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INTRODUCING THE CHINA JURIST SERIES

Timothy Webster[†]

Browse the law section of any major bookstore in China and you will find a number of familiar titles. You may not recognize them, unless you read Chinese, but books by Ronald Dworkin, Cass Sunstein, Richard Posner, and other U.S. scholars line the shelves of many Chinese bookstores. Do the same thing in the United States, assuming the bookstore has a law section. If you find a book about Chinese law, it was probably written by one of a handful of Western scholars specializing in Chinese law. You will find no translations of China's leading scholars, and very little reflecting Chinese ideas or theories of law. This informational asymmetry—that the Chinese are far more informed about the United States than Americans are about China—characterizes most of the relationship between the two countries.

Many reasons explain the incommensurability. First, the preeminence of U.S. universities, even by Chinese standards,¹ suggests that American scholarship should play a disproportionately large role—take up more shelf space—in formulating the debates, models, and theories of global influence. Of course, they are helped in this regard by foreign students trained in the United States who return to China armed with the tools, frameworks, and discourses learned at U.S. academic institutions.

Second, a paucity of Americans with the linguistic skills, scholarly interest, and professional capacities to render Chinese legal scholarship into English lowers the chances of translation considerably. This is in part the traditional Anglophone aversion to translation in general; U.S. and U.K. publishers rank far below their French, German, and Italian counterparts in the percentage of total publications that are translations.² And Chinese does not even rank in the top ten most frequently translated languages.³ It is not surprising that the major source of English language translations of Chinese legal scholarship, *Frontiers of Law in China*, is produced in Beijing by Renmin University.

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¹ Like all rankings, academic rankings should be taken with a grain of salt. Nevertheless, those conducted by Shanghai Jiaotong University remain the most authoritative global ranking. In 2010, seventeen of the world's top nineteen universities were in the United States. Academic Ranking of World Universities, <http://www.arwu.org/ARWU2010.jsp> (last visited Feb. 6, 2011).

² LAWRENCE VENUTI, *THE TRANSLATOR'S INVISIBILITY* 12-14 (1st ed. 1995).

³ *Id.* at 14.

Third, a Chinese ardor to study and selectively emulate powerful Western countries such as the United States propels the rate at which the Chinese translate U.S. materials. For over 150 years, Chinese students have come to the United States to study. The first Chinese national to graduate from a U.S. university, Yung Wing (Rong Hong in pinyin), earned a B.A. from Yale in 1854.⁴ In the 1870s, over 120 Chinese boys studied in Hartford, Connecticut, so as to prepare for school at the U.S. military academies.⁵ While the stream has been broken by political tensions between the United States and China, there has been a long tradition of Chinese coming to the United States to study. At present, close to 128,000 Chinese students are studying in the United States,⁶ while approximately 11,000 Americans are studying in China.⁷ Since the Chinese population is roughly four times the American population, the fact that more than eleven times as many Chinese study in the United States as Americans study in China suggests that the imbalance persists. But even these numbers do not address some fundamental issues: what are these students studying and at what level? Based on my own observations, I would surmise that most Americans studying in China are studying the Chinese language at a specialized language school. Contrariwise, many Chinese studying in the United States are enrolled in degree programs. That is, the Chinese are gaining skills in science, law, medicine, engineering, and other specialized fields, so as to return to China with substantial knowledge of a particular academic discipline, in addition to some knowledge of U.S. culture and society. The Americans will probably learn some Mandarin, and a bit about Chinese culture, but few of them return home with degrees.

Fourth, Americans' unawareness of the rest of the world is also partially responsible for the inequality. Whether it be foreign language skills⁸ or world geography knowledge,⁹ Americans display a stunning lack of

⁴ JONATHAN D. SPENCE, *THE SEARCH FOR MODERN CHINA* 198 (1st ed. 1990).

⁵ *Id.* at 219. The U.S. government did not permit the boys to attend West Point or Annapolis, however, leading the next generation of Chinese students to be dispatched to western Europe. *Id.* at 219-20.

⁶ Kathy Matheson, *Report: More Chinese students studying in the US*, ASSOCIATED PRESS, Nov. 15, 2010, available at http://news.yahoo.com/s/ap/us_international_students (last visited Feb. 6, 2011).

⁷ Tamar Lewin, *Study Abroad Flourishes, With China a Hot Spot*, N.Y. TIMES, Nov. 17, 2008, at A19, available at <http://www.nytimes.com/2008/11/17/education/17exchange.html>.

