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### John C.H. Wu and His Comparative Law Pursuit

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# John C.H. Wu and His Comparative Law Pursuit

XIAOMENG ZHANG\*

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## Introduction

Dr. John C.H. Wu, in his work *The Four Seasons of T'ang Poetry*, used four different seasons to describe the development of T'ang Poetry.<sup>1</sup> He wrote "[l]ike the Roman Law and Greek Philosophy...the great wonder of T'ang Poetry as a whole is that it was such a complete year in itself, a year in which the seasons seem to be in succession so naturally and inevitably.... it carried within its bosom all the stages of a vital movement."<sup>2</sup>

Dr. William G. Goddard, while writing a prologue for this work, commented, "one may say, then, that the Four Seasons of T'ang Poetry are a study of Life, not just as it was in T'ang China but everywhere and at all

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<sup>1</sup> Confucius's *Classics of Poetry* is commonly considered the first poetry collection in writing in China. Poetry, as one of the most respected form of writings in China, reached its peak during the Tang dynasty (618-907). Poetry allows poets to express complex emotions and thoughts through rigid and concise forms.

<sup>2</sup> John C.H. Wu, *THE FOUR SEASONS OF T'ANG POETRY* 36-37 ((Tokyo, Japan: Charles E. Tuttle Company, Inc., 1972). (*Hereinafter* WU, *THE FOUR SEASONS OF T'ANG POETRY*)

times.”<sup>3</sup> It is also a true reflection of Wu’s own life, as a legal scholar, an educator, a judge, and a politician in one of the most turbulent periods in the history of China.

During the *spring* of his life, he was fortunate to receive an outstanding legal education from the Comparative Law School of China in Shanghai, the University of Michigan Law School in Ann Arbor, the University of Paris, and the University of Berlin in Europe.

Always keeping his native soil in mind, Wu returned to China in the summer of 1924 and actively participated in teaching and writing. He contributed greatly and innovatively to the Comparative Law School of China, where he began his legal education. In autumn 1926, the West and China finally signed the *Provisional Agreement for the Rendition of the Shanghai Mixed Court* (“1926 Agreement”). In accordance with the 1926 Agreement, the newly created Shanghai Provisional Court took jurisdiction over the International Settlements, areas that had previously been controlled by foreign powers. Wu was appointed as the chief justice of the Shanghai Provisional Court in 1927. Like the winter before the spring, 1933 marked the darkest hour before the dawn in Chinese history. In that year, he devoted himself to the drafting of the Chinese Constitution. The 1933 draft later became the foundation of the Chinese Constitution of 1947, another hallmark in Chinese history. Although scholarly attention to Wu’s life and career in China and Europe has been extensive,<sup>4</sup> there appears to be limited scholarship in English<sup>5</sup>

In this paper, I will focus on exploring Wu’s accomplishments in comparative law from four different aspects. After a brief introduction to the

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<sup>3</sup> William Goddard, Prologue, in *THE FOUR SEASONS OF T’ANG POETRY* 20 (Tokyo, Japan: Charles E. Tuttle Company, Inc., 1972).

<sup>4</sup> E.g. Matthias Christian L. RECHTSPHILOSOPHIE ZWISCHEN OST AND WEST: EINE VERGLEICHENDE ANALYZE DER FRUHEN RECHTSPHILOSOPHISCHEN GEDANKEN VON JOHN C.H. WU (Wien: Springer-Verlag, 1998). Wei Sun, *STUDY ON JOHN C.H. WU’S LEGAL PRACTICE (1917-1949)* (Soochow University, 2009). For more discussion on this, see Wei Sun, *A Review of the Studies on John C.H. Wu*, 23 *J. Ningbo Univ.* 1 (2010).

<sup>5</sup> Only a few articles in English focused exclusively on Wu. E.g. See William R. Alford & Yuanyuan Shen, “*Law Is My Idol*”: *John C.H. Wu and the Role of Legality and Spirituality in the Effort to “Modernise” China*, in *ESSAYS IN HONOUR OF WANG TIEYA* 43-53 (Ronald St. J. Macdonald ed., Kluwer, 1994); Xiuqing Li, *John C.H. Wu at the University of Michigan School of Law*, 58 *J. LEGAL EDUC.* 545 (Nico Howson trans., 2008).

historical and societal background of Wu's life and research in Part II, I will examine his comparative law research and methodologies in Part III. In Part IV, I will elaborate his contributions to the development of Chinese legal education in the Republican China era at the Comparative Law School of China. I will then analyze how his jurisprudence was further reflected in his judicial rulings, which helped shape the contemporary Chinese judicial system in Part V. In Part VI, I examine the 1933 Chinese Constitution drafted by Wu, which was not only a masterpiece of comparative law, but more importantly, a milestone in Chinese history. I will conclude the article by exploring how Wu's research and thinking can actually benefit China today on the issues of legal transplantation, legal educational reform, and judicial reform, followed by a bibliography of Wu's legal works.

## I. HISTORICAL BACKGROUND

The excellence of Wu's comparative law studies and practices was not accidental. Internally, it was a result of his passion, persistence and hard-work. Externally, many factors, such as the need for comparative law research arising out of the struggles and controversies that happened daily in contemporary Chinese society, and the start of developing comparative law education in both China and the United States, contributed to the birth of the best comparative law scholar in Chinese history.

