

# Rise and Demise of The Comparative Law School of China

--With a Focus on Case Method and Case Law

Neal Nianyi Xu

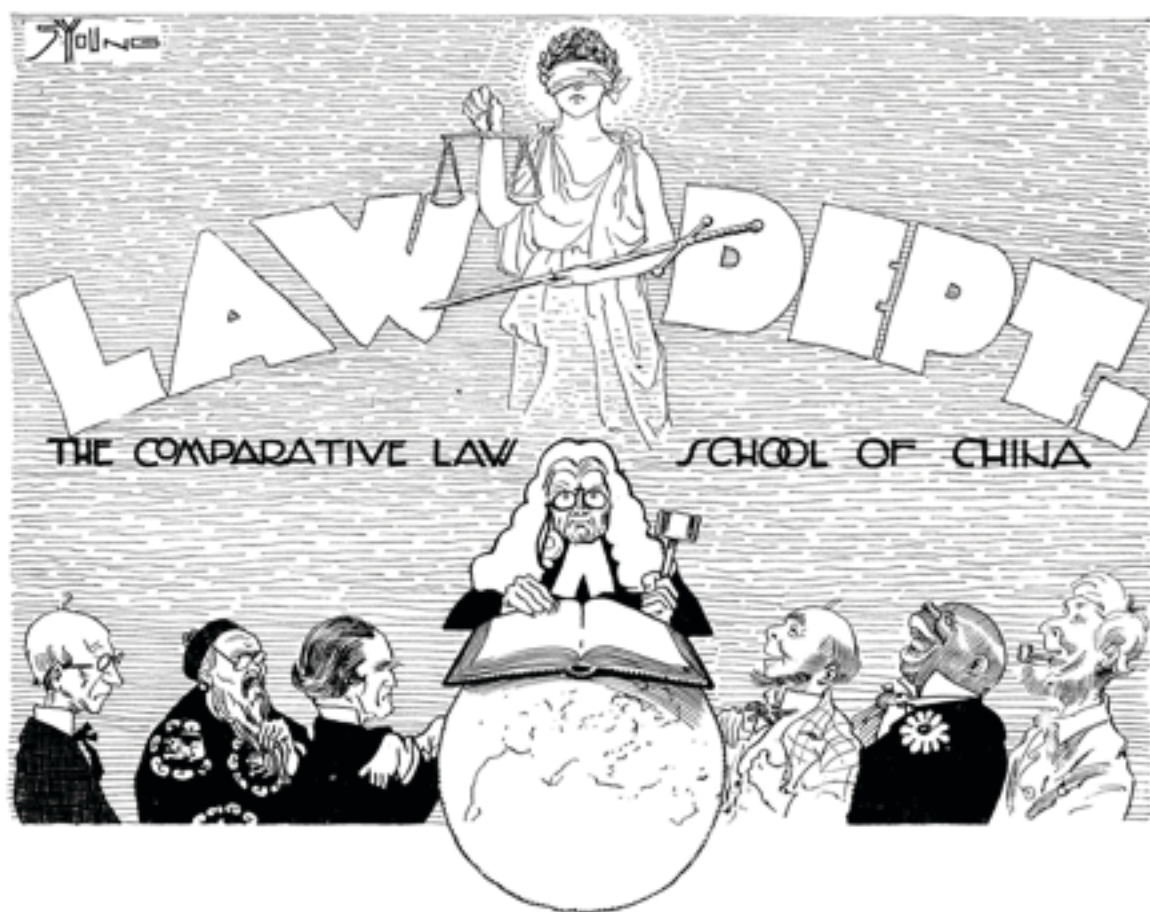
Colgate 2013

A Project Sponsored by the Colgate University

Institute for Philosophy, Politics, and Economics,

*Lampert Endowment*





## Abbreviations

BEEC Bureau of Education of East China 華東教育部  
 CLS(SULS) The Comparative Law School of China (Soochow University Law School) 東吳大學法學院  
 CPC The Communist Party of China 中國共產黨  
 CPCPPCC The Common Program of the Chinese People's Political Consultative Conference 中國人民政治協商會議共同綱領  
 CUPSL China University of Political Science and Law 中國政法大學  
 ECUPSL East China University of Political Science and Law 華東政法大學  
 HEBS Higher Education Bureau of Shanghai 上海高等教育局  
 HKBL Hong Kong Basic Law 香港基本法  
 HKSAR Hong Kong Special Administrative Region 香港特別行政區  
 ICJ International Court of Justice  
 KMT Kuomintang (Chinese National People's Party) 中國國民黨  
 MEPRC Ministry of Education of the People's Republic of China 中華人民共和國教育部  
 MEROC Ministry of Education of the Republic of China 國民政府教育部  
 PRC People's Republic of China 中華人民共和國  
 PWO Political Work officers  
 ROC Republic of China 中華民國  
 SHECCPC Shanghai Higher Education Committee of the Communist Party of China 上海高等學校委員會  
 SJU St. John's University 聖約翰大學  
 SMA Shanghai Municipal Archives 上海檔案館  
 SUDL Soochow University Department of Law 東吳大學法科  
 SUFE Shanghai University of Finance and Economics 上海財經大學  
 TAC Three-Anti Campaigns 三反運動  
 UOTOHEIS The United Office of TO-be-closed-down Higher Education Institutes in 1952 in Shanghai 上海市1952年停辦高等學校聯合辦事處  
 ULC United Learning Committee 聯合學習委員會  
 ULCRCLS United Learning Committee of the Region of the Comparative Law School of China 東吳法學院區聯合學習委員會  
 UoS University of Shanghai 滬江大學

|   |    |
|---|----|
| Prologue: Liberal Democracy, Legal System and Case Method     | 7  |
| <i>Questions</i>  | 7  |
| <i>Method of Approach</i>                                     | 7  |
| <i>Structure</i>  | 8  |
| Introduction: The “China Problem” and Responses               | 10 |
| <i>Language and Culture</i>                                   | 10 |
| <i>“Pao Ching Tien”</i>                                       | 11 |
| Shanghai’s Answer: Foundation of Soochow, 1915                | 17 |
| <i>“The other China”</i>                                      | 17 |
| <i>“Do men gather grapes of thorns, or figs of thistles?”</i> | 18 |
| Case Method and Case Law, 1925-1949                           | 21 |
| <i>Case method and textbook method</i>                        | 21 |
| <i>1921-1926, The Blume Period</i>                            | 21 |
| <i>“The Selletistic style”</i>                                | 26 |
| <i>1927-1937, The Wu Period and Further Sinification</i>      | 29 |
| <i>“Something about everything”</i>                           | 37 |
| <i>The last glimpse, Trial of Tokyo</i>                       | 38 |

|   |    |
|---|----|
| Soochow in 1952   | 39 |
| <i>“Red Star over China”</i>                            | 39 |
| <i>“Curricular Reform”</i>                              | 39 |
| <i>“The United Learning Committee of Soochow”</i>       | 41 |
| <i>“Adjustment of Colleges and Departments”</i>         | 44 |
| <i>Pao Ching Tien in the 1960s</i>                      | 45 |
| <i>“No light, but darkness visible”</i>                 | 48 |
| Legacies of Soochow, 1980s and 1990s                    | 51 |
| <i>“In the darkest hour as brightest”</i>               | 51 |
| <i>English-Chinese Dictionary of Anglo-American Law</i> | 53 |
| <i>Soochow in ROC (Taiwan)</i>                          | 57 |
| <i>Soochow in China</i>                                 | 58 |
| <i>Soochow in Shanghai</i>                              | 59 |
| Conclusion and Lessons for us in 2011                   | 61 |
| Bibliography  | 63 |

# Prologue: Liberal Democracy, Legal System and Case Method

## A. Questions

The broader topic my paper explores is the adaptability or the limitedness of liberal democracy. Does it only apply to countries or peoples that speak a particular language and adopt a particular culture? What are the important components of it and what are the essential one(s)? More brazenly, are there so-called “universal values”? Do they have to be exported and imported, or do they lie indigenously in cultures that are seemingly most distant? Although many of these questions and their sub-questions have become cliches of post 1990s political science research, they remain unanswered with the ongoing social-political changes in different countries of the world, from fall of the Berlin wall to the recently paradigmatic changes in North Africa. “Rise of China” is a much discussed and researched topic, or in some scholars’ view, another “on-going event.”

This paper aims to enrich the answer to two specific questions. What is the adaptability or the limitedness of the legal system in a liberal democracy? What is an ideal legal system for China that is both effective and efficient? The main form of this paper is the retelling of Soochow University Law School, otherwise known as the Comparative Law School of China. Opened in 1915 and closed in 1952, it carried out thirty-seven years of legal education famed for its comparative law tradition that focused on Anglo-American law, primarily using the case method that started from Harvard Law School in 1870s. Its graduates became successful in all major legal professions and were immensely influential in pre-1952 China. Its history was, however, suppressed and forgotten after its closing down in 1952 and few scholarship was thereafter done in both the Chinese and the English world.

## A. Method of Approach

My main method of approach was obtaining and reading primary sources. The first step of obtaining them was also my uttermost difficulty, for much of them have vanished in sixty years of time due to deliberate negligence or destruction. I went to Shanghai Municipal Archives, Shanghai Municipal Library, searched in the black book market, and visited researchers that kept memoirs that were no longer published. After collecting the materials, I electronicized all of them, created a private online database, and started to read the materials. Formal publications in Chinese were easy and quick to read. Chinese characters in typed documents were still easy to recognize. A great number of them were written in Chinese calligraphy that was aligned vertically and extremely stylish; these documents took much longer time to read and digest. Reading of the materials was combined with a number of interviews with humanists, political scientists and researchers specialized in church university study in China. Overall, I have used only a small part (approximately 10%) of the information (from archives and interviews) acquired in the summer.

### C. Structure

The paper will start from a survey of the continuity of the Chinese language and culture and the well-documented history of legal codes and their enforcement. It will then elaborate on the story of a jurist in ancient China who achieved a legendary status to briefly analyze the success and failure of ancient Chinese legal system that is related to its language and culture. Section II narrows my focus to the city of Shanghai and why it provided an especially rich soil for the growth of a school of comparative law. Then I explore the implementation of the case method in Soochow in section III. The next section concentrates on Soochow's misfortunes in post-1949 China under communist control. Section V describes efforts to revive Soochow's curriculum and its educational philosophy from various groups and how the same factors that promoted or destroyed it were repeating their battle in the history.



Before moving on to a detailed description of Soochow's case method teaching and Soochow professors' and graduates' attitudes towards case law, I would like to offer special thanks to Professor Alison Conner and her articles. For several decades, she has been the only American scholar carrying out research systemically on Soochow.

My report on Soochow is a natural continuation as well as an expansion from the foundation she laid down two decades ago. I shall focus on more detailed classroom situations of case method and its specific changes over time in Soochow. I have also included many more personal stories of Soochow graduates and their influence on Chinese legal system. While Prof. Conner decided that her story was "Soochow's founding and life, not its death,"<sup>1</sup> I have elaborated on Soochow's predicament in 1952 to display thoughts and factors in Chinese society that cut short the success of Soochow, its home city Shanghai and "the other China." Section V on revival of Soochow also contains more information on the topic.

---

<sup>1</sup> Alison Conner, "How I Got the Story (and Why It Took So Long): Legal History Research in China," *Washington University Global Studies Law Review* 2, no. 1 (2003): 217.

# I. Introduction: The “China Problem” and Responses

## A. Language and Culture

The Chinese language is usually regarded as one of the oldest languages of the world; in the first half of the twentieth century, when some American colleges still had ancient language requirements, Chinese students were often allowed to offer their native language for entrance Latin or Greek.<sup>2</sup> As the only surviving logographic language, it uses characters. Each character combines a pronunciation, a great number of meanings, and a shape that is related to the meaning through puzzling yet learnable rules. The shape of each character remains extremely stable whereas its pronunciation differs in different areas and changes overtime.<sup>3</sup> Most books were in *Wenyan*, or classical Chinese, a highly condensed language,<sup>4</sup> mastery of which was a hallmark of education. The great stability of characters and the grammar enabled scholars and civil servants of any period to read and understand writings of all previous generations, though sometimes a brilliant classicist was needed to explain masterpieces from a too remote period: Confucius was the first major and the most brilliant one, who edited the classics of the Chou (Zhou) dynasty that planned a utopia for China.

Ethnic tension was resolved in a special way as well. When five main barbarian tribes were sacking Rome and contributing to the downfall of the Western Roman Empire, five groups of

---

<sup>2</sup> Yuen Ren Chao, *Mandarin Primer, an Intensive Course in Spoken Chinese* (Cambridge: Harvard University Press, 1948), 3.

<sup>3</sup> It is not difficult for a literate Chinese to understand the oracle bone's hieroglyph, original forms of Chinese characters dated to the 2<sup>nd</sup> century B.C.E., used contemporarily with the Cretan Linear B: the structure of key characters have not changed greatly.

<sup>4</sup> As opposed to *Baihua*, or colloquial Chinese. It was not the case however that the educated used classical Chinese all the time and the illiterate used only the colloquial. The educated may use colloquial in daily communication and a less educated may be able to write.

nomadic “Hu” people<sup>5</sup> were harassing agricultural “Han” people, destroying the most prosperous dynasty<sup>6</sup> since the “First Emperor” of China. Germanic tribes seized *Roma Eterna*, and for centuries European emperors and kings attempted the *renovatio imperii*, yet none of them forged a completely restored and united Roman Europe. The nomadic people in China, however, were gradually absorbed into one;<sup>7</sup> the united nomadic people eventually abandoned their own culture voluntarily and adopted the language and culture of Han Chinese,<sup>8</sup> breeding the air of ethnical and cultural tolerance of the Tang dynasty, coincided the golden era of Chinese culture. The teaching of the Chinese classics and the indoctrination of crucial social values remained intact.

#### B. “Pao Ching Tien”

Like Chinese language and culture, the traditional Chinese legal system also appears special. Strictly speaking, it was not a “legal” system based on one or a number of canonical codes (“*leges*”). Although every imperial dynasty attempted to compile its own legal code,<sup>9</sup> the extent that each dynasty stuck to a code varied tremendously. Written codes worked better in the Tang dynasty, with the help of successive emperors and strong-handed civil servants. In the Ming dynasty, however, violation of the codes was frequent. There was never an independent legislature or a judicial system, and each dynasty or each emperor may add *ad hoc* units into the intricate system to carry out a written code, an expedient order, or simply his own wish.

---

<sup>5</sup> “Hu,” 胡, “barbarian” in Chinese, particularly referring to northern barbarians.

<sup>6</sup> The Jin Dynasty, 晉朝

<sup>7</sup> The Xianbei, 鮮卑

<sup>8</sup> Emperor Xiaowen of Northern Wei, the imperial dynasty founded by Xianbei, carried out the Sinification Reform. He forced the population to speak Chinese and wear Chinese clothes. He even executed his eldest son for disobeying reformative policies.

<sup>9</sup> The systemic effort started in the Tang dynasty, and leading civil servants compiled the Tang code. It was largely a penal code, as the Code of Hammurabi.

