation, the course explores the role lawyers have played in ancient Greece, the American law of slavery and civil rights, medieval law, and the Nuremberg trials of Nazi lawyers and judges.⁶ The course is intended to raise ethical and historical questions of the legal professions, while the students gain experience in lawyering skills. They write critical pieces on what they are learning, reviewed by the teaching fellows. They also conduct oral arguments on questions of international law. These include whether reparations should be paid for slavery, as already noted, and on what legal authority did the Allies base their convictions of Nazi war criminals.

III.

How do I assess the course of STL and the small part it may play in improving international legal relations? So far, I think it has been a great success. This article has focused on the Legal Practice Program, which is of course only one component of STL’s operation. Dean Lehman has hired world-renowned professors to teach the first-year courses. A similarly distinguished faculty has been assembled for upper-level courses. STL has now finished its equivalent of the first semester—the first three modules—and the performance of the students has been terrific. STL has received funding from various sources, including a

⁶ Readings for this course include excerpts from *To Kill a Mockingbird*, by Harper Lee, *The Return of Martin Guerre*, by Natalie Zmond, *Profiles in Courage* by John F. Kennedy, and the movies *To Kill a Mockingbird* (1962), *Return of Martin Guerre* (1982), *Sommersby* (1993) and *Judgment at Nuremberg* (1961).

generous gift from the Starr Foundation. Enthusiasm for the school remains high at the Shenzhen campus and throughout Chinese legal circles.

I expect that the first fruit of the school will be its outstanding graduates. Given their training in American law and Chinese government, they will be uniquely qualified to take up positions as public officials dealing with questions of international law and relations, as domestic lawyers enriched by a comparative legal education, and as international lawyers working in Chinese law firms and offices. STL students will be experts in the two great legal systems of the world—common law and civil law; I expect some to work in Western and Asian law firms with an expertise in Chinese legal relations. Most of all, I am hoping that the School, in its small way, can fulfill its promise of being a bridge between modern legal systems and the great Chinese nation and culture. Both Western law and Chinese law can benefit from the unique perspective STL students will gain from their studies. Following, perhaps, in the footsteps of the Soochow School of Law, STL can make a small but significant contribution to the professionalization of Chinese law and the promotion of Chinese international legal relations, as China takes its place as one of the world's great powers.