Wu was born in 1899--perhaps one of the darkest years in Chinese history. In that year, the Chinese Empire finally awoke from its thousands-year-long episode of "The Emperor's New Clothes" or "The Golden Millet Dream" as a Chinese would say. China was no longer the strongest empire in the world; in fact, it was probably one of the weakest nations at that time. After the Second Opium War ended in 1860, China was forced to sign a few unequal treaties that eventually opened up almost all coastal cities in China for business and trade.<sup>6</sup> This new relationship revealed irreconcilable cultural clashes between the West and China. Those clashes led to the Boxer Rebellion, an uprising from an underground society in China that started in 1899 with a goal of expelling all foreigners. The Boxer Rebellion was defeated less by the Chinese government than by the military interventions of

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<sup>6</sup> See DONG WANG, CHINA'S UNEQUAL TREATIES: NARRATING NATIONAL HISTORY (Lexington Books 2005); also see John K. Fairbank, *The Creation of the Treaty System*, in THE CAMBRIDGE HISTORY OF CHINA: LATE CH'ING 1800-1911 213-63 (John K. Fairbank & Kwang-Ching Liu eds., Cambridge, UK: Cambridge University Press, 1978)

eight Western countries.<sup>7</sup> As a result, China completely opened up its door to the Western world--not just coastal cities, but the whole country; not just the trade system, but almost the entire judicial and political regime.<sup>8</sup>

Shanghai, the major city closest to where Wu was born, and the city in which Wu spent most of his time in China, was, on the other hand, quietly and rapidly becoming a metropolis in China.<sup>9</sup> The British Empire first created a settlement in Shanghai in 1843, after the first Opium War. Over the next fifty years, French, Americans, Germans, Danes, and Japanese quickly established settlements in Shanghai. Those international settlements were entirely under foreign control.

Administrative control was apparently not enough; a legal institution protecting their interests in China was of course necessary and imperative to foreign nations. Therefore, a Mixed Court for International Settlement, originating in the 1860s, was in operation. It covered cases in which a Chinese resident was a defendant in the international settlements. If, however, a French national plaintiff sued a Chinese defendant in the French concession, the French Mixed Court had jurisdiction. The court was presided over by a Chinese magistrate, but he had to gain consent from a foreign assessor for punishments and verdicts.

Meanwhile many nations established consular courts to try cases where its citizens were defendants. For example, the British Supreme Court of China and Japan was established in 1865. In 1906, the United States established the United States Court for China in Shanghai, claiming jurisdiction over U.S. citizens in China; this court lasted until 1943. Although foreign nations' interests in China were mostly on trade and commerce, as they always claimed, the foreign establishment in China was pervasive and multi-faceted. In fact, "the physical, intellectual and spiritual results of the foreign presence" were beyond the power of words to describe and summarize.<sup>10</sup>

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<sup>7</sup> E.g., see W. A. Rogers, *The Boxers*, HARPER'S WEEKLY (1900), available at <http://www.nytimes.com/learning/general/onthisday/harp/0609.html>; also see Lanxin Xiang, *THE ORIGINS OF THE BOXER WAR: A MULTINATIONAL STUDY* (Psychology Press, 2003).

<sup>8</sup> See Fairbank, *supra* note 6.

<sup>9</sup> See *Id.* 237-42,

<sup>10</sup> Albert Feuerwerker, *The Foreign Presence in China*, in *CAMBRIDGE HISTORY OF CHINA* 128 (John K. Fairbank ed., 1983).

Against this background, modern legal education and the legal profession in China developed quickly during this time. For example, in 1912, the Shanghai Bar Association (“SBA”) was created by a group of twelve Chinese lawyers who were “indignant that the foreign concessions have extraterritoriality, while our nation’s sovereignty is incomplete, and that foreigners monopolized the lawsuits between the Chinese and foreigners.”<sup>11</sup> The goal of the SBA was “to organize in the Shanghai area a lawyer’s association of the Chinese Republic to protect the people’s rights and to spread the spirit of the rule of law throughout the country.”<sup>12</sup> By the end of 1912, over ninety lawyers had joined the SBA.

On September 3, 1915, the Comparative Law School of China (renamed the Law School of Soochow University in 1935) opened in Shanghai. It had only seven students in its first class, but had more than ten lecturers, including Charles W. Rankin<sup>13</sup> and Judge Charles S. Lobingier of the United States Court for China.<sup>14</sup> This is also the Law School at which Wu studied from 1917-1920. After Wu graduated from the Comparative Law School of China in 1920, he welcomed the spring of his life in Ann Arbor, Michigan, in the United States.

## II. SPRING - MARCH 1921

*The heart of Spring is heaving like waves.  
The sorrow of Spring is flying about in confusion like snowflakes.  
All emotions are roused, forming a mingled yarn of joy and grief.  
O, what pathos I feel within me in this sweetest of the seasons!*

- Spring (愁阳春赋)

by Li Po<sup>15</sup>

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<sup>11</sup> Xiaoqun Xu, CHINESE PROFESSIONALS AND THE REPUBLICAN STATE: THE RISE OF PROFESSIONAL ASSOCIATIONS IN SHANGHAI, 1912-1937 215 (Cambridge: Cambridge University Press, 2001).

<sup>12</sup> *Id.*

<sup>13</sup> Rankin was the Dean of the Comparative Law School of China when Wu was a law student there. Mr. Rankin had a great influence on Wu’s religious life and legal career. Wu described Rankin in glowing terms: “[b]esides being a good teacher and dean, he was full of the spirit of love and self-sacrifice... Taken all in all, he was one of the most devout Christians I have seen in my life.” See JOHN C.H. WU, BEYOND EAST AND WEST 66 (New York: Sheed and Ward, 1951) (*hereinafter* WU, BEYOND EAST AND WEST).