It seems that the Chinese legal system managed to survive through millennia of uncertainty, yet an opposite view exists in the academic world that Chinese legal system had a stable ideology. Many argue that after Han Feizi, widely believed to be founder of Chinese legalism, advocated absolute authority of law in the 2<sup>nd</sup> century B.C.E., each generation of Chinese emperors followed Feizi's template to produce a stable rule by law, i.e., one rules by law not because the law is higher than oneself but because it is convenient to do so and inconvenient not to do so.<sup>10</sup> The by-product, however, is that China never had an indigenous concept of rule of law. Winston argues against this point of view. He claims that in Feizi's legalism there is indeed a link between morality and law.<sup>11</sup> To answer this question fully is beyond the scope of this report. The personal story of Pao Ching Tien, a civil servant whose impartial heroism has been recounted by the Chinese people for a thousand years, may help to understand both the success and the tragedy of the Chinese "legal" system.

Pao lived in the Song dynasty (960-1127 C.E.). While the Tang dynasty, by its martial prowess, drove away the northern Turkic peoples and secured the prosperity of its capital Chang'an, Song achieved the same goal mainly through trade and commerce; if for China, the Tang dynasty was the Roman Empire, the Song dynasty was the city-state of Athens.<sup>12</sup> The Song dynasty witnessed an unprecedented renaissance in art and literacy: both the royal family and the commoners were promoting artistic achievements and classical education; wealthy families in south China supported an enormous fine art industry, and the emperor established a royal school for Chinese painting. One of the highest artistic achievements was perhaps *Ruci*, a ceramic funded and cherished by an emperor. Legend says that he dreamed of its color: lighter

---

<sup>10</sup> Donald J. Munro, *The Concept of Man in Early China* (Stanford, Calif.: Stanford University Press, 1969), 4.

<sup>11</sup> Kenneth Winston, "The Internal Morality of Chinese Legalism," *SSRN eLibrary* (2005): 2.

<sup>12</sup> Or more accurately, Athens before the foundation of the Delian League.

than azure, darker than Cyan, resembling sky blue after thunderstorm.<sup>13</sup>

Pao was an alpha male of the Song dynasty. Born a year before the first millennium in Anhui province, one of the richest provinces of the empire, Pao received a classical education in an atmosphere where parents would strive to send children to schools, be they civil servants, farmers, craftsmen, or merchants.<sup>14</sup> He excelled at all stages of the Imperial examination and was thus entrusted with rulership of a county. Later he was appointed *Jianchayushi*, or the inspector-general, and later mayor of Kaifung, capital of the Song empire, at the time the largest city in the world.

Throughout his service, he was most remembered for his consistent application of the written codes and other principles such as *nulla poena sine lege*. As inspector-general he charged whom-ever he discovered violating imperial legal codes, regardless of the social status of the accused, including powerful governors, renowned poets, and military officers. As major of the imperial capital, Kaifung, his role in the legal system shifted to be more judicial and in his rulings he applied the codes equally to royal family members. He died mysteriously in Kaifung in 1062 and his story entered both classics and folktales thereafter.

Judging from the superficial it seemed that Pao gained his fame by upholding to written codes and adhering to Feizi's legal absolutism, but in fact he was adored less as a legal figure, but more as a moral figure. Pao accused corrupted courtiers out of loyalty to the court and ruled impartially in criminal cases out of duty to protect the commoners as a civil servant. He modeled himself after Wei Zheng, the most respected courtier of the Tang dynasty and was fortu-

---

<sup>13</sup> 汝瓷圖片配一個

<sup>14</sup> The classical four classes in China. There was considerable social mobility, largely due to the Imperial examination, established in the Sui dynasty. It tested mastery of *Wenyan* and understanding of Chinese classics. In the Song dynasty, it was open to almost all Chinese male nationals regardless of age, origin or birth, or family background.

nate to have an emperor, Renzong<sup>15</sup>, who often sided with him and made his rulings effective. In accordance with his posthumous name “obedience to the parents<sup>16</sup> and loyalty to the court,” he achieved harmony between parents and son, emperors and courtiers. This was the very utopia that Confucius interpreted from the classics of the Zhou dynasty and the highest ideal of traditional Chinese society.

No one after Pao gained so much success. Thanks to the stability of the Chinese language and the continuity of the written tradition, Pao was able to quote 5th century B.C.E. sources to argue about why an emperor should be impartial with his relatives, while, on the other hand, his opponent could fight back with the case of Shun, one of the five legendary emperors of an even earlier time, who violated written codes he had himself made to rescue his corrupted father. Thanks to the firm belief of his colleagues and the emperor in the traditional moral values (that Pao charged a member of the royal family out of loyalty to the court, not of jealousy or treason), Pao won justice for the commoners. Such cooperative effort became less frequent with increasing expansion of emperor’s power. Even if an individual could possess Pao’s erudition and luckily serve another “virtuous emperor,” it would be more difficult to acquire the third and the fourth factor of his success: mastery in collecting evidence and logical reasoning.

During the last years of the Song dynasty, as in every Chinese dynasty, corruption and treason poisoned the empire. In 1276 the Mongols eradicated the Song dynasty and tremendously reduced level of literacy. The Han Chinese recovered their regime and established the Ming dynasty in 1368. Hundreds of years later another group of nomadic people, the Manchus, invaded and establish the last imperial dynasty, Qing in 1638. The Qing dynasty attempted, just like the barbarians in the 5<sup>th</sup> century C.E., to learn from Han Chinese culture, yet they adopted stricter

---

<sup>15</sup> Posthumous name of the emperor. Literally, “a virtuous emperor.”

<sup>16</sup> He refused initial appointment to rule a town by the emperor for it was too far away from his home country and he had to leave his parents.

apartheid policies. The political decisions were a cooperative discussion between Manchurian aristocrats and Han Chinese courtiers; the important ones were often, if not always determined however by swords of the Manchu warriors, not the brush pens of courtiers that were still writing the same language and the same words as Confucius, Han Feizi, and Pao. Crucial moral values of the Song dynasty, nevertheless, still persisted in the Qing, but Qing emperors, fearing the restoration of a Han Chinese regime, manipulated submissive Han courtiers to transform loyalty to the court into an absolute obedience, and no one dared to challenge the royal family as much as Pao had done centuries before.

People normally attribute Pao's tremendous personal success to the moral nature of Chinese legal system, but such morality became so strong with thousands of years evolution that it almost replaced the legal system. Rule by law was not the only dominating pattern, but rule of law, a legal system with considerable yet suitable extent of influence from moral values, did not come into being, either. (same or different, explain) It was perhaps a rule of *morality*, run by a virtuous emperor and able courtiers who truly believed in the inherent moral values of Chinese classics, such as Renzong and Pao, and the possibility of a Confucian-Chou utopia. On occasion of a manipulative emperor and courtiers, there remained only rule by morality.

The standards in the Chinese legal system are as uncertain as the color of *ruci*. The means to produce *ruci* was lost forever after Mongol invasion; and the method of educating courtiers like Pao remained a puzzle. Pao's life was still narrated as a bedtime story, but just like the transient production of *ruci* that lasted for only twenty years, Pao's effort did not result in a standardized legal education system. Pao was deified and there remained crying for another "Ching Tien," the respectful alias given by the commoners to Pao, literally "a blue and bright sky," the same type of sky that the emperor dreamt of and subsequently ordered the production of *ruci*.

By the end of the nineteenth century, Chinese thinkers have almost lost their hope. They turned to civil law in Germany and Japan that appeared to be the most standardized and systemic, but in reality, the imported legal systems never re-controlled China as successfully as the Confucian ideal. Just as the Chinese language is unified in writing yet extremely diverse in speaking, Chinese thinkers found it impossible to apply to all of China with over thirty provinces and three hundred dialects a unified legal system. In 1915, in an age of unprecedented political uncertainty and desperation, an American missionary and lawyer Charles Rankin established the Comparative Law School of China in a non-traditional Chinese city, Shanghai.



## II. Shanghai's Answer: Foundation of Soochow, 1915

### A. "The other China"<sup>17</sup>

Victory in the First Opium War in 1842 enabled British merchants to enter Chinese cities other than Kwangtung. As one of the "five treaty ports," Shanghai started her integration into the international market in 1843. Relative independence from the bureaucratic Chinese government, "exceptionally favorable geographical situation," an "active middle class" and a "relatively established working-class tradition" all helped the fishing town to develop into the largest metropolis of the Far East.<sup>18</sup>

Co-existence of Chinese and Westerners started from the first moment of its opening up. Triggered by the Taiping Rebellion and other drastic social changes, a great number of rich Chinese families flooded continuously into foreign concessions of Shanghai in the second half of the nineteenth century. The relationship between Chinese and Westerners soon surpassed a *modus vivendi* and moved toward mutual understanding through business competitions.

By the early 1910s, Shanghai had transformed from a foreign concession to a truly International Settlement that merged western commercialism with the indigenous Chinese mercantile tradition; such tradition has been "ignored or ill-treated for long periods by the Imperial power and by Chinese officialdom."<sup>19</sup> Almost every nation that participated in international trade had some citizens battling in the Bund. In 1906, five years before founding of ROC, Chinese were first admitted into Shanghai Municipality, the highest political authority of the In-

---

<sup>17</sup> "東吳大學法律科章程 Dongwu Daxue Falvke Zhangcheng [Regulations of Soochow University Law School]," (1926).

<sup>18</sup> Christopher Howe and University of London. Contemporary China Institute., *Shanghai, Revolution and Development in an Asian Metropolis*, Contemporary China Institute Publications (Cambridge Eng. ; New York: Cambridge University Press, 1981), 2.

<sup>19</sup> *Ibid.*, 22.

ternational Settlement. As the motto of Shanghai Municipality “*omnia juncta in uno*,” Shanghai had all her citizens of different nationalities “united into one.” It was “the other China” that had hibernated after the fall of the Song dynasty for a thousand years. It was still Chinese for it remained nominally a Chinese territory and the teaching of the Chinese classics and the Confucian culture persisted among Chinese inhabitants. On the other hand, Shanghainese started to learn Western languages earlier and adopt Western customs more drastically and became more and more “foreign.”<sup>20</sup> The combination of an un-erasable Chinese-ness and the kaleidoscopic arrival of Western objects and ideas fostered the “otherness” of Shanghai.

Such intimate Chinese-Western contact in a commercial city inevitably led to an increasing number of legal disputes. Cases between Western countries were normally dealt with respective traditions established in Europe, but those involving Chinese merchants and citizens were much more puzzling, even after the establishment of the Mixed Court. Few Chinese litigants possessed western legal knowledge and had to appeal to Western lawyers for help. Not fully understanding the Chinese language and culture, Western lawyers often did not achieve satisfactory results to the full interest of Chinese clients. Some ill-trained ones did not even stick to western legal ethics and finished courtroom debates by “reading several random pages of the Napoleonic Code.”<sup>21</sup> Both well-trained western lawyers and Chinese citizens could not stand the unpredictable quality of legal professionals in Shanghai.

B. “Do men gather grapes of thorns, or figs of thistles?”<sup>22</sup>

---

<sup>20</sup> To avoid “charges” for excessive local pride of being a Shanghainese myself, I cannot stress more that Shanghai was not unique in its contact and merging with Western culture. Harbin in North China, Kwangtung in South China, Wuhan in Central China and many other cities had such experience. Shanghai was, however, one of the earliest westernized cities and the largest one in pre-1949 China.

<sup>21</sup> 鹵厂Luchang, “東吳大學法律學院的今昔 Dongwu Daxue Falv Xueyuan De Jinxi [a History of CIs (1915-1932)],” 新社會半月刊 *Xinshehui Banyuekan* 1932, 2.

<sup>22</sup> Matt. 7:16-20. 回溯 *Huisu [the Quadranscentennial History of Soochow University, 1901-1926]*, (1926), 26.

One of the dissatisfied American lawyers, Charles Rankin, decided to improve the situation and establish a law school in Shanghai. He was also a missionary of the Methodist Episcopal Church South and accordingly wrote to the church for financial support. The church was initially non-supportive of his plan, but he kept sending messages across the Pacific and the request was eventually granted. He was appointed headmaster of Middle School No.2 of Soochow University in Shanghai and was allowed to borrow rooms of the campus for the law department, but only in the evening. (It needs to be clarified that Soochow University is mainly based in Soochow, while the law school was always in Shanghai.)

Rankin was not disturbed by the condition, for he planned to open it as a night school.<sup>23</sup> He soon invited friends in the Shanghai bar and other legal fields to give lectures and classes after they had finished their own business during the day. The first group of faculty members included Dr. Wang Chung Hui, ex-minister of Foreign affairs of ROC and Judge Charles Lobingier, judge for the United States Court for China.<sup>24</sup> Lobingier had an unusual background in comparative law at the time, having been trained in both civil and common law. It was he who suggested the English name of the law school, the Comparative Law School of China.

With part-time faculty members and only one full-time employee (Rankin himself),<sup>25</sup> Soochow had a truly humble start. The first graduating class of 1918 was composed of only seven members, and in 1919 only two graduated.<sup>26</sup> The professors, coming after work, would carry a “standard textbook” used in Western law schools and lecture for three hours; and the students

---

<sup>23</sup> 鹵厂 Luchang, "東吳大學法律學院的今昔 Dongwu Daxue Falv Xueyuan De Jinxi [a History of CIs (1915-1932)]," 2.

<sup>24</sup> Ibid.

<sup>25</sup> "東吳大學法律科章程 Dongwu Daxue Falvke Zhangcheng [Regulations of Soochow University Law School]," 9.the English side

<sup>26</sup> 回溯 Huisu [*the Quadranscentennial History of Soochow University, 1901-1926*], 26.

had to cope with their styles.<sup>27</sup> By the time Rankin resigned and left for headmastership of a Bible School, Soochow had established reputation in Shanghai. Rankin and Soochow became the gatherers of “the thorny grapes”<sup>28</sup> of legal education in China.

---

<sup>27</sup> 鹵厂Luchang, "東吳大學法律學院的今昔 Dongwu Daxue Falv Xueyuan De Jinxi [a History of CIs (1915-1932)]," 3.

<sup>28</sup> Matt. 7:16-20.

### III. Case Method and Case Law, 1925-1949

#### A. Case method and textbook method

Though there are various accounts of who first adopted the method in American law school,<sup>29</sup> Christopher Columbus Langdell was the first person to revolutionize law school teaching with the case method, experimenting at Harvard Law School in the 1870s. The method gradually spread to law schools nationwide and reformed the learning of American law. The case method holds that the best way to learn law is to read casebooks, compiled from actual judicial opinions that became the law under the principle of *stare decisis*.

Langdell based his reform on his understanding of law as “a science” and “science is to be studied in its sources.”<sup>30</sup> James Barr Arnes, a pupil of the first trial class of case method in Harvard, became later a professor at Harvard and emulated Langdell in his Socratic-like characteristics: “his favorite device in teaching was to put one good student against another, that the class might learn the law from their arguments.”<sup>31</sup>

Textbook method, on the other hand, uses code-based books that are compilations of legal codes in one or a few countries. The method naturally requires more mechanical memorization than classroom discussion and was gradually abandoned in America since the implementation of the case method.

#### B. 1921-1926, The Blume Period

---

<sup>29</sup> Levine argues it appeared before Langdell in New York University, or another private law school. Martin Levine, *Legal Education*, International Library of Essays in Law and Legal Theory Legal Cultures (New York, NY: New York University Press, Reference Collection, 1993), D XIV.

<sup>30</sup> C. C. Langdell, "A Selection of Cases on the Law of Contracts with a Summary of the Topics Covered by the Cases." (Boston: Little, Brown, 1879).

<sup>31</sup> Harvard Law School. Association (1886-), *The Centennial History of the Harvard Law School, 1817-1917* (The Harvard law school association, 1918), 37.