⁸ The monolingual American is the butt of many jokes. But consider the fact that, according to USA Today, over 200 million Chinese study English, while only 24,000 Americans study Chinese. Given China's current and future importance, this is a serious imbalance worthy of correction. See David J. Lynch, *U.S. firms becoming tongue-tied*, USA TODAY, Feb. 9, 2006, at 6B, available at http://www.usatoday.com/money/companies/management/2006-02-08-language-usat_x.htm (last visited Feb. 6, 2011).

⁹ While statistics of this sort surface periodically in newspapers, National Geographic conducted a comprehensive survey of young Americans' knowledge of geography in 2006. The survey assessed the

knowledge of the outside world, particularly given this country's effect on the world's economy, environment, security, and political stability. We live in the most connected and globalized period in history, yet we do not understand most of the countries we trade with, invade, or otherwise interact with. One conclusion is inescapable: the Chinese know a lot more about the United States and U.S. legal system than Americans know about China and the Chinese legal system.

The China Jurist Series aims to ease part of this inequity by introducing leading law scholars from China to an Anglophone audience. Each year, in consultation with the editors of the *Pacific Rim Law & Policy Journal*, I will translate an article or a book chapter from a leading Chinese law scholar. In particular, the translated piece will highlight major breakthroughs, concerns, developments, setbacks or otherwise notable features of contemporary Chinese law.

My goals for the series are multiple. First, I want to introduce American legal scholars to various aspects of the Chinese legal system. While a handful of China specialists in the United States can already read these materials, I want to reach scholars who would not otherwise research China, so as to "mainstream" Chinese studies. In my professional work, I have found that almost every American legal academic I speak to has an interest in China. I suspect that more people will write about Chinese law if they can only access some English-language materials.

Second, the series aims to be more widely available to legal academics by appearing in Westlaw and Lexis. To be sure, other series—such as *Frontiers of Law in China*—play a similar role by translating Chinese language materials into English. While that series serves a valuable function, it is largely unavailable outside of a few law school libraries. By publishing in a respected and widely available journal like the *Pacific Rim Law & Policy Journal*, I can be sure that many legal academics and lawyers will be able to access the translations.

Third, the series will prefer Chinese scholars whose work has not already appeared in English. Again, the point is to introduce Chinese legal scholarship to American and other Anglophone lawyers, scholars and students. While some Chinese scholars can produce English-language

geographic knowledge of young Americans (aged 18 to 24), and arrived at some fairly astonishing conclusions: 50 percent of young Americans could not find New York state on a U.S. map, 69% could not find China on a map, 63% cannot find Iraq on a map of the Middle East, while 88% cannot find Afghanistan on a map of Asia. GFK ROPER PUBLIC AFFAIRS, FINAL REPORT: NATIONAL GEOGRAPHIC—ROPER PUBLIC AFFAIRS 2006 GEOGRAPHIC LITERACY STUDY 8 (2006), available at www.nationalgeographic.com/roper2006/pdf/FINALReport2006GeogLitsurvey.pdf (last visited Feb. 6, 2011).

scholarship, and many others have been translated, this series will select persons whose work is not available, or not widely available, in English.

With this in mind, I am particularly happy to be introducing the work of Professor Chen Ruihua of Peking University Law School. Though still in his early forties, Professor Chen has already established himself as one of China's leading scholars of criminal procedure. His many books, including most recently *A Chinese Model of Criminal Procedure*,¹⁰ have been extremely influential in China, both for their theoretical sophistication and for their impact on the current process of legal reform. Indeed, Professor Chen serves on numerous government advisory panels, dispensing clear-eyed advice on what works, and what does not work, in China's ongoing project of legal reform.

In this piece, Professor Chen explains various problems with the reform of China's criminal procedure, in particular, the problem of implementing Western criminal models to fit the Chinese context. Though his critique is broad-ranging, salient issues include the lack of legislation spelling out how to enforce China's Criminal Procedure Law, particularly when the police, procurators, or judges violate procedural law. A related concern is the rise in costs—time, personnel, money—needed to implement the adversarial nature of the Criminal Procedure Law. Since Chinese courts are notoriously understaffed and often under intense time pressures, this created a huge disconnect between the law on the books and the law as practiced. In the gap, courts developed their own set of “latent regulations” to handle cases where they were unable to follow the procedures prescribed in the Criminal Procedure Law. Professor Chen's rich insights into the functions, and malfunctions, of current criminal procedure will be valuable to any scholar trying to understand the mechanics, and mechanical failures, of criminal justice in China.

¹⁰ CHEN RUIHUA, *XING SHI SU SONG DE ZHONGGUO MO SHI* [A Chinese Model of Criminal Procedure] (2nd ed. 2010) (see translation immediately following this article).