<sup>14</sup> W.B. NANCE, SOOCHOW UNIVERSITY 70-72 (New York: United Board for Christian Colleges in China, 1956).

<sup>15</sup> WU, THE FOUR SEASONS OF THE T’ANG POETRY, *supra* note 2 at 28.

One of the *sweetest* times in Wu's life occurred in Ann Arbor. As he later recalled in his work, *Beyond East and West*, "my stay in Ann Arbor was among the happiest periods of my life."<sup>16</sup> At the age of twenty-one, Wu began his studies in the U.S. on international law and comparative law under Professors Henry Bates, Joseph Drake and Edwin Dickinson.<sup>17</sup> Wu's performance at the University of Michigan Law School impressed many people, including Professor Dickinson, who called him a "prodigy."<sup>18</sup>

However, he would not have achieved such excellent performance without the great education he received in China prior to his arrival in the U.S. As a child, he received systematic private education on Chinese philosophies through the age of sixteen. He then received a three-year-long intensive legal education at the Comparative Law School of China. The Comparative Law School of China, different from most of other schools in China at that time, aimed to "give the students a thorough mastery of the fundamental principles of the world's chief legal systems, an important object being to turn out students who can contribute to the making of a new and better jurisprudence of China."<sup>19</sup> Most courses were offered in English. Strong proficiency in English was required for students. All of these prepared Wu with a solid understanding of Chinese law and American law before he started his studies at the Michigan Law School.

There is no indication from Wu himself or any other source on why Wu chose the University of Michigan Law School, but a few factors may have contributed to his decision. First, the University of Michigan Law School, by that time, had earned its reputation in China. In 1915, a Chinese educational commissioner touring the United States placed the University of Michigan among the top five schools, along with Yale, Harvard, Columbia and Cornell.<sup>20</sup> Mr. W.W. Blume, who was appointed as the dean of the Comparative Law School of China in 1920, graduated from the University of Michigan Law School.<sup>21</sup> Second, the University of Michigan Law School was one of the law schools that made significant contributions to the legal education of foreign students, including students from China. It was one of

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<sup>16</sup> WU, *BEYOND EAST AND WEST* *supra* note 13 at 89.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> W.W. Blume, *Legal Education in China*, 1 CHINA L. REV. 305, 306 (1922).

<sup>20</sup> THE UNIVERSITY OF MICHIGAN AND CHINA: 1845-2006 (Nancy Bartlett ed., 2006), available at <http://bentley.umich.edu/research/publications/china/main.php> (last accessed on Nov. 22, 2012).

<sup>21</sup> Nance, *supra* note 14 at 72.

the very few U.S. law schools that gave full academic credit to foreign law student for their previous work.<sup>22</sup> This policy likely encouraged foreign students to study at the Michigan Law School. From 1899 to 1919, the year before Wu entered the University of Michigan Law School, there were over fifteen Chinese students graduating from the Law School.<sup>23</sup> Third, as a student interested in comparative law, Wu would have been attracted by the international and foreign law courses offered at the University of Michigan Law School. By 1920, the Law School consistently offered courses such as Roman Law and Public International Law to students.<sup>24</sup> In fact, Wu, not surprisingly, did select and excel in these two courses, among others.<sup>25</sup>

In March 1921, an article, *Reading from Ancient Chinese Codes and Other Sources of Chinese Law and Legal Ideas*, appeared in volume 19 of the *Michigan Law Review*. This article was not the first on Chinese law to appear in the *Michigan Law Review*.<sup>26</sup> It was the first such article, however, to be written by a Chinese scholar. Furthermore, it was the first article that presented an in-depth and comprehensive picture of legal theories and thoughts of ancient Chinese law in the *Review*. In Wu's own words, the article "presents a translation of the Chinese law, by a Chinese bred under the genuine Chinese influence."<sup>27</sup>

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<sup>22</sup> See C. Summer Lobingier, *Legal Education in Twentieth Century China*, 4 LAW. GUILD REV. 40, 43 (1944); also see ELIZABETH GASPARD BROWN, LEGAL EDUCATION AT THE UNIVERSITY OF MICHIGAN: 1859-1959 291-92 (1959).

<sup>23</sup> BROWN, *supra* note 22 at 689.

<sup>24</sup> *Id.* at 510.

<sup>25</sup> Xiuqing Li, *John C.H. Wu at the University of Michigan School of Law*, 58 J. LEGAL EDUC. 545, 554-555 (2008). According to this article, John Wu took five courses amounting to twenty credits during his first semester: Political Theory (?), Constitutional Law (Bates), Public International Law (Dickson), Roman Law (Drake) and Sciences of Jurisprudence (Drake).

<sup>26</sup> Gustavus Ohlinger published two articles on Chinese law in the *Michigan Law Review* before Wu. Mr. Ohlinger was born in China and practiced law in Shanghai, China after graduating from the University of Michigan Law School. He was also the student who proposed the idea of starting the *Michigan Law Review* to the dean. See University of Michigan Law School, Student profile, available at <http://www.law.umich.edu/historyandtraditions/students/Pages/ProfilePage.aspx?SID=6832&Year=1902> (last accessed on Dec. 3, 2012).