Now back to Soochow's story. In 1921, after Rankin's leave, William Wirt Blume was appointed dean of Soochow, at the time still the Law Department of Soochow University. During his deanship, Soochow witnessed an unprecedented expansion in quality of teaching and academic achievements and entered a true "bloom" period. A man of "dauntless spirit and statesmanlike qualities,"<sup>32</sup> he introduced full-time professorships and hired four faculty members, three of them early graduates from Soochow: Dr. Kung Shih joined in 1926, Dr. D. S. Chen<sup>33</sup> in 1922, and Dr. C. H. Wu in 1924.<sup>34</sup>

With recommendations from Soochow, a graduate needed only one more year and a thesis to obtain a Juris Doctor Degree from Michigan Law School.<sup>35</sup> This was a recognition of the quality of education of Soochow, modeling its curriculum from 1921 to 1926 entirely after that of MLS and other top American law schools.

Although the courses were almost directly transplanted from American law schools, the case method was not widely adopted; its status in Soochow was undecided. Because of the part-time

---

<sup>32</sup> 回溯 *Huisu [the Quadranscentennial History of Soochow University, 1901-1926]*, 26.

<sup>33</sup> He obtained the JD degree after graduating from Soochow. "東吳大學法律科章程 Dongwu Daxue Falvke Zhangcheng [Regulations of Suls (CIs)]," (1926), 64.

<sup>34</sup> Graduating "at the head of his class," Wu went to Michigan and obtained a JD degree. With the help of a Traveling Fellowship by the Carnegie Endowment for International Peace, he then went to the University of Sorbonne and later the University of Berlin and studied international law with Rudolf Stammler. Wu returned to America and joined HLS, becoming a graduate student of Roscoe Pond. Upon request from John Henry Wigmore he also wrote articles on Stammler's Theory of Justice. He also kept a long time correspondence with Oliver Wendell Holmes. Dean Wigmore discovered in him "an extraordinary combination of realism and idealism." "東吳年刊 Dongwu Niankan [the Soochow Annual]," (1930), 2-3; Wang Jian, "超越東西方：法學家吳經熊 Chaoyue Dongxifang: Faxuejia Wu Jiongxiang [Beyond East and West: Jurist C. H. Wu]," 比較法研究 *Bijiaofa Yanjiu [Research on Comparative Law]*, no. 2 (1998); Guoping Wang and Jianping Zhou, 蘇州大學校史研究文選 *[Selected Papers on the History of Soochow University (Prc)]* (2008), 307-12.

<sup>35</sup> Zhengyu Ni, 淡泊從容蒞海牙 *Danbo Congrong Li Haiya (Personal Memoir of the CIs Graduate Mr. Ni)* (1999), 20. But the American law school where most Soochow graduates attended was New York Law School.

nature of all professors, they had great freedom in pedagogical method.<sup>36</sup> Some professors, such as Dr. H. C. Mei, a renowned lawyer in Shanghai, who always taught Anglo-American Contracts, preferred using a standard textbook instead of real case from either American or Chinese courts.<sup>37</sup> The reason was perhaps because the modern Chinese legal system had not recorded enough cases to be discussed. In addition, many worried about the transplantability of American cases. Others combined textbooks with handouts, and inserted some cases they happened by chance to encounter in their daytime work in the International Settlement.<sup>38</sup>

Though case method is generally believed to create a greater burden of preparation for students, textbook method was not easier for early Soochow graduates. A professor normally assigns “forty to fifty pages” of reading from the textbook “per hour” as preparations for the class and expects students to be fully prepared. For example, one class normally lasted three hours,<sup>39</sup> and 150 pages may be assigned for a single day. During the class, it was a tradition for a Soochow professor to open a students’ name book and randomly call upon a poor student to answer whatever materials were involved in the reading. It was too familiar a scenario in old Chinese private schools (such as the one Pao Ching Tien went to) so the students got used to this method quickly.

Such a workload, however, may seem unreasonable. When Soochow was founded, the Imperial examination had been abolished for a decade, and the traditional Confucian spirit of learning

---

<sup>36</sup> 鹵厂Luchang, “東吳大學法律學院的今昔 Dongwu Daxue Falv Xueyuan De Jinxi [a History of Cls (1915-1932)].”

<sup>37</sup> Ni, 淡泊從容蒞海牙 *Danbo Congrong Li Haiya (Personal Memoir of the Cls Graduate Mr. Ni)*, 84.

<sup>38</sup> 鹵厂Luchang, “東吳大學法律學院的今昔 Dongwu Daxue Falv Xueyuan De Jinxi [a History of Cls (1915-1932)],” 267.

<sup>39</sup> Early Soochow students were also part-time.

had rapidly lost its standing.<sup>40</sup> Many “new schools”<sup>41</sup> learned from what they believed to be the correct western method of teaching and it was the tutors who digested and summarized reading materials for the students. Soochow’s workload did result in an extremely low retention rate,<sup>42</sup> yet some gifted and hardworking students still managed to survive and secured the reputation of Soochow. This seemingly disastrous workload<sup>43</sup> in the “textbook period” paved the way for the introduction of case method.<sup>44</sup>

If William Blume for Soochow were Charles Eliot for Harvard, then Soochow’s Langdell would undoubtedly be Professor George Sellet, the fourth permanent faculty member of Soochow that Blume hired to join the faculty with the other three Soochow graduates in 1923. Professor Sellet also had studied at Michigan Law School and came to Shanghai inspired by Drs. S. C. Ho and S. M. Ho.<sup>45</sup> Blume asked for leave in 1924 and returned to the States and Dr. Sellet “became the Acting Dean.”<sup>46</sup> The first major reform under Sellet’s administration was the complete adoption of case method.

The fall semester of 1925 was a remarkable time for Soochow. There were seven classes for

---

<sup>40</sup> There is a household phrase describing a hard-working student preparing for the Imperial examination, “with his head attached to a beam and stabbing his thigh with an awl.”

<sup>41</sup> i.e., schools under more Western influence.

<sup>42</sup> From various sources, it was lower than twenty percent in early 1920s. This was consistently much lower than national average. Ibid; “東吳大學法學院年刊 the Woolsack [the CIs Annual],” (1944); “東吳年刊 Dongwu Niankan [the Soochow Annual],” (1929).

<sup>43</sup> 150 pages per day might not be very much in some American colleges, but Soochow students during this period all had full-time job. They went to classes after 4:30 p.m. everyday and the only time for classes preparations was late evenings. Some of them were even married.

<sup>44</sup> The rigidity of Soochow’s curricula persisted into 1940s. None of the 1946 graduates joined Phi Tau Phi Scholastic Honor Society, the most prominent Greek letter society of ROC, because not a single student managed to score above 80% in every course. Phi Tau Phi was discontinued in PRC.

<sup>45</sup> Zhengyu Ni, 淡泊從容蒞海牙 *Danbocongrong Li Haiya (Personal Memoir of the CIs Graduate)* (1999), 22. The Ho Brothers later founded Tse-Chih University, the best non-Christian private law school in Shanghai.

<sup>46</sup> 回溯 *Huisu [the Quadranscentennial History of Soochow University 1901-1926]*, (1926), 27.



freshmen,<sup>47</sup> and four of them were Anglo-American Law: Contracts, Torts, Criminal Law and Family Law.<sup>48</sup> All Anglo-American Law courses would be taught as experiments by the case method. Casebooks for all four classes were imported from the States, and were so expensive that they worth the tuition of the entire semester.<sup>49</sup>

The three courses of Torts, Criminal Law and Family Law went smoothly during the transition. The Family Law, perhaps taught by Dr. Chen, became more attractive. So did Criminal Law and Torts, for all these three involved “problems and thoughts in daily life” and were “easily understood.”<sup>50</sup> The ease of using cases to teach Family Law and Criminal Law may be due to the legal tradition of China, which laid much emphasis on family issues and penal codes.<sup>51</sup> Concerning using the same method to teach Contracts, however, the faculty did not reach consensus easily. Mei until the last moment strongly disagreed with the change from the textbook to the casebook method, and resigned his position of teaching Contracts. His worries were valid, for Contracts involved a great number of disputes in industry and commerce that were highly technical issues. In such a city as Shanghai in 1920s, where there were American and English courts as well as the Mixed Court, contractual disputes were even more complicated. Dean Sellet, on the other hand, was not daunted and said to all, “if no one wishes to teach by the case

---

<sup>47</sup> All compulsory at the time Ni, 淡泊從容蒞海牙 *Danbocongrong Li Haiya (Personal Memoir of the CIs Graduate)*, 21.

<sup>48</sup> “東吳大學法律科章程 Dongwu Daxue Falvke Zhangcheng [Regulations of Soochow University Law School],” 7. The Anglo-American Law courses were the same for years.

<sup>49</sup> Ni, 淡泊從容蒞海牙 *Danbocongrong Li Haiya (Personal Memoir of the CIs Graduate)*, 21.

<sup>50</sup> *Ibid.*, 22.

<sup>51</sup> Recall Pao Ching Tien’s legal career as a judge for criminal cases. In legend he had three guillotines, each decorated by patterns of a dragon, tiger and dog, used to execute members of the royal family, courtiers and commoners.

method, then I have to.”<sup>52</sup>

The first class of Contracts in Soochow by the case method was a great success. Sellet, perhaps opening Williston’s *A Selection of Cases on the Law of Contracts* just published in 1922,<sup>53</sup> held the name book in hand and called upon a student to recite the case and content of a ruling; this is perhaps the most familiar thing for any first year law school student in America, a case brief. Then he went on analyzing legal principles rendered by the case.<sup>54</sup> The best description of the class is probably what happened during the first trial class of Langdell’s case method teaching.<sup>55</sup> Soochow’s “Mr. Fox,” “Mr. Rawle,” and “Mr. Adams” managed to survive the case method again, English being , merging themselves into classroom discussion in 11b Quinsan Road, Shanghai. Classrooms became even more exciting “in a dazzling of glee and mirth” with several Miss Foxes and Miss Rawles who arrived at Soochow when in 1928 the university started to admit female students.<sup>56</sup>

### C. “The Selletistic style”

There was another difference (beside the teaching place and the social environment) between

---

<sup>52</sup> Ibid. It seems that history too often repeats itself in detail: the first trial class of case method of instruction by Langdell in Harvard was also Contracts. Charles Warren, *History of the Harvard Law School and of Early Legal Conditions in America*, 3 vols. (New York: Lewis Pub. Co., 1908), 372-73.

<sup>53</sup> “東吳大學法律學院一覽 Dongwu Daxue Falv Xueyuan Yilan [Catalogue of Cls],” (1935), 49. The use of this case book is my supposition based on the use of the same book in Contracts in 1935. Since the same course was still taught by Sellet, it might be that he had not changed the book for ten years.

<sup>54</sup> Ni, 淡泊從容蒞海牙 *Danbocongrong Li Haiya (Personal Memoir of the Cls Graduate)*, 22.

<sup>55</sup> “Mr Fox, will you state the facts in the case of *Payne v. Cave*?

Mr Fox did his best with the facts of the case.

Mr Rawle, will you give the plaintiff’s argument?

Mr Rawle gave what he could of the plaintiff’s argument.

Mr Adams, do you agree with that?

And the case system of teaching law had begun.....” Harvard Law School. Association (1886-), *The Centennial History of the Harvard Law School, 1817-1917*, 34/35.

<sup>56</sup> Guoping Wang, 東吳大學簡史 *Dongwu Daxue Jianshi [a Brief History of Soochow University]*, 1 ed., Suzhou Daxue Xiaoshi Congshu (Suzhou Shi: Suzhou Daxue Chubanshe, 2009), 202; “東吳年刊 Dongwu Niankan [the Soochow Annual],” 162; *ibid.*, 170.

the early days of case method at Soochow and at Harvard. Compared to Langdell, Sellet had a much greater number of “James Barr Arnes”<sup>57</sup> to continue and enhance case method teaching in Soochow.

One of the students in Sellet’s first Contracts class, Arthur C. Y. Yao, went to Michigan Law School and returned to Soochow with a JD degree. He “wholeheartedly adored the Selletistic style”<sup>58</sup> and taught Contracts after Sellet left Soochow during WWII.<sup>59</sup> A student’s dairy proved that he had truly inherited Sellet’s style, blending it with his own personality and offering the best of case method. He “appeared to be care-free about size of briefs, saying that it should be limited to sixty words,” yet students “normally have to exceed the limit by two or three times.” The ways that he raised questions in the Socratic discussion was “infinitely complicated.” A student might find it easy to deal with several rounds of classroom cross-fires clarifying facts of a case, yet Yao would astonish the student, when digging further into jurisprudential topics, asking “why is it so?”<sup>60</sup> Seeing the poor student “paralyzed as a wooden bar,” Yao would then express his interpretation of the case, starting by the classic sentence structure “I repeat (the case).” The student remembered particularly his love of music and he often used “sing a song” as an example in “consideration” of a case. Admirations of Harvard students on James Arnes perhaps also fits Yao: “he desired to open the eyes of his students and let them discover the truth for themselves.”<sup>61</sup>

Ao Sen was a classmate of Yao at Soochow and the two men went to the States on the same

---

<sup>57</sup> Harvard Law School. Association (1886-), *The Centennial History of the Harvard Law School, 1817-1917*, 37.

<sup>58</sup> Ni, 淡泊從容蒞海牙 *Danbocongrong Li Haiya (Personal Memoir of the CIs Graduate)*, 22.

<sup>59</sup> “東吳大學法學院年刊 the Woolsack [the CIs Annual],” (1945).

<sup>60</sup> *Ibid.*, 65.

<sup>61</sup> Harvard Law School. Association (1886-), *The Centennial History of the Harvard Law School, 1817-1917*, 37.

boat, but Ao went to Stanford Law School.<sup>62</sup> As Yao, he returned to Shanghai soon after graduation, and started a lifetime career teaching at Soochow, besides pursuing his own successful practice as a lawyer in the city.<sup>63</sup> His teaching style appeared more “fearful” than that of Yao: He had a “zero tolerance policy” for tardiness; the punishment was to recite the case before the entire class, contrary to his normally flexible policy of allowing direct reading from a prepared page. Hwei-Chen Yu, secretary of the Law Society and a diligent student, was unfortunately ten minutes’ late<sup>64</sup> in Ao’s class and had not prepared the brief. Moreover, she had not prepared for the previous class, either. Putting her head low and hiding in the shadows, she hoped to escape the burden. But her clumsiness immediately sold her out and Ao called upon her immediately. She was so worried and unprepared that only such the following words came out of her mouth, “plaintiff brought an action against defendant.” After a long time of silence, Ao laughed, “Of course in every case it is ptf. vs. Def.”

Many students naturally preferred to prepare their briefs on a page and read it out in the class. Whereas Yao allowed it, and Ao was generally tolerant (except, as seen, when he caught a student coming in late), Henry K. F. Ai forbade the behavior. Also a graduate of Soochow, Ai specialized in teaching International Law and was the legal adviser to the Swiss Consulate General in Shanghai. In his class, every student had to recite the brief. Jack Y. H. Yuen<sup>65</sup> had the strictest policy on brief preparation his class on Torts was the students’ most fearful “nightmare.”<sup>66</sup> If a student read from a book, he would say “everybody has a case book.”<sup>67</sup> Then he or she

---

<sup>62</sup> Ni, 淡泊從容蒞海牙 *Danbocongrong Li Haiya (Personal Memoir of the Cls Graduate)*, 28.

<sup>63</sup> 東吳春秋 *Dongwu Chunqiu [a History of Soochow University: A Hundred and Tenth Anniversary]*, (2010), 24.

<sup>64</sup> “東吳大學法學院年刊 the Woolsack [the Cls Annual],” 63.

