

**Overview:
Viewing the project within the academic settings
in Beijing and the West**

Teaching Comparative Law in Global Context

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One of the major challenges law schools around the globe face today is whether and to what extent they can train their students to be able to navigate the multiple legal orders, which they will encounter in the world of practice. This issue is as acute for Columbia Law School as it is for major law schools in Beijing or Shanghai.

The major challenges include the need to:

- Re-focus attention from the legal systems that have traditionally been the focus of comparative legal education in the West (France, Germany, UK, US, perhaps Japan) to countries such as China, India, Russia, and Brazil.
- Enable students to understand basic features of a greater number of legal systems. They will need to understand the “grammatical structure” of these systems, not necessarily the full vocabulary. This also includes the ability to situate the role of formal legal institutions within a country’s overall governance structure.
- Explore foreign legal systems in their own right without constantly benchmarking them against one’s own legal system, or an idealized version thereof. The reason is that the domestic legal solutions and institutional arrangements are responses to a particular set of issues, which may not be the same across different countries.

Addressing these challenges successfully may reap the additional benefit of overcoming the boundaries that often separate lawyers as technicians in their various sub-specialties from social scientists with their broad theories and abstract models and create the foundation for a more fruitful inter-disciplinary analysis of the evolution and functioning of real world institutions.

How this project might help address these challenges:

To many outside observers, China’s extraordinary economic success over the past three decades is puzzling. China defies the notion that a “rational legal system” is a pre-condition for the development of vibrant market economy. China’s socioeconomic

transformation has produced a bewildering variety of property rights arrangements, organizational forms for firms and financial arrangements, as well as mechanisms for governing economic relations that don't fit into the matrix of "clear property rights", "good private" vs. "bad public" institutions, etc. that are typically used for assessing the "quality of law" across countries. Moreover, many of these institutions have grown outside legal governance structures. This is not to say that China does not face major challenges, which need to be addressed. The critical question is how we go about addressing them.

A conventional approach would do the following:

1. Identify the "problem" by benchmarking China's legal institutions against those of "developed" market economies, or some best practice checklist.
2. Use the gaps between observed institutional arrangements in China and observed "best practice arrangements" to explain the causes of the (perceived) problem as well as the solution to resolve it.
3. Survey legal solutions across several countries to identify, which is the most suitable for China.
4. Suggest a particular legal/institutional change and implement it.

An alternative approach would instead

1. Start with the problem not with the institutional arrangement.
2. Conduct a "differential diagnosis" of China's current governance system on its own terms by identifying weaknesses within the system (examples would be partial or complete breakdowns that make themselves known in the form of crises, abusive practices, civil unrest, etc.).
3. Identify the pressure points that caused the crisis, by explaining timing, severity and location of the problem within the overall governance structure.
4. Identify systems (countries/jurisdictions) that have faced similar crises – irrespective of their prestige or glamour as a model country for legal borrowing.
5. Explore how they have resolved them by focusing not only on outcomes, but also on the process of crisis resolution.
6. Determine which of these practices/approaches are suitable for China and/or adjust them accordingly
7. Apply them, monitor outcome, and make changes where necessary.

The same approach can be transferred to teaching comparative law. It would give them a framework for exploring the characteristic features of foreign legal systems, but also make them better observers, and potential reformers, of their own system.