<sup>27</sup> John Wu, *Readings from Ancient Chinese Codes and Other Sources of Chinese Law and Legal Ideas*, 19 MICH. L. REV. 502 (1921) (hereinafter Wu, *Readings from Ancient Chinese Codes*).



Although Wu claimed this article was his “maiden work in jurisprudence,”<sup>28</sup> it contains at least three significant aspects that are worthy of discussion. First, he emphasized that the essence of the scope of comparative law is to “embrace[s] all the length and breadth of legal scholarship, so that it cannot afford to ignore any materials that give us light upon the legal notions of the ancient world.”<sup>29</sup> In other words, a comparative law approach is not just about a comparison of different contemporary legal systems and laws, it is also about tracing historical notions and traditions, because “a country could not possibly have lasted so long without sound legal principles as her foundation and without having continually drunk from the life giving fountain of justice to perpetually renovate herself.”<sup>30</sup>

However, for Wu, this emphasis on historical sources does not in any way imply an endorsement of the past. Wu later pointed out that “as Your Honor [Justice Holmes] tells me among other things that continuity with the past is *only* a necessity and not a duty and that we have to reduce this necessity like all other necessary evils to a minimum. One of the principal causes of the stagnation of the Chinese civilization is a wrong conception which regards continuity with the past as a sacred duty, and which ignores the fact that the divine right of the past is no less baseless than the divine right of kings.”<sup>31</sup>

In the article, he carefully selected readings that would reflect the essence of legal principles of Chinese law and its development and growth. He referred to the *Book of History*, the *Li Ki*, Lao-Tsze’s *Treatises of Nature and Practical Utility*, *Confucian Dialects*, Legalism of Shang Iang, Pan Koo, as well as the T’ang Code. His selection reflected his deep understanding of Chinese law and philosophy, which can be attributed to his education in traditional Chinese law and philosophy starting at the age of six.<sup>32</sup>

Second, he made a great effort to compare Asian theories with western conceptions of law. For each of the theories, he focused on readings covering four different elements, which he thought would “bring very near to the twentieth century of conceptions of law.”<sup>33</sup> “pure reason, administrative justice, certainty and definiteness, and the idea of historical growth.”<sup>34</sup> He

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<sup>28</sup> WU, BEYOND EAST AND WEST, *supra* note 12 at 110.

<sup>29</sup> Wu, *Readings from Ancient Chinese Codes*, *supra* note 22, at 502.

<sup>30</sup> *Id.*

<sup>31</sup> WU, BEYOND EAST AND WEST, *supra* note 13 at 91.

<sup>32</sup> *Id.* at 40.

<sup>33</sup> Wu, *Readings from Ancient Chinese Codes*, *supra* note 22 at 504.

<sup>34</sup> *Id.*

also tried to put Chinese legal and philosophical theories into a framework coined by Professor Albert Kocourek, “three evolutionary stages in the progress of law”—that is, “the period of confusion of religion and law,” “the anethical stage,” and “a synthesis of laws and morals.”<sup>35</sup>

The reason to lay out Chinese theories in a Western legal philosophical framework was not just that it would make it easier for the major audience of this article, western scholars, to appreciate Chinese legal thought. More importantly, by making these comparisons, as a young man who never forgot that he had a “country to save, a civilization to enlighten,”<sup>36</sup> Wu was trying to demonstrate to westerners that the Chinese legal system and legal minds were receptive to and similar to modern western jurisprudence, and it was time for the “extraterritoriality [to be] withdrawn from the oldest land of freedom of justice.”<sup>37</sup>

Third, this article *accidentally*<sup>38</sup> started a lifetime long relationship of his with Justice Oliver Wendell Holmes.<sup>39</sup> After the article was published in the *Michigan Law Review*, he sent a copy to Justice Holmes, expressing the hope that “some of which [legal ideas of ancient China], were to akin to his [Holmes’] own views.”<sup>40</sup> Justice Holmes immediately replied that “[y]our article ... is not within my reach as of this moment, but I shall try to get a sight of it at the Capital tomorrow.... I only venture one bit of caution... one cannot jump at once to great ends. Therefore I hope that you will not shirk the details and drudgery that life offers, but will master them as the first step to bigger things. One must be a soldier before one can be a general.” Justice Holmes later apologized, saying that this advice was given under a misapprehension that Wu was only a young law student; after reading his article, Justice Holmes realized that “I am addressing a scholar who already knows so much that he probably smiles at elementary counsels.” However, it was just this piece of advice that directed Wu to continue his research and career as a judge, an educator, and a politician in an unpretentious and humble way. As Wu wrote in his last letter to Justice Holmes, in 1933, “among all

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<sup>35</sup> *Id.* at 503.

<sup>36</sup> WU, BEYOND EAST AND WEST, *supra* note 13 at 91.

<sup>37</sup> WU, *Readings from Ancient Chinese Codes*, *supra* note 22 at 503-504.

<sup>38</sup> WU, BEYOND EAST AND WEST, *supra* note 13 at 87.

<sup>39</sup> *Id.* at 87-89.