<sup>65</sup> B.A., L.L.B., University of Michigan.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, 20.

might close the book, but he or she would find it impossible to memorize pages of cases swallowed in haphazardly last night, and a close friend passed on to the student a life-saving brief. Prof. Yuen could always, however, see that, “you borrow a brief from someone else.”<sup>68</sup>

The pedagogical method of Soochow in the 1940s was perhaps more complicated than pure case method. An alumnus in the 1940s wrote, “it was not entirely case method, but a combination with seminars;” it was not “straight lectures,” but “continuous communication between professors and students.” His most impressive professor was, unsurprisingly, the best student of Sellet, Arthur Yao.<sup>69</sup>

Beside case books and “the participation of students in class discussion,” exam tips of a student<sup>70</sup> suggests that Soochow held “the problem type of examinations” for case method classes, the third device of case method.<sup>71</sup>

#### D. 1927-1937, The Wu Period and Further Sinification

As more Chinese jurists entered its faculty, a subtle change occurred at Soochow. Although early Soochow graduates who became faculty members obtained degrees in American law schools and focused on Anglo-American law, they were inclined to apply their legal knowledge to the betterment of the Chinese system, starting from extending the curriculum to include more courses in Chinese law. The Comparative Law School of China transformed itself from a

---

<sup>68</sup> Ibid., 63.

<sup>69</sup> Zhongcheng Chen, 東吳歲月 *Dongwu Suiyue [Life in the Cls] (Personal Memoir of the Cls Graduate)* (2008), 14. See also “東吳大學法學院年刊 the Woolsack [the Cls Annual],” 60. For more stories in Soochow classes, see 東吳春秋 *Dongwu Chunqiu [a History of Soochow University: A Hundred and Tenth Anniversary]*, 24; *ibid.*, 28; *ibid.*, 305-06. For C. H. Wu’s Logic of Would be, the most famous class in Soochow, see “東吳年刊 *Dongwu Niankan [the Soochow Annual]*,” 149.

<sup>70</sup> “東吳大學法學院年刊 the Woolsack [the Cls Annual],” 65.

<sup>71</sup> Edwin Patterson, “The Case Method in American Legal Education: Its Origins and Objectives,” *Journal of Legal Education* (1951): n34, 10.

Christian Law School *in* China, to a Christian Law School *for* China.

As early as 1915, Criminal Law, Family Law and Criminal Procedures were offered bilingually: a three hour class compose of two hours of English for Anglo-American and one hour of Chinese law.<sup>72</sup> In the summer of 1926, with the approval of President Nance of Soochow University and Dean Blume, Sellet invited the first full-time Professor of Chinese Law, Judge C. H. Chang.<sup>73</sup> In 1926, second year students were required to take Chinese Civil Law in Contracts, Torts and Property offered by Chang, and third years students were taught Chinese Commercial Law by Mr. D. S. Chen.<sup>74</sup>

The military success of Kuomintang's Northern Expedition in 1927 accelerated the Sinification process both in curricula and administration. As soon as KMT unified China and relocated the capital of ROC to Nanking, The Ministry of Education required Christian colleges to register and reserve more than half of administrative positions for Chinese. Soochow welcomed the policy and soon registered in MEROC.<sup>75</sup> A Soochow and Northwestern University Law School graduate, Dr. Robert C. W. Sheng, was appointed dean, and a new position of the highest leadership in Soochow, "principal of the law school" was created by the board of trustees and given to John C. H. Wu.<sup>76</sup> Under Wu's principalship and Sheng's deanship, the curriculum included a much larger number of Chinese Law courses and the school hired a greater number of profes-

---

<sup>72</sup> Alison W. Conner, "The Comparative Law School of China," *UNDERSTANDING CHINA'S LEGAL SYSTEM*, C. Stephen Hsu, ed., New York University Press, 2003 (1905): 244.

<sup>73</sup> 回溯 *Huisu [the Quadranscentennial History of Soochow University 1901-1926]*, 27.

<sup>74</sup> "東吳大學法律科章程 Dongwu Daxue Falvke Zhangcheng [Regulations of Soochow University Law School]," The English side 7.

<sup>75</sup> "私立東吳大學為抄送1929年教育部覈准立案的訓令致法學院函 [Order from Meroc Confirming Registration of Soochow University, Forwarded by Soochow University to the Law School]," (1929); "東吳法科改為東吳法學院 [Soochow University Department of Law Upgraded to Soochow University Law School]," 申報 *Shun Pao (the most influential newspaper in ROC era Shanghai)*, 03/26 1927.

<sup>76</sup> "東吳年刊 Dongwu Niankan [the Soochow Annual]."

sors of Chinese Law.<sup>77</sup>

From the 1935 catalogue of Soochow we can see achievements of localization. The compulsory courses in Chinese law increased to more than ten, covering Chinese Court Organization, Chinese Criminal Law, Chinese Civil Law, Chinese Insurance Law, Chinese Bankruptcy Law, etc.<sup>78</sup>

Similar arrangements continued to 1936, the last year that Soochow remained undisturbed by the military invasion of the Japanese in 1937.<sup>79</sup> The most important Chinese law course was perhaps Chinese Constitutions; it was drafted by Soochow's own principal, C. H. Wu,<sup>80</sup> vice-chairman of the Constitution Draft Committee of Legislative Yuan.<sup>81</sup>

The expansion of the teaching of Chinese law at Soochow did not mean the contraction of Anglo-American Law, though there were major changes. The Anglo-American law courses were distributed evenly throughout the study. Criminal Law (using *Cases on Criminal Law* by C.S. Kenny) was moved to the second year, while Contracts, still taught by Sellet, and Torts, occupied the Compulsory Credit for Anglo-American law in the third and the fourth year.<sup>82</sup>

The introduction of case method into teaching of Chinese law led to a more profound transition. The Republic of China under the control of KMT started making major legal codes in 1928 after the completion of Northern Expedition, but it had inherited Peking government's legal system with heavy influence from German and Japanese law. Professors in Soochow, however, borrowed certain elements of case method to teach Chinese law. P. C. Young, again a Soochow

---

<sup>77</sup> For a faculty list in 1930s see *Ibid.*, 71-73.

<sup>78</sup> "東吳大學法律學院一覽 Dongwu Daxue Falv Xueyuan Yilan [Catalogue of Cls]," 38.

<sup>79</sup> "東吳大學法律學院一覽 Dongwu Daxue Falv Xueyuan Yilan [Catalogue of Cls]," (1936).

<sup>80</sup> , National Assembly of ROC, <http://www.na.gov.tw/ch/intro/IntroView.jsp?itemid=1>.

<sup>81</sup> "東吳大學法學院年刊 the Woolsack [the Cls Annual]," 11.

<sup>82</sup> "東吳大學法律學院一覽 Dongwu Daxue Falv Xueyuan Yilan [Catalogue of Cls]."

graduate, taught Bills and Notes and Criminal Law. He summarized his own “case books” from real cases in Chinese courts of different periods, such as cases of *Dalisi*, the highest judiciary authority of the Qing dynasty and the Supreme Court of ROC.<sup>83</sup> Mr. Ai, the strict professor that required students to recite briefs, when teaching Chinese Maritime Law, often used local cases, and sometimes coined his own. One time the classroom discussion came across the problem of General Average, and he said immediately before the students, “what if the problem happens in Slender West Lake,<sup>84</sup> who should have jurisdiction?” Then he suggested referring to “Ebbs and Tides” in public international law. “You see, very interesting,” commented Ai, “smiles climbing up to his entire face.”<sup>85</sup>

As Young and Ai, other Soochow faculty members strove to balance their Chinese identity with Western training. Yao “never spoke Chinese in classes,” and the students were curious about his province of origin. When asked by Ai outside of the classroom in a party, “why would you not confess you are a Soochownese?” Yao replied excitedly “Na, what are ye talking about? I am an authentic Hangchownese.”<sup>86</sup> This reply was indeed in the authentic Hangchow dialect, and Yao apparently no longer intended to hide this time.<sup>87</sup>

With expansion of the student body, Soochow students also brought into the school elements of traditional Chinese society and educational institutes. The most active type of student or-

---

<sup>83</sup> “東吳大學法學院年刊 the Woolsack,” (1945), 64.

<sup>84</sup> Located in Yangzhou, Professor Ai’s hometown, one of the largest trading ports in the Tang dynasty. From Yangzhou Master Jianzhen travelled to Japan and introduced the Ritsu school of buddhism. (There is a portrait of him on the ground floor of Lawrence Hall of Colgate University.)

<sup>85</sup> *Ibid.*, 63.

<sup>86</sup> *Ibid.* Hangchow and Soochow were regarded as the two most beautiful cities in China. As the household saying goes, “there is a paradise in the heaven, and we have Soochow and Hangchow on the earth.” Another Christian mission, Presbyterian Church were aware of the saying and founded Hangchow University, another renowned Christian college, famed for its department of engineering.

<sup>87</sup> *Ibid.*



ganization, *besides academic and co-curricula clubs*,<sup>88</sup> was not Y. M. C. A. or other Christian associations, but “fraternities” of a special kind that were organized by geographical origin.<sup>89</sup> The oldest one in Soochow was the Liang Kwang Club<sup>90</sup> and the most powerful one was the Ningpo club.

The role of such clubs in Chinese society and schools is significant. In pre-republican China, the unified Chinese language and the Imperial examination glued the country vertically, while local issues were determined by wealthy landlords and learned scholars.<sup>91</sup> In “times of peace and prosperity,” generations of the same family would live together, participate in political discussion, and manage local schools. Such a social-political structure created a tremendously strong affinity to one’s hometown. In “times of turbulence,”<sup>92</sup> when people from the same village or town went out to earning their livings, “fraternities” acted as a protective shield for them that kept the local tradition.

The time of the early Republic was certainly viewed by traditionalists as one of the most atrocious “times of turbulences” (even Imperial examination was abolished in 1905) and a great number of fraternities appeared in all walks of life. The power of united fraternities could lead to extreme violence, yet in the hands of Soochow students the organizations were used well to further their study in Anglo-American, Roman, and Chinese Law. The fraternities gained much

---

<sup>88</sup> The most important and best funded one was the moot court. See 回溯 *Huisu [the Quadranscentennial History of Soochow University, 1901-1926]*, 8; “東吳大學法學院年刊 the Woolsack [the Cls Annual],” 67.

<sup>89</sup> For example, imagine a fraternity called NY that only admits members from the NY state, and all NY state citizens of the college were strongly recommended to join or did not have a good reason for not joining.

<sup>90</sup> Kwantung and Kwangsi (Guangdong and Guangxi).

<sup>91</sup> To participate in local political issues, a scholar needed to pass certain level of the Imperial examination.

<sup>92</sup> “Times of peace and prosperity” and “times of turbulences” are a pair of antithesis in classical Chinese political thoughts, depending on whether the Confucian ideal was realized or not (family living together, education of youngsters conducted locally, etc.)

help from C. H. Wu and Y. C. Yang (the first Chinese president of Soochow University), both of them native Ningponese.<sup>93</sup> Even Chiang Kai Shek, a Ningponese as well and the de-facto ruler of China since 1927 is mentioned in the introduction of the Ningpo Club:<sup>94</sup> it was not impossible, after all, for the young and brilliant law school students to meet Chiang through the introduction of senior members, such as Wu, who at the time was already a prominent political figure in China.

After twenty years of effort, the Comparative Law School of China reached its peak. In 1935 it offered a full series of courses in Anglo-American, Roman and Chinese Law, categorized into eleven distributions<sup>95</sup> and blended some most profound traditions of Western and Chinese education into its own.

Christianity was certainly a pillar of Soochow spirit. Charles Rankin was thinking of producing "Christian lawyers,"<sup>96</sup> who would "put public service before private gain and make their profession an effective means for realizing justice on earth."<sup>97</sup> Wu agreed and wished to see Soochow graduates becoming Christian lawyers "not in the sense of 'church-going', still less in the sense in which the 'fundamentalists' take it, but in the sense of Christ-like!"<sup>98</sup> In his view, Lord Mansfield was "Christ-like," declaring "I never like to entangle justice in matters of form;" Roscoe Pond was "Christ-like" "in his struggle against the mechanical jurisprudence;" and Ru-

---

<sup>93</sup> "東吳年刊 Dongwu Niankan [the Soochow Annual]," 278.

<sup>94</sup> Ibid.

<sup>95</sup> Government Organization and Court Administration; Criminal Laws and Criminal Science; International Law and International Relations; Chinese Civil Laws; Commercial Laws, Sociology and Economics; Special Laws; Procedure Laws and Legal Forms; Jurisprudence and Philosophy; Legal History, Legal Bibliography and General History; and Comparative Laws. For the complete courses description, see "東吳大學法律學院一覽 Dongwu Daxue Falv Xueyuan Yilan [Catalogue of CLS]," 37-59.

<sup>96</sup> 鹵厂 Luchang, "東吳大學法律學院的今昔 Dongwu Daxue Falv Xueyuan De Jinxi [Past and Present of CLS]," 新社會半月刊 *Xinshehui Banyuekan* 1932, 266. Or another source

<sup>97</sup> 回溯 *Huisu [the Quadranscentennial History of Soochow University 1901-1926]*, 26.

<sup>98</sup> Ibid., 28.

dolf Stammer is “Christ-like” in his Promethean fight against the materialistic conception of history.<sup>99</sup>

Wu knew well the story of Pao Ching Tien as well as the Confucian, Taoist, and Buddhist classics<sup>100</sup>; these classics provided the other source of inspiration for Soochow’s exploration in legal education and legal studies. Wu adored one side of Chinese spirit of “love for peace and harmony” which may be a crucial contribution, when soundly interpreted, to legal ethics of the world, but he was also cautious in the extent of borrowing from the tradition.<sup>101</sup> In a 1932 article, “The Struggle Between Government of Laws and Government of Men in the History of China,” he criticized superfluous infiltration of traditional morality into the imperial legal system and lamented that the eventual victory of Confucianism sent the legal science into hibernation for two thousand years.<sup>102</sup>

unclear. Wu’s colleagues echoed him in comparing Western and Chinese legal thoughts and lessons they could learn to improve Soochow’s education; their dedications to the Woolsack (the yearbook of Soochow) represented much increased diversity of thoughts and spirits in Soochow’s faculty members. Quotes from works of four prominent jurists from four different nations occupied opening pages of the 1944 Woolsack, the first issue since the start of WWII. The quotes are from Holmes’ *Collected Legal Papers*, Leon Duguit’s *Droit Objectif*, Rudolf Stammer’s *Lehrbuch der Rechtsphilosophie* and Del Vecchio’s *Lezioni di filosofia del diritto*. In another issue of Woolsack, Dr. Lloyd L. C. Char<sup>103</sup> wrote in traditional Chinese and opened with quotes of Men-

---

<sup>99</sup> Ibid.

<sup>100</sup> His parents died in his early youth and relatives sent him to a traditional primary school in Ningpo and read Chinese Classics. Jian, “超越東西方：法學家吳經熊 Chaoyue Dongxifang: Faxuejia Wu Jiongxiang [Beyond East and West: Jurist C. H. Wu].”

<sup>101</sup> Ibid.

<sup>102</sup> I have to attribute my own comments in Chapter One on Chinese legal system to Dr. Wu’s words.

<sup>103</sup> Once again, a Soochow graduate.

cius, “a kingdom would not last forever without righteous men defending laws in the court.”<sup>104</sup> He then continued describing the relative completeness of the Chinese legal system by the Tang dynasty and how it was weakened in late Ching. Yao quoted in his dedication an English joke of a man visiting a tombstone who was surprised at a lawyer being burnt with an honest man in one grave, exhorting the graduates that although such a stereotype exists in the career, “this is true of all profession” and it is not enough “to be honest,” but one must be “believed to be honest.”<sup>105</sup>

More complicated was Professor Henry Ai’s work. He quoted from the *magnum opus* of Lao-tze in Chinese, translated the sentence into English and placed the translation and the original text together. Dr. Karl Büniger, Professor of German Civil Law, quoted from *der Kampf ums Recht* of Rudolf von Jhering that “[d]as Ziel des Rechts ist der Friede (the aim of gaining rights is peace),” and he translated the paragraph into Chinese and put it under the German version.<sup>106</sup>

The most able writer was perhaps Ao Sen, as Professor of Evidence, he wished the graduates in writing to “pass this heritage (of Soochow) to those who may follow” and as dean, he composed a Chinese poem of a sophisticated meter to exhort the students to “revive the old spirit of a learned Chinese gentleman and salvage the country when morality and laws were sinking.”<sup>107</sup>

On the thirtieth anniversary of the Comparative Law School of China in 1945, faculty and students had just returned to the “sub-leased” campus long occupied by the Japanese army since

---

<sup>104</sup> “東吳大學法學院年刊 the Woolsack [the Cls Annual],” (1946), 24. It comes from the most recited piece of writing of Mencius, 生於憂患死於安樂 [One survives by combating calamities, yet perishes in ease and joys.] It is still a required text in most Chinese high schools nowadays.

<sup>105</sup> “東吳大學法學院年刊 the Woolsack [the Cls Annual],” 18.

<sup>106</sup> *Ibid.*, 21.

<sup>107</sup> *Ibid.*, 6.

1937. No meetings or celebrations were held, but the school had stood firmly in Shanghai and had fostered a new system of training legal professionals for China. Soochow preserved respect for traditions and written classics in Confucianism and transformed the traditional Chinese legal ethic of Pao Ching Tien, with the help of Rankin's Christian spirit, from loyalty to the imperial "court" to, as the strict professor Yuen, who required recitation of every brief, wrote, the duty of aiding the modern "court" to see that "the law is administered correctly and without partiality."<sup>108</sup> The combined spirit healed some prejudice of both Western and Chinese societies--appointment of female professors never gave rise to great objections. In late 1940s, a Columbia Law School graduate, Ms Cheng Lingxiu, charmed the students by her "fluent American English" and taught "Legal Ethics."<sup>109</sup>

It is perhaps not a coincidence that every dean of Soochow after Blume, namely Robert Sheng, Ao Sen, and C. L. Yang, specialized in Evidence, the third unparalleled skill of Pao Ching Tien. Ao Sen taught Evidence in Soochow, and both Robert Sheng and C. L. Yang were students of John Henry Wigmore, dean of Northwestern Law School, an expert in the law of evidence.

#### E. "Something about everything"

When the focus of Soochow in the legal field expanded to its widest range, the liberal arts component of the curriculum was formally introduced as well. It was put into the first year of the five years course, and covered sociology, political science, economics, criminology, Chinese and English literature. Legal Latin was offered as one of the most popular electives.<sup>110</sup> The basic structure of one year of liberal arts followed by three to four years of professional training was

<sup>108</sup> "東吳大學法學院年刊 the Woolsack," 20.

<sup>109</sup> Zhongcheng Chen, 東吳歲月 *Dongwu Suiyue [My Life in CIs] (Personal Memoir of the CIs Graduate Mr. Chen)* (2008), 10.

<sup>110</sup> "東吳大學法律學院一覽 Dongwu Daxue Falv Xueyuan Yilan [Catalogue of CIs]," 44. School of Arts and Science of SU offered Latin much earlier, emphasizing on its "profound influence in the English language." "東吳大學堂 Dongwu Daxuetang [the Soochow Annual]," (1909), 31.

not altered even during WWII when the school was divided between Shanghai (which changed its name several times to escape Japanese control) and Chungking (as part of the United College of Soochow and Shanghai).<sup>111</sup>

#### F. The last glimpse, Trial of Tokyo

Outside of Shanghai, Anglo-American law in China had less of a market in which to practice, but Soochow graduates were still the most competitive due to their background in comparative law. Thus they were able to cope with a great number of legal professions and systems. The alumni became so powerful that they had a nickname: the Tung Wu (Chinese name of Soochow University) warlords of the Chinese legal profession (“東吳法閥”).<sup>112</sup> The first cooperative effort of Soochow graduates to present Anglo-American law's value for China directly before the nation was The International Military Tribunal for the Far East, or the Tokyo Trials. None of the participants perhaps could imagine that it was the last time as well.<sup>113</sup>

---

<sup>111</sup> "私立東吳大學、滬江大學、之江大學聯合法商工學院校刊 [the Yearbook of the United College of Soochow, Shanghai, and Hangchow]," (1945). For further reading on Soochow's predicament in WWII, see "東吳大學法學院年刊 the Woolsack [the Cls Annual]," 43.

<sup>112</sup> "上海各大學的輪廓畫 [What Is It Like Attending Different Colleges in Shanghai?]," 學生月刊 [Student Monthly] 1941.

<sup>113</sup> For a more detailed description of Soochow graduates contribution in the Trials of Tokyo, see 東吳春秋 *Dongwu Chunqiu* [a History of Soochow University: A Hundred and Tenth Anniversary], 120-21; *ibid.*, 140-41; *ibid.*, 329; *ibid.*, 329-30; Ninghua Sun, "蘇大10位校友親歷東京審判 [Ten Soochow Graduates Working for the Trials of Tokyo]," 蘇大校友 [The Alumni Magazine of Soochow University (the PRC one founded in 1952)] 2006; Wang and Zhou, 蘇州大學校史研究文選 [Selected Papers on the History of Soochow University (Prc)], 258-63.

## IV. Soochow in 1952

### A. “Red Star over China”

When Dean Ao Sen was writing the dedication, wishing that his students could “pass on the heritage,” the world outside of Quinsan Road was in chaos. As one of the Allies, ROC won the war against the Japanese as part of WWII, yet the country barely had a rest when conflicts between KMT and CPC broke into open fire. CPC eventually won the civil war and “liberated” Shanghai on May 27<sup>th</sup>, 1949 and established Shanghai Municipal People’s Government. In the first few years, CPC held back from systemic social reorganization. Department stores of Nanking Road kept opening and Christian schools continued to exist.<sup>114</sup>

### B. “Curricular Reform”

C. H. Wu and all non-Chinese faculty members had already left Soochow before or soon after the “liberation.”<sup>115</sup> Robert Sheng stayed but soon handed over the principalship to C. L Yang, who was ambitious to consolidate the comparative law tradition of Soochow to perfect the legal system of “new China.” The “curriculum reform,” however, started soon after his appointment as principal. On May 15<sup>th</sup> 1951 the Ministry of Education of PRC sent a “reformed curriculum” designed for Soochow and demanded “the personnels that it may concern” to “discuss” and send their feedbacks. MEPRC left Soochow only two weeks to reply.<sup>116</sup> In the redesigned curriculum, the officers “decided” that the new education philosophy was to “consolidate Peo-

---

<sup>114</sup> Guotong Zhao, *Interview near Shanghai Jiaotong University* (06/25/2011). For details of underground CPC members’ activity in Soochow, see 東吳春秋 *Dongwu Chunqiu [a History of Soochow University: A Hundred and Tenth Anniversary]*, 59-61; *ibid.*, 62-64.

<sup>115</sup> Wu left in 1937 for Hong Kong.

<sup>116</sup> “私立東吳大學法學院呈報中央教育部、華東教育部的法律系課程草案課程表修正初稿的意見 [Opinions of CIs on the Reformed Curricula Drafted by Ministry of Education of Prc and Bureau of Education of East China],” (1951).

ple's democratic dictatorship, to adapt to the need of the state's construction . . . and to produce legal-political officers and teachers who have good understanding of the regulations and orders of CPC, the people's government and the People's Liberation Army and a good understanding of the nature of 'New Laws.'"<sup>117</sup>

The "reformed curriculum" abolished almost completely teaching of Chinese laws made during the republican era, including the constitution made by Wu. There was no need to, for CPC abolished all prior laws and replaced them with newly-made codes according to the principle of "New Democracy" based on Mao Tse Tung's theory of "the Bloc of Four Social Classes." Teaching of Chinese laws was thus divided into two categories. For the recently-made "New Laws", the teachers were expected to emphasize their "better nature" than "Old Laws," such as the "New Marriage Law" and the "New Land Law;" for the small portion of "Old Laws" that had been replaced, they should only criticize and not "compare too much with 'New Laws.'"<sup>118</sup>

Besides a massive replacement of "Old Laws" of "Old China" by "New Laws" of "New China," Anglo-American and Roman Law courses completely disappeared. There was only one course that appeared to be related to foreign issues, "International Law," but another principle stated, in "teaching International Law," the teacher should be, "according to Chapter Seven of the Common Program,"<sup>119</sup> "clear in his mind who are our enemies and who are our friends and carry out at the same time the spirit of Patriotism and Internationalism."<sup>120</sup>

The status of case method, however, was in a subtler situation. American case books were certainly thrown away or locked in the archives, but the practice of case summarizing and class-

---

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Referring to "The Common Program of the Chinese People's Political Consultative Conference," the first temporary constitution of the PRC.

<sup>120</sup> Ibid.



room discussions continued in courses of “New Laws,” especially in the legal fields where the so-called “philosophy of New Laws” had not produced a functioning legal code for the PRC, such as Civil Law<sup>121</sup> and Criminal Law. It was stated explicitly that such classes involved four parts: researching materials (i.e., reading and digesting the materials and making a “brief”), summarizing cases, discussing key topics, and making conclusions. The name of these courses were literally called “Criminal Law Discussion” or “Civil Law Discussion.”<sup>122</sup> The standards of the materials to be chosen were so flexible that “if in that particular legal field, a ‘New Law’ has not been made, the teacher was free to choose from “policies, orders, decisions, commands, or notifications of related social units.”

The continued existence of case method and classroom discussion, however, should not produce the illusion that Soochow continued to flourish with its original education philosophy. Each “discussion” course was paired with a “principle” course that indoctrinated the nature of “class struggle.” For example, in a course entitled “Criminal Law Principle,” the materials to be covered were “the class nature, traits, inter-relationship of, and differences between different types of crimes in a People’s Democracy, such as anti-revolution, anti-land-reform, anti-state, etc.”<sup>123</sup> When each student went to the “discussion” class, he or she had already been fully equipped with “principles,” and makers of reformed curriculum expected discussions to go on smoothly and voluntarily, as Edgar Snow saw in Yan’an and other parts of Northwest China.<sup>124</sup>

### C. “The United Learning Committee of Soochow”

What if a teacher did not agree with the “principles,” and chose to stick to his or her “Old

---

<sup>121</sup> The PRC still has not made a functioning Civil Law Code after sixty-one years of adopting “New Laws.”

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Edgar Snow, *Red Star over China*, 1st rev. and enl. ed. (New York,: Grove Press, 1968), 274, 338.

Laws”? And what if a student did not swallow the “class nature” of PRC’s “New Laws” and dared to challenge in “discussion” courses with a quote from Han Feizi, the Magna Carta or Plato’s *Republic*?

In fact, Soochow’s administrative team, especially Principal Yang, did not give in completely to the “reformed curriculum.” He was ambitious to solidify the tradition of comparative law and his version of “reform” was to include more Soviet laws without cutting any courses.<sup>125</sup> Since 1950, smaller scales of reforming order already came from MEPRC,<sup>126</sup> and Anglo-American laws were put under the protective new names “Comparative Civil Law” or “Comparative Criminal Law.”<sup>127</sup> In 1951, the arrangement continued.<sup>128</sup> The embrace of “New Laws” was never full and voluntary.

Here comes the necessity of “political learning,” to help those who have fallen backward in the great revolution to “catch up with the steps of the People.”<sup>129</sup> To facilitate on-going and future “reforms,” the United Learning Committee of the Region of the Comparative Law School of China was established, which was also in charge of several other educational institutes near Soochow.

There were countless number of ULCs in PRC in early 1950s and the tradition of political learn-

---

<sup>125</sup> Chao Lung Yang, Yongming Ai, and Jinbi Lu, 楊兆龍法學文集 [*the Complete Works of C. L. Yang*], 1 ed., Dongwu Faxue Xianxian Wencong (Beijing: Falv Chubanshe, 2005), 727; Zhengyu Ni, 淡泊從容蒞海牙 *Danbo Congrong Wei Haiya (Personal Memoir of the Cls Graduate Mr. Ni)* (1999), 133.

<sup>126</sup> "私立東吳大學法學院1950年秋季學期課程改革總結報告 Sili Dongwu Daxue Faxueyuan 1950nian Qiuji Xueqi Kecheng Gaige Zongjie Baogao [Conclusive Report on Result of Curricula Reform of Cls, Fall 1950]," (1950).

<sup>127</sup> "私立東吳大學法學院1950年秋季教學計劃和講授提綱 Sili Dongwu Daxue Faxueyuan 1950nian Qiuji Jiaoxue Jihua He Jiangshou Tigang [Teaching Plan and Syllabi of Cls, Fall 1950]," (1950).

<sup>128</sup> "私立東吳大學法學院1951年春季學期教學計劃 Sili Dongwu Daxue Faxueyuan 1951nian Chunji Xueqi Jiaoxue Jihua [Teaching Plan of Cls, Spring 1951]," (1950).

<sup>129</sup> A catch-phrase of the time that has entered colloquial Chinese ever since.

ing has not stopped for a single day since the Yan'an period.<sup>130</sup> CPC central committee explicitly stated that ULCs should borrow from the Yan'an system when ULCs started in PRC schools.<sup>131</sup> Since its establishment in Soochow, ULCRCLS at once started to function. As in other places, it divided Soochow professors and students into small study groups and organized study sessions; in each study group there were always several trusted Political Work Officers acting as "political life tutors." Initial phases of such sessions were more peaceful, involving discussions, "inter-critique and self-critique," the low tutor-student ratio ensured efficiency of the discussions and critiques.<sup>132</sup>

To carry out ULC in Soochow was not an easy task. The extraordinary level of learning of Soochow professors was much higher than tutor selected based on "loyalty to People's Democracy." Exceptionally intelligent ones, such as Yang, could learn Russian within two years and finished writing a voluminous essay "On the Class Nature and the Inherent Nature of Laws"<sup>133</sup> in the 1950s, quoting extensively from Russian and particularly Soviet sources that CPC relied on as a bible in all fields, arguing directly against abolishing "Old Laws" and creating so-called "New Laws."<sup>134</sup>

ULC also encountered great difficulty in "controlling" the students.<sup>135</sup> The communists in So-

---

<sup>130</sup> Political learning still exists, but has become more entertaining than forceful. After the opening up of PRC, a great number of activities might count as political learning. This year's prime activity was national competitions of "red songs," i.e., music related to the history of the Red Army, PLA, CPC, CPC leaders, etc. They borrowed certain procedures from Western TV shows such as "America's Got Talent."

<sup>131</sup> "關於在學校中進行思想改造和組織清理工作的指示的通知 [the Order to Carry out "Thoughts Reconstruction" and "Social Organizations Cleaning" in Schools]," (1951).

<sup>132</sup> Ni, 淡泊從容蒞海牙 *Danbo Congrong Wei Haiya (Personal Memoir of the CIs Graduate Mr. Ni)*, 134.