<sup>40</sup> *Id.*

the advice given by you, the greatest one to me was never try to jump at once to great ends....”<sup>41</sup>

The *Michigan Law Review* article was just the beginning of his scholarly publishing career. After graduating from the Michigan Law School, he left for the University of Paris on a fellowship from the Carnegie Endowment of International Peace.<sup>42</sup> At the University of Paris, he finished a dissertation, *La Methode du droit des gens: Essai de la critique juridique*<sup>43</sup>. He then left for the University of Berlin to study under the renowned neo-Kantian legal philosopher Rudolf Stammler. Meanwhile, Wu continued to exchange thoughts with Justice Holmes, and published an article in the *Michigan Law Review*, “*The Juristic Philosophy of Justice Holmes*”<sup>44</sup> while in Berlin.

In this article, he tried to explore Justice Holmes’ contribution to the solution of a fundamental problem of legal philosophy--what is law?-- in two aspects, epistemological/conceptual aspects of law and psychological/ aspects of law, by comparing Justice Holmes’ legal philosophy with Professor Stammler’s. After analyzing the views of both Justice Holmes and Professor Stammler, Wu proposed his solution to the problem: “We stand in need of a new philosophy of law which will introduce us into the hidden harmony of things”<sup>45</sup> because “[T]rue philosophy must seek to explain away the apparent conflict between conceptual unity and perceptual diversity and to suggest the possible concession between the two... it is clear, then that perception and conception of law both point to a unity which is manifested in their very difference, and to a substance which gives birth to both of them.”<sup>46</sup> As he later recalled in his own work, *Juridical Essays and Studies*, his own legal philosophy was about “reconciling the Holmesian with the Stammlerian, the

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<sup>41</sup> John Wu, Letter to Justice Holmes dated Apr. 4, 1933, in 法律哲学研究 333 (Beijing, China: Tsinghua University Press, 2005) [could not find the source in English, therefore translated by author].

<sup>42</sup> Out of thirty-three applicants, John Wu was one of the six first-time winners of this fellowship. Other winners included Alexander Hamilton Frey from Yale Law School. See Carnegie Endowment for International Peace, YEARBOOK 170 (1922).

<sup>43</sup> *Id.* at 172.

<sup>44</sup> John C.H. Wu, *The Juristic Philosophy of Justice Holmes*, 21 MICH. L. REV. 523 (1922).

<sup>45</sup> *Id.* at 539.

<sup>46</sup> *Id.* at 535.

perceptual with the conceptual, the becoming with the become, the theory of interests with the theory of justice, the empirical with the rational.”<sup>47</sup>

Despite Wu’s departure for Harvard in 1923, his relationship with Professor Stammler remained strong. In fact, later in 1925, when Stammler’s *Theorie der Rechtswissenschaft* was translated and published in English as *Theory of Justice*, Wu’s article on critics of Stammler’s philosophy was selected to be included as an appendix.<sup>48</sup> In that article, he started by exploring the genesis of Stammler’s legal philosophy, because he thought “in order to sympathize with a thinker of such elemental greatness, one has to enter into the very depth of his soul and to realize exactly what it is that most agitates him and presses for an impending solution.”<sup>49</sup> Then he went further to select and analyze ten scholarly critics, representing three different classes/schools: Sociological, Philosophical and Juristic.<sup>50</sup>

During his brief visit at Harvard Law School as a research fellow, Wu studied with another famous jurist, Professor and Dean Roscoe Pound. Later, in January 1924, Wu published an article, “*Juristic Philosophy of Roscoe Pound*,” in the *Illinois Law Review*. In this article, he continued to demonstrate his passion for comparative law, and explored Professor Pound’s legal philosophy through the lens of the views of both Justice Holmes and Professor Stammler. As he concluded in his article, “both Holmes and the author of the theory of social interests possess common sense in an uncommon degree, and this is precisely why they are in perfect agreement with my noble master, the logical-minded Stammler, for robust common sense and genuine logic arrive at the same conclusions, however different their ways of approach and points of departure.”<sup>51</sup> The article also presented his view of comparative law studies and methodologies about comparing different (contemporary) legal thinking. Different laws and views could

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<sup>47</sup> JOHN C.H. WU, *JURIDICAL ESSAYS AND STUDIES* xi (Shanghai: Commercial Press, 1928).

<sup>48</sup> Only two commentaries were included in the book; the other one was written by Geny Francois, a famous French jurist and professor of law: *Critical System of R. Stammler*. See John C.H. Wu, *Stammler and His Critics*, in *THEORY OF JUSTICE* 553 (1925).

<sup>49</sup> *Id.* at 554.

<sup>50</sup> Sociological: Weber and Kantorowicz; Philosophical: Wielikowski, Binder and Natortp; Juristic: Saleilles, Geny and Pound. See *id.* at 559.

<sup>51</sup> John C.H. Wu, *The Juristic Philosophy of Roscoe Pound*, 18 *ILL. L. REV.* 285, 304 (1923).

arrive at the same conclusions through finding common ground by comparing and contrasting “different ways of approach and points of departure.”<sup>52</sup>

### III. SUMMER - JUNE 1924

*What a long day it has been! It looked as though the sun would never set!  
The boiling heat has almost smoked and steamed me to death.*

...

*In the heart of Summer, the night is all too short,  
Let me open the pavilion doors to invite the cool air.*

...

*One touch of nature makes all creatures kin:  
Big or small, they all love freedom and comfort.*

...

*I am only thinking of the soldiers, who, heavy laden with arms,  
Stand guard at the frontiers for years on end.*

...

*Even if they wear honors thick on their heads,  
The happiness is nothing like an early return home.*

...