<sup>133</sup> Yang, Ai, and Lu, 楊兆龍法學文集 *[the Complete Works of C. L. Yang]*, 577-87.

<sup>134</sup> This paper was the major "crime" he "committed" against "People's democratic dictatorship." *Ibid.*, 727.

<sup>135</sup> "中共上海高等學校委員會填報的東吳法學院全區需要幹部人數總表 [the Complete Table for the Number of Pwos Needed to Facilitate Political Learning in Ulcrcls, Filled by Shecccp]," (1952).

soochow reported that “the political situation” of the “masses”<sup>136</sup> in Soochow was “extremely complicated.”<sup>137</sup> Even the ability of the members of the Communist Youth League of the school<sup>138</sup> was “limited.” SHECCPC then applied on behalf of ULCRCLS for “external supply” of political officers. The energy devoted into “educating ‘Old Laws’ personnel of Soochow” was so great that ULCRCLS even requested that PWOs who might have “personal problems” in Three-Anti Campaigns<sup>139</sup> not to be sent back to their “home units” to report, because the “students’ political work” in Soochow was “overwhelmingly burdensome.”<sup>140</sup> The number of PWOs needed in Soochow was so large that it had to borrow from nearby ULCs, such as the ULC of Tongji University,<sup>141</sup> this caused a shortage in PWOs in Tongji, which in turn requested BEEC to “allocate them back.”<sup>142</sup> With the resources of the ULC potentially available in all of East China, ULCRCLS succeeded in its mission of “asserting Marxism and Leninism as the dominant thoughts in the school.”<sup>143</sup>

#### D. “Adjustment of Colleges and Departments”

---

<sup>136</sup> “Masses” and “Party Members” are a pair of phrases used by CPC until today. “Politically reliable members” of the Masses become party members, whereas troublesome ones become “people’s enemies.” Most professors and many students of Soochow became “people’s enemies” in Anti-Rightists Movement.

<sup>137</sup> Ibid.

<sup>138</sup> Developed within the student body, they were supposed to aid PWOs who were normally CPC members.

<sup>139</sup> Another political movement aiming at “reforming” private section of the economy.

<sup>140</sup> Ibid.

<sup>141</sup> A state university originally founded by Germans, well-known for its engineering. In Tongji’s curriculum reform, the tradition of teaching engineering courses in German terminated.

<sup>142</sup> “同濟大學學習委員會關於調去東吳法學院區聯合學習委員會工作的幹部現在是否可以調回的報告 [Request from ULC of Tongji University on Whether Pwos Allocated to Ulcrcls Could Be Reallocated to Tongji University],” (1952).

<sup>143</sup> “私立東吳大學法學院呈報中央教育部、華東教育部的法律系課程草案課程表修正初稿的意見 [Opinions of CIs on the Reformed Curricula Drafted by Ministry of Education of Prc and Bureau of Education of East China].”

The political learning paved the way for the “Adjustment of Colleges and Departments.” In 1952, the central government of the PRC, following the Soviet model, began to rearrange departments of institutes of higher education countrywide. MEPRC ordered engineering departments of top national universities to be separated from arts and science schools and be regathered to form specialized technical institutes. Anthropology, sociology, and non-marxist political science were banned.

The United Office of TO-be-closed-down Higher Education Institutes (UOTOHEI) was set up nationwide and private and Christian colleges were forced to hand in their material properties and human resources to the nearby local office. Soochow’s department of law was annexed into the newly established East China University of Political Science and Law; the department of accounting went to Shanghai University of Finance and Economics (SUFE).<sup>144</sup> The Quinsan Road Campus was confiscated and given to SUFE. The law school entrance, “door of justice” was dismantled and the name of the school on the main building was covered by lime.<sup>145</sup> The entire process was so quick and abrupt that the UOTOHEI in Shanghai was literally using Soochow’s official letter paper. On some sheets UOTOHEI officers crossed at Soochow’s school name on the top and wrote the Chinese characters representing UOTOHEI; on many others, the titles of UOTOHEI and Soochow superimposed. The overall effect was perhaps not ideal for UOTOHEI officers, for the two names mingled with each other, unrecognizable. Soochow’s last letter papers became truly palimpsests of history.

#### E. Pao Ching Tien in the 1960s

Despite being Chinese and a long respected hero, Pao Ching Tien did not enjoy a quiet time

---

<sup>144</sup> Wang, 東吳大學簡史 *Dongwu Daxue Jianshi [a Brief History of Soochow University]*, 185.

<sup>145</sup> See appendix.

during the revolution. A group of Red Guards broke into his mausoleum, burned his portraits, destroyed the tomb and even dug out his bones that had lain there undisturbed for nine hundred years. The Red Guards believed that “Pao’s impartiality paralyzed the Masses and solidified the rule of the Song dynasty, one of the many imperial dynasties of China.” The standard for deciding what was detrimental to the revolution was so flexible that in the wildest days of the Cultural Revolution, People’s Governments were destroyed and replaced by “revolution committees.” Even PRC chairman Liu Shaoqi was accused of being anti-revolutionary. He was most remembered of holding a PRC constitution on August 5<sup>th</sup> 1967 made under the principle of “New Laws,” attempting to drive away the large crowd of Red Guards beating him and robbing his house. But the group of legal professionals who could defend *habeas corpus* had already disappeared: Soochow had been closed for seventeen years and Yang had been put into jail for six years.<sup>146</sup> What is known was that Chairman Liu had been arrested and, because of restriction from treatment, died of a minor disease.<sup>147</sup>

It is worth mentioning that the thoughts and plans against a continued, independent Soochow Law School were not unique with CPC. During KMT’s rule in 1930s and 1940s, MEROC was already standardizing the curriculum, condensing the span of a law degree of Soochow from five to four years.<sup>148</sup> It did not allow the number of students in social sciences (including law) to exceed that registered in engineering for the same reason that CPC claimed to adjust the departments: engineering was deemed more helpful in creating a stronger China.<sup>149</sup>

---

<sup>146</sup> Yang in fact defended Liu when he himself was already in jail, another “crime” that almost brought him the death penalty. Yang, Ai, and Lu, 楊兆龍法學文集 [*the Complete Works of C. L. Yang*], 728.

<sup>147</sup> Open explanation from the CPC was that Liu was prevented from treatment by the Gang of Four. What specific role Mao played in Liu’s persecution as well as Cultural Revolution has not been fully decided.

<sup>148</sup> “私立東吳大學、滬江大學、之江大學聯合法商工學院校刊 [the Yearbook of the United College of Soochow, Shanghai, and Hangchow].”

<sup>149</sup> Xinxian Huang, 基督教教育與中國社會變遷 *Jidujiao Jiaoyu Yu Zhongguo Shehui Bianqian*, 1 ed., 基督教教育與中國社會叢書 *Jidujiao Jiaoyu Yu Zhongguo Shehui Congshu* (Fuzhou: Fujian Jiaoyu Chubanshe, 1996).

Many of the less educated, on the other hand, had long held anti-Christian emotion, which had an even longer tradition, dating back to late Qing dynasty. For the masses, Buddha came in the Tang dynasty “riding on white elephant,”<sup>150</sup> yet in late Ching, Jesus came with “guns and powder of western imperialists.” They could not differentiate between Charles Rankin and George Elliot, Commander-in-chief of the British army in the First Opium War.

The localization crisis in 1927 of introducing more Chinese elements into the school, such as courses in Chinese law and Chinese members in the faculty, was passed thanks to collaboration between a willing faculty and a less controlling government. The Christian colleges and Soochow therefore managed to survive after 1927. In 1952, however, the same prejudice<sup>151</sup> of educators and the same emotion of the Masses were brought back to the table. Soochow was not spared despite its administrators’ tolerance to the spread of communism on its campus before 1949.<sup>152</sup> Backed by the extraordinary executive ability of CPC, Soochow, along with fifteen other Christian colleges had only one destiny, that of complete extinction. With the systemic construction of ULCs in all walks of life, China was eventually “standardized,” but along a different path than that which Soochow graduates had hoped for. It is a thought-provoking phenomenon that some CPC members used to study in Soochow, but they were those who “did not pay attention to learning law” or “sat in the back of the classroom.”<sup>153</sup>

---

<sup>150</sup> Ibid.

<sup>151</sup> That engineering and natural sciences which could build “huge and powerful machines and weapons” were more important to China at the time than “softer” subjects such as law and humanities.

<sup>152</sup> Some Soochow professors saved CPC members in the student body. See 東吳春秋 *Dongwu Chunqiu* [a History of Soochow University: A Hundred and Tenth Anniversary], 139. Principal Yang even helped to release over ten thousand political prisoners involved in communism in 1947. Yang, Ai, and Lu, 楊兆龍法學文集 [the Complete Works of C. L. Yang], 726.

<sup>153</sup> Ni, 淡泊從容蒞海牙 *Danbo Congrong Wei Haiya* (Personal Memoir of the CIs Graduate Mr. Ni), 24. This is not bias of Ni, for the quotes come from the communists’ own memoirs that Ni quoted in his book. The grades of the communist students are probably available in Shanghai Municipal Archives. There were thousands of pages of them preserved.

F. “No light, but darkness visible”

I would like to close this chapter by going back to the personal stories of Soochow professors and graduates with more details. Most of them stayed in China and experienced the numerous political movements mentioned above.

After all private and Christian colleges were closed, Soochow professors were either forced to retire or relocated to state universities or high schools and every school and every penny of wage was controlled by CPC and its outskirt units. Even before the chaos of the Cultural Revolution, Soochow professors had lost economic freedom, “an indispensable means toward the achievement of political freedom.”<sup>154</sup> None of them, however, could perhaps foresee the true disasters awaiting them.

Taking the principalship of Soochow, C. L Yang declined Roscoe Pond’s offer to teach at Harvard. Because of his articles and other writings arguing against “New Laws,” he was, as mentioned, put into jail and was “beat and tortured,” with “hands tied to the back by handcuffs.”<sup>155</sup> As one of the proudest students of John Wigmore, Yang was urged to provide “evidence for his anti-revolutionary activities.” Having barely escaped the death penalty, he went back to Jintan, his birthplace, in 1975. He was released not because his scholastic view was eventually accepted, but because he used to serve as the last Attorney General of ROC. It was an amnesty of “previous KMT officers” the People’s enemies, not an apology for an erudite and outspoken jurist.<sup>156</sup>

---

<sup>154</sup> Milton Friedman, Rose D. Friedman, and ebrary Inc., “Capitalism and Freedom.” (Chicago: University of Chicago Press, 2002), <http://site.ebrary.com/lib/yale/Doc?id=10275474>.

<sup>155</sup> Yang, Ai, and Lu, 楊兆龍法學文集 [*the Complete Works of C. L. Yang*], 731.

<sup>156</sup> For a fuller account of Yang’s life, see 東吳春秋 *Dongwu Chunqiu* [*a History of Soochow University: A Hundred and Tenth Anniversary*], 190-93; Yang, Ai, and Lu, 楊兆龍法學文集 [*the Complete Works of C. L. Yang*].



Robert Sheng declined the presidency of Taiwan University, the de-facto central university of ROC after its capital relocated to Taipei. “The mother-like Dean Sheng,” who used to wait worryingly at the school’s reception overnight for the naughty students breaking the curfew hanging out in war-time Chungking,<sup>157</sup> was charged with “anti-revolution crime” and sent to Lao-gai<sup>158</sup> Camp for ten years. Professor Ai and Professor Ao Sen were arrested and both died in jail.<sup>159</sup> The list could go on to include almost all of the most righteous and able Chinese jurists in the first half of the twentieth century.

It is worth exploring, at least briefly, why they chose to stay in China: love for their family and their country. Yang was persuaded by his wife’s persuasion to stay and witness the “New China,”<sup>160</sup> while Sheng was determined take care of his parents.<sup>161</sup> Having travelled abroad during their youth and witnessed decades of social turbulence and WWII, they did not want to leave the land they loved and abandon their family for any personal expediency.

The overwhelmingly strong family-caring spirit and “local complex” have been characteristics of Chinese personalities. Influencing personal decisions and public life, these characteristics could become “the excessive moral values” that C. H. Wu thought “sent the Chinese legal system into a tomb.”<sup>162</sup> But the same characteristics could also help Soochow’s Ningpo fraternity to promote learning. In the case of Yang, Sheng, and other Soochow professors that stayed, the

---

<sup>157</sup> Shalin, “京滬學人的世紀悲情 [Tragedies of a Few Scholars in Shanghai and Peking],” 文學報 [*Literature Newspaper*], 12/4 1997.

<sup>158</sup> The CPC version of the Gulag, or “political thoughts reconstruction through heavy labour.”

<sup>159</sup> 東吳春秋 *Dongwu Chunqiu* [a History of Soochow University: A Hundred and Tenth Anniversary], 25; *ibid.*, 260.

<sup>160</sup> Yang, Ai, and Lu, 楊兆龍法學文集 [*the Complete Works of C. L. Yang*], 725.

<sup>161</sup> Yin Sheng, Yun Sheng, and Qing Sheng, “盛振為博士生平 [Life of Dr. Robert C. W. Sheng (Written by His Children)],” 東吳上海會訊 [*Magazine for CLS Alumni in Shanghai*], no. 2 (1997).

<sup>162</sup> Chapter III

Apollonian, family-caring spirit that could surpass any fear of political persecution met the Dionysian fever of revolution, and produced tragedies of personal life and left the attempt to modernize the training of Chinese jurists unfinished.

After 1952, the rest of Soochow' story as a school in PRC was thirty years of silence. Its memory was soon smothered by the Korean War (known as "Anti-America and Pro-DPRK movement" in PRC), the Great Leap Forward, the Great Chinese Famine and a number of kaleidoscopic events. Soochow appeared again in 1958 when the newly founded Shanghai Municipal Archives summarized the archival materials obtained from ECUPSL.<sup>163</sup> The last available document of Soochow in SMA was a request in 1965 from HEBS to burn a large part of the archive of Soochow, as well as the other two Christian colleges, Shanghai Baptist College, and St. John's University.<sup>164</sup> Anti-Confucianism was the national attention of the time. When Red Guards were throwing torches and bricks at Pao Ching Tien's tomb, Yang, Sheng, Ai, and other Soochow graduates had been "kicked out of the Masses" and locked up in cells for years. Soochow plunged into "the darkest hour."

---

<sup>163</sup> "私立東吳大學法學院全宗情況簡報 [a Brief Report on the Complete Archive of CIs]."

<sup>164</sup> "上海市高等教育局關於處理前滬江、聖約翰、東吳大學法學院一部分文件材料的意見 [the Opinion of Shanghai Higher Education Bureau on How to Deal with the Remaining Documents of Shanghai Baptist College, St John's University and the CIs]," (1965).

## V. Legacies of Soochow, 1980s and 1990s

### A. “In the darkest hour as brightest”<sup>165</sup>

Soochow’s spirit and the influence of case law was not extinguished. A small number of its graduates entered the “New Laws” system of “New China.” Chen Zhongcheng, a 1940s graduate and the student who mentioned “the mixed method” between case method and seminars, served as a people’s court judge.<sup>166</sup> Pan Handian, a 1946 graduate and editor-in-chief of *Wool-sack*, escaped Anti-Rightists-Movement and the Cultural Revolution, for he started to learn Soviet law soon after graduation.<sup>167</sup> Even the archive was saved by two PWOs who argued in 1965 that it was “evidence of American imperialism” and should not be burnt.<sup>168</sup>

The first reappearance of Soochow graduates in crucial social events of PRC was probably in 1980 the trial of Chiang Ching, the last spouse of Mao, and other members of “the Gang of Four,” who were accused of “anti-revolution crime” by manipulating the Cultural Revolution for personal gains.<sup>169</sup> Qiu Shaoheng, a Soochow graduate who played a key role in the Trials of Tokyo, was summoned from his position as a college teacher of English to Beijing and served as the only consultant to the judging panel. Though the trial was believed to be more political than legal, the judging panel and party leaders were concerned about “attacks from other countries on human rights in PRC” and were careful about rules of procedures in the court.