*Summer Night (夏夜叹) by Tu Fu*<sup>53</sup>

Nothing is happier than returning home early. In June 1924, John Wu went back to China after four years of searching for “the unknown end” in the West.<sup>54</sup> In the same year, Wu started teaching at his alma mater, the Comparative Law School of China in Shanghai. This is the school that Professor Manley O. Hudson referred to as one where “[i]nstruction in the national law is given on a basis of comparison with Anglo-American and civil law and yours is the only school I know which really deserves the name of a comparative law school.”<sup>55</sup>

During his tenure at the Comparative Law School of China, Wu taught several courses, including Public International Law, International Relations, Property Law, Roman Law, Philosophy of Law, Legal History, Jurisprudence and Comparative Law.<sup>56</sup> He adopted the case method when

<sup>52</sup> *Id.*

<sup>53</sup> WU, FOUR SEASONS OF T'ANG POETRY, *supra* note 2 at 28-29.

<sup>54</sup> WU, BEYOND EAST AND WEST, *supra* note 13 at 105.

<sup>55</sup> NANCE, *supra* note 14, at 75-76.

<sup>56</sup> Wei Sun, *John Wu and Soochow University*, 56 J. E. CHINA U. POLI. SCI. & L. 148 (2008); *see also* WU, BEYOND EAST AND WEST, *supra* note 13, at 108.

teaching several courses such as Property Law and International Law. He carefully selected cases as well as textbooks for each of his courses. For example, he selected *The Institutes of Roman Law* by Rodulf Sohm for his Roman law course. He used *Jurisprudence* by John Salmond for his Jurisprudence course. He stated passionately in his letter to Justice Holmes that teaching was a creative process. Around the same time on the other side of the world, one of his favorite teachers at the University of Michigan Law School, Professor Dickson, stated in his paper, *The Teaching of International Law to Law Students*, that “[i]t is in training students to do their own critical thinking, to use the raw materials of the subject intelligently, and to apply the principles extracted to new situations that the case system of teaching law is superior to other methods.”<sup>57</sup> It was exactly what Wu was doing in his classroom, “a laboratory wherein the living law is dissected, debated, and reconstructed.”<sup>58</sup>

It is also interesting to note that Professor Dickinson used a tree/forest analogy to describe the process of using case method to teach law: “one of the best ways to know the forest is to study trees; and it is hard to believe that a prolonged and intensive study of trees can leave the student without a fairly adequate general picture.”<sup>59</sup> He further said that although the picture will likely be imperfect, “it is likely to be truer to the facts than one neatly constructed and dogmatically present at the beginning or the end of a course of study.”<sup>60</sup>

A few years later, when Wu discussed using the case method to teach Jurisprudence, he used another analogy describing the case method in a more vertical way: “even if we want to study statutes and customary laws, it would be best to look at them as they are being molded in the judicial process, I like to compare the whole law-creating process to the metamorphosis of the butterfly. We cannot understand fully the caterpillar without keeping in view of the completely formed insect.”<sup>61</sup> Both of them argued that to understand the law itself, law students must understand the process of becoming law, i.e., the process through which a law or case is created.

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<sup>57</sup> Edwin D. Dickerson, *The Teaching of International Law to Law Students*, 17 AM. POLI. SCI. REV. 464, 470 (1923).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 471.

<sup>60</sup> *Id.*

<sup>61</sup> John C.H. Wu, *Jurisprudence as a Cultural Study*, 33 U. DET.L.J. 277, 286 (1955).

In 1927, Wu was appointed to be the first principal<sup>62</sup> of the Comparative Law School of China, as, according to Dean W.W. Blume, Wu was “a brilliant, but somewhat unpredictable genius” but “eminently fitted to promote the prestige of the Law School in public relations.”<sup>63</sup> He worked closely with Dr. Robert Sheng, the new dean of the Law School, until he left in 1937. During Wu’s tenure at the Law School, he made at least three significant contributions to the development of the Law School, and more importantly, to the development of Chinese legal education at that time.

### Expanding Comparative Law Curriculum

His vision of legal education in China was realized through his career at the Comparative Law School. In his article, *Legal Education and Legal Mind*,<sup>64</sup> he discussed the importance of having a lofty ideal and historical insight as a law student.<sup>65</sup> He further claimed that the ultimate goal of legal education is to help students to find a “natural law” that progress with time.<sup>66</sup> Put in practice, during his career as the principal, he increased the number of course offerings in Chinese law, while continually developing a rich offering of foreign and international law courses. In addition to practical course offerings, theoretical courses on Jurisprudence and legal theories were also offered. A graduate program (an LL.M. program), was approved and begun in 1926. This program allowed students an opportunity to pursue advanced studies in law without having to go abroad.<sup>67</sup>

### Promoting Comparative Scholarship

As a member of the advisory board and an author, he helped in the development of the *China Law Review*. The *China Law Review* was first published in 1922 in English and Chinese (“法学季刊”). This journal was later considered a “mirror of legal change in China during the first third of the

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<sup>62</sup> Principal was a new office created just for Dr. Wu. After Dean Blume resigned in Apr. 1927, both Wu and Sheng became the two most popular candidates for the Dean position. The search committee decided to elect Sheng, “the practical man,” as the Dean and created a new office for Wu to promote the Law School in public relations. See Nance, *supra* note 14, at 80-81.

<sup>63</sup> Nance, *supra* note 14 at 80-81.