---

<sup>165</sup> The climactic sentence of Soochow’s school song in English.

<sup>166</sup> Chen, 東吳歲月 *Dongwu Suiyue [My Life in Cls] (Personal Memoir of the Cls Graduate Mr. Chen)*, 5.

<sup>167</sup> “被遺忘三十年的法律精英 [Soochow Graduates--Forgotten for Three Decades],” 南方周末 [*Southern Weekly*], 01/09 2003.

<sup>168</sup> “陈敬如、曹庆云关于上海市高等教育局请示销毁前沪江大学、圣约翰大学、东吴大学法学院的一部分档案问题的意见 [Opinion of Chen Jingru and Cao Qingyun Upon Request of Hebs to Destroy Documents of Uos, Sju and Cls],” (1965).

<sup>169</sup> The official CPC choice of the word “manipulating” means that the party regards Mao as innocent in his intention starting the Cultural Revolution and it was the Gang of Four who made it disastrous.

Therefore, when Chiang Ching shouted in the courtroom<sup>170</sup> and was taken out, the judges were put in a dilemma.<sup>171</sup> None of the judges (there were a hundred of them) had sufficient knowledge of Anglo-American or Roman law system<sup>172</sup> to dare to announce the sentence *in absentia*, for they worried that this might violate certain “universal legal rules” and cause Westerners to criticize PRC’s “human rights.”<sup>173</sup> Qiu, as the only “jurisconsult” to the judging panel, with his knowledge obtained from a Soochow legal education, searched in the library of the Legislative Affairs Office of the People’s Congress,<sup>174</sup> discovered a case in America in which a robber was taken away from the courtroom but the federal court still sentenced him as guilty. Qiu was “exhilarated,” translated the case and wrote an article. Based on his article, the judging panel continued in Chiang Ching’s absence.<sup>175</sup>

Drafting the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, or Hong Kong Basic Law (HKBL), serving as the constitutional document of the Hong Kong Special Administrative Region (HKSAR) of the People’s Republic of China was another legal event in which Qiu and other Soochow graduates played key roles. In 1985, they became members of the drafting committee of HKBL.<sup>176</sup> In 1990s, Soochow graduates proofread British laws of Hong Kong (the Letters Patent, the Royal Instructions, etc.) and none of them asked for payment.<sup>177</sup> On the other hand, jurists in Hong Kong were modifying legal traditions

---

<sup>170</sup> As ex-president of Ukraine, Tymošenko, recently did.

<sup>171</sup> “曾參加審判日本戰犯和“四人幫”的傳奇東吳人--裘劭恆 [Qiu Shaoheng--a Soochow Legend Who Has Participated in Trials of Tokyo and Trial of the "Gang of Four"],” 06/20 1997.

<sup>172</sup> Most “judges” in the PRC until the 1980s came from the PLA and were not even aware of such a difference.

<sup>173</sup> They were much more worried about the latter than the former consequence.

<sup>174</sup> The People’s Congress is theoretically the highest authority of PRC but never had it in reality.

<sup>175</sup> 東吳春秋 *Dongwu Chunqiu [a History of Soochow University: A Hundred and Tenth Anniversary]*, 142.

<sup>176</sup> *Ibid.*

<sup>177</sup> *Ibid.*, 259.

before 1997 to prepare for the legal transition. The Honorary Sir Ti-Liang Yang, the first Chinese Chief Justice of the Supreme Court of Hong Kong, introduced Chinese into courtrooms in 1995, changing the tradition of 152 years. Before he fled with his family to Hong Kong in 1949, he had studied in Soochow for three years and taken Public International Law by Ai and Contracts by Yao.<sup>178</sup>

After PRC replaced ROC's seat of China in the United Nations and other International Organizations, it began to recommend jurists to the International Court of Justice. After thirty years of "New Laws" and discontinuation of Anglo-American law and case method teaching, Ni Zhengyu, a 1920s Soochow graduate who went on the same boat with Yao and Ao to the States and who had earned a JD degree from Stanford, was recommended by the PRC and elected as a judge of ICJ at the age of 78.<sup>179</sup> (Ni is also the author of the one of the memoirs quoted in this report.) Li Haopei, a 1928 graduate was elected a judge International Criminal Tribunal for the former Yugoslavia. When Li retired in 1997, he was already 91 years old.<sup>180</sup>

#### B. English-Chinese Dictionary of Anglo-American Law

English-Chinese Dictionary of Anglo-American Law was the last group contribution of Soochow graduates by their training through case method and comparative law to legal studies.

Around the same time when Dean Ao was writing bilingual congratulatory wishes for a bright future to the graduates of Soochow, he was gathering several students, including Pan Handi-

---

<sup>178</sup> Ibid., 184.

<sup>179</sup> He served until Shi Jiuyong, graduate of St. John's University (another Christian College in Shanghai that has been mentioned) and Columbia Law School succeeded him in 1994. For more details of his career in the ICJ, see Ibid., 121.

<sup>180</sup> Ni and Li were "the two hardworking classmates sitting in the front" that the CPC member referred to. Ni, 淡泊從容蒞海牙 *Danbo Congrong Wei Haiya (Personal Memoir of the CIs Graduate Mr. Ni)*, 24.

an,<sup>181</sup> to compile a dictionary that translates terms of Anglo-American Law into succinct and accurate Chinese. The plan was disturbed by the civil war and completely forgotten along with everything else related to Soochow after 1950s.<sup>182</sup>

In 1993, Xue Bo, a student at the China University of Political Science and Law<sup>183</sup> undertook a similar task without knowing of the existence of a previous plan at Soochow. The need for such a dictionary was, however, imperative, as the PRC was increasingly involved in international trade and commerce, and other fields requiring knowledge in Anglo-American law; the negotiation to join the WTO had last for already eight years and a great number of domestic laws needed to be modified to facilitate China's integration into the world's economy. Xue's original plan, however, was not an Anglo-American Law dictionary, but a simple English to Chinese dictionary for "Western laws' legal terms."<sup>184</sup> Having spent three years and "hundreds of thousands of RMB purchasing books and materials about western laws," Xue "gradually realized" that "western laws" have two main branches, Civil Law and Common Law, in which "the same words may have different meanings." Xue decided to focus on Anglo-American law terms, for he also discovered that "English legal terms mainly express concepts in Anglo-American law."<sup>185</sup> He then found great difficulty in carrying out the work by himself, for he did not have systemic training in Anglo-American law as an elite student trained in the "New Laws." He then sought help from his academic instructor, at the time one of the most prominent professors in CUPL, Pan Handian. Pan gave him addresses of Soochow graduates who were still alive;

---

<sup>181</sup> Editor-in-Chief of the *Woolsack* and one of the few Soochow graduates who escaped political movements after 1949. See previous chapters.

<sup>182</sup> Shalin, "京滬學人的世紀悲情 [Tragedies of a Few Scholars in Shanghai and Peking]."

<sup>183</sup> Founded in 1952 as the Soviet mode school for "New Laws" in Beijing. It is regarded by CPC as the most prestigious institute for the subject in the country.

<sup>184</sup> 唐律疏議 Tanglvshuyi, "薛波和他的《元照英美法詞典》 [Xue Bo and His English-Chinese Dictionary of Anglo-American Law]," <http://www.douban.com/group/topic/2347119/>.

<sup>185</sup> Ibid.

many of them were still living in Shanghai.<sup>186</sup>

Few of them were in a decent situation when Xue knocked at their doors. Lu Jun, a Soochow LLB and Harvard JSD, was lying in bed in a “stuffy room.” Blind in one eye and wearing a pair of glasses “glued together by worn-out envelopes,” he could not afford an air-conditioner and the only electric appliance in his room was a “palm-size fan” that his daughter bought for him with 12 RMB, or 2 dollars.<sup>187</sup> Another valuable possession of Lu was a large collection of volumes of the *Harvard Law Review* that he received from his *alma mater*. Cai Jin, who was once judge of Shanghai District Court of ROC, could put all property he still owned in a “broken milk powder can.”<sup>188</sup> But for the kind help of a government officer, he would not have had a chance of moving into the community hospital.<sup>189</sup> Wang Yuhua, with a JD degree from Indiana University, had worked in his neighborhood's food department for decades. Another Soochow graduate of 1944, when meeting with Xue, was wearing a much-mended piece of clothing: none of the five buttons was the same.<sup>190</sup> In their homes, Xue “hardly saw books.” As Xue writes, they “dared not to own them” in the past (during the Anti-Rightist Movement and the Cultural Revolution), and now “cannot afford them.”<sup>191</sup>

Lu, Wang, Cai, and other Soochow graduates agreed, however, to help Xue with editing and proofreading the dictionary. Knowing that the project did not have any governmental fund, they refused any payment from the young Xue. Lu invited another graduate and argued “fiercely” before Xue over one word. Wang’s sight faded quickly and he had to rely on natural

---

<sup>186</sup> “被遺忘三十年的法律精英 [Soochow Graduates--Forgotten for Three Decades].”

<sup>187</sup> 東吳春秋 *Dongwu Chunqiu* [a History of Soochow University: A Hundred and Tenth Anniversary], 261.

<sup>188</sup> “被遺忘三十年的法律精英 [Soochow Graduates--Forgotten for Three Decades].”

<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

light to read--not having a balcony at home, he had to commute to his daughter's home. Another Soochow graduate, Lu Shengwu, wrote for the entry "United States of Law" a footnote of "six pages and two thousand words"--this 90 years' old man had a cerebral angiospasm and was sent to the hospital.<sup>192</sup> Dean Sheng volunteered to help, but passed away several days after he started.

These Soochow graduates in East China were not fighting alone in their struggle to complete the sentence. Pan joined them in Beijing and was still proofreading his contribution forty-eight hours before surgery, when he was having a "drainage bag attached to the body."<sup>193</sup> Yang Tiliang in Hong Kong also became a consultant for the project. Even the long absent Professor Yao, the great fan of Sellet,<sup>194</sup> who had gone to the States after 1949, sent his advice from the University of Texas at St. Antonio as the first Chinese teaching Contracts in America. Generations of Soochow graduates reunited finally on the first English-Chinese Anglo-American law dictionary.

Ten years later in 2002, the Soochow team, with an average age of 85, finished the task that their Dean Ao had started sixty years before. In 2003, Cai passed away. Accompanying Cai were his 1933 graduate certificate of Soochow, and forty-nine pages of the dictionary he edited. Lu died two years before; so did Ni Zhengyu in 2003.<sup>195</sup> The names of these legal scholars who have "vanished quietly" have all been placed together on the same page of the dictionary that is going to be used by future generations.

Xue was not freed from worries, however, with completion of the dictionary. His original spon-

---

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> See section II.

<sup>195</sup> "老兵不會死去，只會默默地消逝 ["Veterans" Won't Die; They Vanish Quietly from Us.]," 南方周末 [Southern Weekly], 04/06 2004.



sor, Foreign Languages Press, “could not reach consensus with him over editors’ and proof-readers’ remuneration.” The editing committee decided to contact other publishers and reached more than fifteen of them. None of them agreed to publish it; they were either “uninterested in it,” or thought that “such dictionary would have no market.”<sup>196</sup> One press at the time approached them, Angle Publishing Co. Ltd, the most influential publisher dedicated to legal studies in the Chinese world. It was founded by a group of jurists in Taiwan; many of them had graduated from law schools that were moved and reestablished in Taiwan, including Soochow, the one in Taipei.

### C. Soochow in ROC (Taiwan)

Four years after Soochow was closed in Shanghai, two men started its revival in Taiwan. D. S. Chen, one of the first four permanent professors of Soochow and C. H. Wang, one of the two honorary degree holders, fled to Taipei and re-founded the law school. They started again as a night school and as the “department of Soochow University.” Within ten years it developed into a day school, and reversely funded reestablishment of Soochow University’s other departments.<sup>197</sup> Sooner than ever the new Soochow revived curricula of comparative law. Chen truly fulfilled his words “The laws serve the vigilant, and not those who sleep.”<sup>198</sup> He was a true “admirable optimist” and “a great doer.”<sup>199</sup> Soochow Law School’s philosophy was carried forth on an “unsinkable aircraft carrier,” “the new Atlantis.”

Not every Christian college that was closed in mainland China had a chance to be revived in

---

<sup>196</sup> “元照公司買斷中國《英美法詞典》 [Anglo Co. Ltd. Purchasing Copyright of English-Chinese Dictionary of Anglo-American Law],” 文匯讀書周報 [*Wenhui Readers' Digest Weekly*] 2003.

<sup>197</sup> I say “reversely” here because in mainland China, the arts and science department of Soochow University founded the law department.

<sup>198</sup> “The New Atlantis 東吳年刊 Dongwu Niankan [Soochow Annual],” (1920), 66. The original quote is in Latin, “Vigilantibus non dormientibus jura subveniunt.”

<sup>199</sup> Ibid.

Taiwan. After a catastrophic military failure, ROC's educational system was also reformed to be oriented toward national education. Even the most renowned Yenching University was not allowed to "re-register" at the MEROC. The extremity of the reform was, however, much less than that in PRC, and several Christian colleges managed to reopen, such as Soochow.

A number of factors brought Soochow its luck. First, the nature of ROC officers did not change: they were still well-educated scholars and were naturally inclined to an educational mission. Second, the Methodist Mission again provided funds.<sup>200</sup> The last reason was related to the essence of the ROC's political and legal system after 1949. Although Chiang (Kai-Shek) was known to have practically operated a militarily controlled government, institutionalized violence such as Anti-Rightist Movement was never utilized to the extent that was done by the CPC in the PRC, not to mention complete chaos such as the Cultural Revolution. The legal system of the ROC in Taiwan, therefore, carried forth traditions fostered in mainland China, and it was at least a rule *by* law, if not rule *of* law. The lineage of Soochow thereby continued.

#### D. Soochow in China

The rebuilding of Soochow in mainland China was impossible in the 1950s and 1960s; even CUPSL was closed down in the Cultural Revolution. There was therefore no teaching of whatever "laws" during the period, by the case method or the textbook method. The effort to rebuild Soochow in mainland China started as soon as the political tension eased after Cultural Revolution. One type of effort comes from "Soochow University" in Suzhou, the Soviet mode college founded in 1952, occupying the campus of Soochow University that was closed down. Changing its English name to Soochow, it claims to be the legitimate heir of the old Soochow, as well as its law school in Shanghai. It founded a law school in Soochow in 1982 and the Institute for Comparative Law in May 1993.

---

<sup>200</sup> SoochowUniversity(Taiwan), <http://www.scu.edu.tw/planning/Historyweb/new/index.htm>.

The few Soochow graduates still teaching after 1949 also helped. Pan Handian established in the CUPSL the School of Comparative Law.<sup>201</sup> In 1985, ECUPSL, the Soviet mode school for law and political science in Shanghai that absorbed a number of Soochow professors,<sup>202</sup> founded International Law department, which has evolved into the “Faculty of International Law.”<sup>203</sup>

Other schools that undertook similar reform include Southwest China University of Political Science and Law and People’s University of China. As “New Laws” in PRC meant from the beginning Soviet and socialist laws, studying “international” or “comparative” law was almost equivalent to the reintroduction of Anglo-American (and Roman) law, hence partially or completely restoring case method, as suggested or already implemented in these institutions.

#### E. Soochow in Shanghai

I shall dedicate the last section of the main story to the effort of reopening Soochow in Shanghai, another much ignored piece of Soochow’s history. In 1989, five months after the “you-know-what-I-am-saying-event,”<sup>204</sup> guided by Shanghai Academy of Social Science, the alumni association of SULS founded “Soochow Comparative Law School of Continuing Education.”<sup>205</sup> Starting once again as a night school, it lasted ten years. Lack of funding and a permanent campus, however, prevented its further development.<sup>206</sup> There was no more Methodist Mission or generous group of Chinese jurists available to support the school’s finance, for they have either disappeared or are prevented from donating to private Chinese schools again. Rejection

---

<sup>201</sup> It is now “School of American and Comparative Law.”

<sup>202</sup> See section IV

<sup>203</sup> For more information on ECUPSL’s inheritance of and attitudes to Soochow’s legacies, see 東吳春秋 *Dongwu Chunqiu* [a History of Soochow University: A Hundred and Tenth Anniversary], 78; *ibid.*, 359.

<sup>204</sup> One of the many jargons for the Tiananmen Massacre to escape online censorship of the Great Fire Wall of PRC.

<sup>205</sup> *Ibid.*, 87.

<sup>206</sup> *Ibid.*, 88.

from HEBS to upgrade Soochow to a formal higher education institute closed the door of Soochow's complete renovation in Shanghai. In 1999 the school was closed.<sup>207</sup>

---

<sup>207</sup> Ibid., 89. To read further on success and failure of SCLSCE as well as regulations and bureaucracies in China since 1989, see Ibid., 87-89; *ibid.*, 92-95; *ibid.*, 238-39.

## VI. Conclusion and Lessons for us in 2011

Before going back to the questions proposed at the beginning, there are more questions coming up. If the CPC aimed at eradicating all Western institutions in China, why did other American institutes such as Peking Union Medical College continue to flourish (with all American professors deported), though it was founded by the Rockefeller Foundation? Does it have something to do with the nature of the case method and Anglo-American law?

The answer to the last question is probably yes. The case method has proved itself, at least in the first half of the twentieth century as a substitute for textbook method, a powerful tool to train not only thoughtful jurists but also critical thinkers, such as Robert Sheng and C. L. Yang. The more thoughtful and critical they are because of their training under the case method, the more uncertainty they bring to any system that attempts a full control of its citizens. The system therefore had to minimize production of such personnels. The prerequisite to discuss the two questions at the beginning of the paper is therefore at least tolerance, if not adoration, of freedom of education; i.e., one should not be restricted from what and how he or she is taught.

The two questions of the adaptability of a legal system and the ideal legal system for China are immensely more complicated. Seeing the success of Soochow graduates in the academic and practical fields of the legal profession in China, is it safe to assert that the Anglo-American legal system has been adapted to China, at least for a certain period? Is case method therefore the ideal tool of teaching law in China, and is Anglo-American law the ideal legal system for the country? Soochow graduates did not give out clear answers. When they helped the ROC to make the constitution and other legal codes, they followed civil law patterns. Practicing in Shanghai and other commercial cities and dealing with international business cases, they appealed to their knowledge in International law. Battling for their country and world's justice

during the Trials of Tokyo, they utilized their training in Anglo-American law. Even Dean Roscoe Pond of Harvard University, a panelist for C. L. Yang's SJD oral defense, who was invited to help Yang in restoration of the legal system in post WWII ROC, did not recommend copying the *trias politicas* system of America and shifting towards the Anglo-American legal system.<sup>208</sup> What is more important than an ideal system is perhaps the existence of a group of responsible and able citizens such as jurists educated in Soochow who were aware of pros and cons of major legal systems and combine them with the country's own linguistic and cultural tradition. Perhaps only in such a way will any ideal system or "liberal democracy" be firmly and sustainably established.

---

<sup>208</sup> Yang, Ai, and Lu, 楊兆龍法學文集 [*the Complete Works of C. L. Yang*], 724.

# Bibliography

. National Assembly of ROC, <http://www.na.gov.tw/ch/intro/IntroView.jsp?itemid=1>.

Chao, Yuen Ren. *Mandarin Primer, an Intensive Course in Spoken Chinese*. Cambridge: Harvard University Press, 1948.

Chen, Zhongcheng. 東吳歲月 *Dongwu Suiyue [Life in the Cls] (Personal Memoir of the Cls Graduate)* 2008.

Chen, Zhongcheng. 東吳歲月 *Dongwu Suiyue [My Life in Cls] (Personal Memoir of the Cls Graduate Mr. Chen)* 2008.

Conner, Alison. "How I Got the Story (and Why It Took So Long): Legal History Research in China." *Washington University Global Studies Law Review* 2, no. 1 (2003).

Conner, Alison W. "The Comparative Law School of China." *UNDERSTANDING CHINA'S LEGAL SYSTEM*, C. Stephen Hsu, ed., New York University Press, 2003 (1905).

Friedman, Milton, Rose D. Friedman, and ebrary Inc. "Capitalism and Freedom." Chicago: University of Chicago Press, 2002.

Harvard Law School. Association (1886-). *The Centennial History of the Harvard Law School, 1817-1917*: The Harvard law school association, 1918.

Howe, Christopher, and University of London. Contemporary China Institute. *Shanghai, Revolution and Development in an Asian Metropolis*, Contemporary China Institute Publications. Cambridge Eng. ; New York: Cambridge University Press, 1981.

Huang, Xinxian. 基督教教育與中國社會變遷 *Jidujiao Jiaoyu Yu Zhongguo Shehui Bianqian*. 1 ed,

- 基督教教育與中國社會叢書 Jidujiaojiaoyu Yu Zhongguo Shehui Congshu. Fuzhou: Fujian Jiaoyu Chubanshe, 1996.
- Jian, Wang. "超越東西方：法學家吳經熊 Chaoyue Dongxifang: Faxuejia Wu Jiongiong [Beyond East and West: Jurist C. H. Wu]." 比較法研究 *Bijiaofa Yanjiu* [Research on Comparative Law], no. 2 (1998).
- Langdell, C. C. "A Selection of Cases on the Law of Contracts with a Summary of the Topics Covered by the Cases." Boston: Little, Brown, 1879.
- Levine, Martin. *Legal Education*, International Library of Essays in Law and Legal Theory Legal Cultures. New York, NY: New York University Press, Reference Collection, 1993.
- Munro, Donald J. *The Concept of Man in Early China*. Stanford, Calif.: Stanford University Press, 1969.
- "The New Atlantis 東吳年刊 Dongwu Niankan [Soochow Annual]." 1920.
- Ni, Zhengyu. 淡泊從容蒞海牙 *Danbo Congrong Li Haiya (Personal Memoir of the Cls Graduate Mr. Ni)*1999.
- Ni, Zhengyu. 淡泊從容蒞海牙 *Danbo Congrong Wei Haiya (Personal Memoir of the Cls Graduate Mr. Ni)*1999.
- Ni, Zhengyu. 淡泊從容蒞海牙 *Danbocongrong Li Haiya (Personal Memoir of the Cls Graduate)*1999.
- Patterson, Edwin. "The Case Method in American Legal Education: Its Origins and Objectives." *Journal of Legal Education* (1951).
- Shalin. "京滬學人的世紀悲情 [Tragedies of a Few Scholars in Shanghai and Peking]." 文學報 [Literature Newspaper], 12/4 1997.



Sheng, Yin, Yun Sheng, and Qing Sheng. "盛振為博士生平 [Life of Dr. Robert C. W. Sheng (Written by His Children)]." 東吳上海會訊 [*Magazine for CLS Alumni in Shanghai*], no. 2 (1997).

Snow, Edgar. *Red Star over China*. 1st rev. and enl. ed. New York,: Grove Press, 1968.

SoochowUniversity(Taiwan). <http://www.scu.edu.tw/planning/Historyweb/new/index.htm>.

Sun, Ninghua. "蘇大10位校友親歷東京審判 [Ten Soochow Graduates Working for the Trials of Tokyo]." 蘇大校友 [*The Alumni Magazine of Soochow University (the PRC one founded in 1952)*], 2006.

Thompson, Homer A., and American School of Classical Studies at Athens. *The Stoa of Attalos Ii in Athens*, Excavations of the Athenian Agora Picture Books. Princeton, N.J.: American School of Classical Studies at Athens, 1959.

Wang, Guoping. 東吳大學簡史 *Dongwu Daxue Jianshi [a Brief History of Soochow University]*. 1 ed, Suzhou Daxue Xiaoshi Congshu. Suzhou Shi: Suzhou Daxue Chubanshe, 2009.

Wang, Guoping, and Jianping Zhou. 蘇州大學校史研究文選 [*Selected Papers on the History of Soochow University (Prc)*]2008.

Warren, Charles. *History of the Harvard Law School and of Early Legal Conditions in America*. 3 vols. New York: Lewis Pub. Co., 1908.

Winston, Kenneth. "The Internal Morality of Chinese Legalism." *SSRN eLibrary* (2005).

Yang, Chao Lung, Yongming Ai, and Jinbi Lu. 楊兆龍法學文集 [*the Complete Works of C. L. Yang*]. 1 ed, Dongwu Faxue Xianxian Wencong. Beijing: Falv Chubanshe, 2005.

Zhao, Guotong. *Interview near Shanghai Jiaotong University*, 06/25/2011.

"上海各大學的輪廓畫 [What Is It Like Attending Different Colleges in Shanghai?]." 學生月刊 [Student Monthly], 1941.

"上海市高等教育局關於處理前滬江、聖約翰、東吳大學法學院一部分文件材料的意見 [the Opinion of Shanghai Higher Education Bureau on How to Deal with the Remaining Documents of Shanghai Baptist College, St John's University and the Cls]." 1965.

"中共上海高等學校委員會填報的東吳法學院全區需要幹部人數總表 [the Complete Table for the Number of Pwos Needed to Fascilitate Political Learning in Ulcrcls, Filled by Shecccp]." 1952.

"私立東吳大學法學院1950年秋季學期課程改革總結報告 Sili Dongwu Daxue Faxueyuan 1950nian Qiuji Xueqi Kecheng Gaige Zongjie Baogao [Conclusive Report on Result of Curricula Reform of Cls, Fall 1950]." 1950.

"私立東吳大學法學院1950年秋季教學計劃和講授提綱 Sili Dongwu Daxue Faxueyuan 1950nian Qiuji Jiaoxue Jihua He Jiangshou Tigang [Teaching Plan and Syllabi of Cls, Fall 1950]." 1950.

"私立東吳大學法學院1951年春季學期教學計劃 Sili Dongwu Daxue Faxueyuan 1951nian Chunji Xueqi Jiaoxue Jihua [Teaching Plan of Cls, Spring 1951]." 1950.

"私立東吳大學法學院呈報中央教育部、華東教育部的法律系課程草案課程表修正初稿的意見 [Opinions of Cls on the Reformed Curricula Drafted by Ministry of Education of Prc and Bureau of Education of East China]." 1951.

"私立東吳大學為抄送1929年教育部覈准立案的訓令致法學院函 [Order from Meroc Confirming Registration of Soochow University, Forwarded by Soochow University to the Law School]." 1929.

"元照公司買斷中國《英美法詞典》 [Anglo Co. Ltd. Purchasing Copyright of English-Chinese Dictionary of Anglo-American Law]." 文匯讀書周報 [*Wenhui Readers' Digest Weekly*], 2003.

"同濟大學學習委員會關於調去東吳法學院區聯合學習委員會工作的幹部現在是否可以調回的報告 [Request from Ulc of Tongji University on Whether Pwos Allocated to Ulcrcls Could Be Reallocated to Tongji University]." 1952.

唐律疏議 Tanglvshuyi. "薛波和他的《元照英美法詞典》 [Xue Bo and His English-Chinese Dictionary of Anglo-American Law]." <http://www.douban.com/group/topic/2347119/>.

回溯 Huisu [*the Quadranscentennial History of Soochow University 1901-1926*]. 1926.

回溯 Huisu [*the Quadranscentennial History of Soochow University, 1901-1926*]. 1926.

"曾參加審判日本戰犯和“四人幫”的傳奇東吳人--裘劭恆 [Qiu Shaoheng--a Soochow Legend Who Has Participated in Trials of Tokyo and Trial of the "Gang of Four"]." 06/20 1997.

"東吳大學堂 Dongwu Daxuetang [the Soochow Annual]." 1909.

"東吳大學法學院年刊 the Woolsack." 1945.

"東吳大學法學院年刊 the Woolsack [the Cls Annual]." 1945.

"東吳大學法學院年刊 the Woolsack [the Cls Annual]." 1944.

"東吳大學法學院年刊 the Woolsack [the Cls Annual]." 1946.

"東吳大學法律學院一覽 Dongwu Daxue Falv Xueyuan Yilan [Catalogue of Cls]." 1936.

"東吳大學法律學院一覽 Dongwu Daxue Falv Xueyuan Yilan [Catalogue of Cls]." 1935.

"東吳大學法律科章程 Dongwu Daxue Falvke Zhangcheng [Regulations of Soochow University Law School]." 1926.

"東吳大學法律科章程 Dongwu Daxue Falvke Zhangcheng [Regulations of Suls (Cls)]." 1926.

"東吳年刊 Dongwu Niankan [the Soochow Annual]." 1930.

"東吳年刊 Dongwu Niankan [the Soochow Annual]." 1929.

東吳春秋 *Dongwu Chunqiu* [a History of Soochow University: A Hundred and Tenth Anniversary]. 2010.

"東吳法科改為東吳法學院 [Soochow University Department of Law Upgraded to Soochow University Law School]." 申報 *Shun Pao* (the most influential newspaper in ROC era Shanghai), 03/26 1927.

"私立東吳大學、滬江大學、之江大學聯合法商工學院校刊 [the Yearbook of the United College of Soochow, Shanghai, and Hangchow]." 1945.

"私立東吳大學法學院全宗情況簡報 [a Brief Report on the Complete Archive of Cls]." 1945.

"老兵不會死去，只會默默地消逝 ["Veterans" Won't Die; They Vanish Quietly from Us]." 南方周末 [Southern Weekly], 04/06 2004.

"被遺忘三十年的法律精英 [Soochow Graduates--Forgotten for Three Decades]." 南方周末 [Southern Weekly], 01/09 2003.

"關於在學校中進行思想改造和組織清理工作的指示的通知 [the Order to Carry out "Thoughts Reconstruction" and "Social Organizations Cleaning" in Schools]." 1951.

"陈敬如、曹庆云关于上海市高等教育局请示销毁前沪江大学、圣约翰大学、东吴大学法学院的一部分档案问题的意见 [Opinion of Chen Jingru and Cao Qingyun Upon Re-

quest of Hebs to Destroy Documents of Uos, Sju and Cls]]." (1965).

鹵厂Luchang. "東吳大學法律學院的今昔 Dongwu Daxue Falv Xueyuan De Jinxi [a History of Cls (1915-1932)]." 新社會半月刊 *Xinshehui Banyuekan*, 1932, 4.

鹵厂Luchang. "東吳大學法律學院的今昔 Dongwu Daxue Falv Xueyuan De Jinxi [Past and Present of Cls]." 新社會半月刊 *Xinshehui Banyuekan*, 1932, 4.