<sup>64</sup> 吴经熊, 法律教育与法律头脑 239 法令周刊 313 (1935).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Sun, *supra* note 56, at 150.

present century.”<sup>68</sup> The vision of the *China Law Review* was “first, to introduce the principles of foreign law in China, and to acquaint foreign countries with the principles of Chinese law; second, to facilitate a comparative study of these principles; and third, to extend widely in China knowledge of these principles as a preparation for legal reform.”<sup>69</sup> In order to achieve this vision, as a general policy, it required “the larger part of the material published in English to deal with matters of Chinese law, and the major part of the Chinese text to deal with foreign law.”<sup>70</sup> It emphasized articles using comparative methodology, because its editors believed that “[o]nly by a system of laws worked out by comparison of the indigenous laws of China with those of the modern nations, can China best govern herself and at the same time bring her legal system into harmony with the modern industrial and commercial world.”<sup>71</sup>

John Wu not only served as a member on the advisory board of the *China Law Review*, but also published over twenty of his own articles in the *China Law Review*. A cursory look at the collection of articles published in the *China Law Review* demonstrates an in-depth and comprehensive selection to achieve the editors’ vision. Articles were from scholars both inside and outside China, from countries such as the United States, Japan, and Germany. Articles covered topics from the foreign law of individual jurisdictions to international law issues. Approaches varied from ones with a goal to “build a theory or science of law” and ones that offered solutions to “concrete social problems or with the operation of legal institutions.”<sup>72</sup>

In 1935, Wu became one of the founders of another Chinese-English magazine in Shanghai, *TianHsien Monthly* (“天下月刊”),<sup>73</sup> which, like the *China Law Review*, was aimed at promote cultural understandings. Like the *Review*, it was considered another successful bridge of connecting the East and the West. In an essay published in the *TianHsien Monthly*, he revealed his passion for and appreciation of the importance of comparative research, “It was Liang Ch’i-ch’ao who first initiated me into the western style of

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<sup>68</sup> C. Summer Lobinger, *Legal Education in Twentieth Century China*, 4 LAW. GUILD REV. 40, 47 (1944).

<sup>69</sup> NANCE, *supra* note 14, at 77.

<sup>70</sup> Editorial, 1 CHINA L. REV. 33, 34 (1922).

<sup>71</sup> *Id.*

<sup>72</sup> Lobinger, *supra* note 79, at 47.

<sup>73</sup> T’ien Hsia came out of T’ien Hsia Wei Kung (天下为公), which means “everything under heaven should be shared with all people.” *I thought that, as our magazine had to do with everything under heaven, which was to be shared with others.* See Wu, BEYOND EAST AND WEST, *supra* note 13, at 201.



thinking. It was G. Lowes Dickinson who opened my eyes to the loveliness of the Chinese outlook. Laotze taught me the philosophy of Shakespeare. Freud and Marx have helped me to a better appreciation of Mencius.<sup>74</sup>

The Japanese invasion in the early 1940s brought publication of both the *China Law Review* and *TianHsien Monthly* to a halt. Both periodicals, however, contributed greatly to the development of China legal education and legal reform. On the one hand, they gave scholars, students, and even the general public an opportunity to express their own views freely. On the other hand, they gave the general public an opportunity to be educated, and therefore helped change the public perception of Chinese laws.

### **Building “One of the Best Law Libraries in the Far East”<sup>75</sup>**

The development of the foreign law collection of the University of Michigan Law School in the 1920s-1960s would not have occurred without Dean Henry Bates' vision for a library “that would support research and teaching in all aspects of the law, over all the world, for all historical periods.”<sup>76</sup> Similarly, the development of the library collection in the Comparative Law School of China in the 1920s-1930s would have been highly unlikely without the leadership of Wu and Dean Robert Sheng. When the Comparative Law School was in its early years (1915 to 1924), its library had only about 3,000 volumes, acquired mostly through gifts. But by the end of 1935, the library of the Comparative Law School held over 20,000 volumes of books covering both Chinese law and foreign and international law materials in the vernacular.<sup>77</sup> By the end of 1941, all law books, amounting to 30,000 volumes, were classified using the Dewey Decimal system. Among these books, two-thirds were foreign law books, covering more than thirty countries from Egyptian law to Peruvian Law. The Library also had over fifty foreign legal periodicals, mostly published in the United States.<sup>78</sup>

Under Wu's leadership, the Comparative Law School of China became a cradle of educating and developing Chinese legal elites, a focal point for legal researchers and scholars in China, and a forum for people to express and

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<sup>74</sup> Kingsley Bolton & Braj Behari Kachru, *WORLD ENGLISHES 160* (Taylor & Francis, 2006).

<sup>75</sup> NANCE, *supra* note 14, at 77.

<sup>76</sup> Margaret Leary, *Building a Foreign Law Collection at the University of Michigan Law Library, 1910-1960*, 94 *LAW LIB. J.* 395 (2002).

<sup>77</sup> Sun, *supra* note 56, at 151.

<sup>78</sup> Charles Y.S. Yu, *China's Law Library – Soochow University Law School Library*, 34 *LAW LIBR. J.* 65, 65-66 (1941).

communicate diverse views. As Judge Lobinger described in an article *Legal Education in Twentieth Century China*, “[t]he brilliant group of young Chinese scholars, emanating from, or gathered around, the Comparative Law School reminds one of those who sat at the feet of Irnerius in the University of Bologna and whose labors initiated ‘The Revival of Roman Law’ in Europe.”<sup>79</sup>

#### IV. AUTUMN - AUGUST 1926

*The grass and trees are withering day and night.  
The wu-t'ung and the willows have begun to shed their green leaves.  
The lovely colors of the orchids are fading.  
Affected by these things, I mediate privately.  
And find my heart in a similar condition.  
Who can always retain his childhood and youth?  
There is a time for blooming, and a time for decaying.  
Human right is like a spark from the stone.  
We often start too late to enjoy ourselves.*

- *Thoughts in Autumn* (秋怀) by Po Chu-I<sup>80</sup>

Wu once commented “in autumn everything takes on definite and chiseled contours; things you have been looking at, as it were, through mist and fog, suddenly reveal their clear outlines and naked colors to you.”<sup>81</sup> In autumn 1926, Chinese people finally were able to see some hope after being perplexed by mist and fog for decades. Under the 1926 Agreement, the Provisional Court of Shanghai took the place of the old Mixed Court for International Settlements, owning jurisdiction over all cases, except where defendants were aliens still under the jurisdiction of foreign consulates in Shanghai.<sup>82</sup> According to the 1926 Agreement, “[a]ll laws, including laws of procedure and ordinances, applicable at the present time in other Chinese courts as well as those that may be duly enacted and promulgated in the future shall be applicable in the Provisional Court.”<sup>83</sup> With a mission to “enlighten, to ennoble, to bring joy to the joyless, to procure minimum wages for the laborers, to provide human homes for human creatures, to take in hand Life

<sup>79</sup> Lobinger, *supra* note 82, at 48.

<sup>80</sup> WU, BEYOND EAST AND WEST, *supra* note 12 at 29.

<sup>81</sup> *Id.* at 216.

<sup>82</sup> *Current Events*, 3 CHINA L. REV. 47-52 (1926-1929).

<sup>83</sup> *Id.*

and direct it to pure channels,”<sup>84</sup> Wu accepted an appointment as the chief justice of the Provisional Court of Shanghai on January 1, 1927.

The establishment of the Shanghai Provisional Court represented a successful first step towards abolishing extraterritoriality, which had haunted the Chinese for over eighty years<sup>85</sup>. However, it was not blessed by many foreigners, who highly doubted the effectiveness of China’s judicial system. These outsiders doubted whether Chinese judges would be able to rule wisely and impartially, whether China had an established legal system with effective laws, and whether the Chinese court system would be corrupt.

Against this background, Wu became the first chief justice of the Court in 1927, then the President of the Shanghai Provisional Court in 1929. While presiding over these courts, Wu decided cases in a wide variety of areas, including contract, divorce, and torts. His decisions demonstrated not only his profound and comprehensive understanding of international law, traditional Chinese laws and principles, as well as recently enacted Chinese laws and --more importantly-- the relationship among them, but also his ability to apply laws into practice, taking appropriate circumstances into account. The significance of his success is two-fold. First, he demonstrated to outsiders who were skeptical of the Chinese judicial system that Chinese judges were fully capable of deciding cases wisely and impartially based on laws. Second, he was shaping the development of Chinese laws through his decisions. As he said, “I felt that I was molding the law of China by my judicial opinions.”<sup>86</sup>

Two examples of Wu’s decision-making illustrate his use of comparative law, and his impact on Chinese law In *Rizaff Freres v. The Soviet Mercantile Fleet*, plaintiffs, Freres, were businessmen of Persia carrying out business in Shanghai. Defendant was a representative of the Russian Mercantile Fleet. Both parties signed a contract under which the defendant

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<sup>84</sup> *Id.*

<sup>85</sup> Chinese’s fight to abolish extraterritorial jurisdiction probably began as soon as it was established, but it was not until 1927, upon the *Recommendations of Extraterritoriality Commission*, composed of thirteen members representing thirteen nations, that the control of the Mixed Court of International Settlements was turned back to the Chinese government. The Chinese government then reformed that court and incorporated it into its already established judicial system, as a provisional court in Shanghai. These thirteen nations were the U.S., Belgium, the British Empire, China, Denmark, France, Italy, Japan, the Netherlands, Norway, Portugal, Spain, and Sweden.

<sup>86</sup> WU, BEYOND EAST AND WEST, *supra* note 13 at 114.

agreed to convey certain goods to Vladivostok and then send them via Chinese railways to various final destinations. Plaintiff sued defendant for failure to perform the contract as agreed upon. Judge Wu dismissed the case, stating that based on “a prevailing tradition of international law, merchant vessels belonging to a foreign state are exempt from local jurisdictions, in accordance with art. 290 and art. 97 of the Code of Civil Procedure of China.”<sup>87</sup>

This holding had two significant features. First, there was actually no settled international rule on this issue at that time. After reviewing a comprehensive list of court decisions of many nations, including Denmark, Switzerland, Norway, Italy, Egypt, Japan, and the U.S., and balancing two conflicting interests--“interests of justice to the private individual” and “interest of amicable relations between States”<sup>88</sup>-- Judge Wu decided to follow a more widely-held view that this issue should be exempt from local jurisdiction. Second, he also used this opportunity to lay down a principle that the “Law of Nations is a part of the municipal law of China.”<sup>89</sup> This ruling occurred when there was no clear definition of international law and no rules of interpreting international law could be found in Chinese written laws and codes, yet China was a member of the League of Nations and certain other international organizations, and was a party to certain international treaties and agreements. Therefore, this was a brave step forward in terms of modernizing Chinese law and introducing the concept to the Chinese people.

In another case, *Loo Shen Kong v. Lan Chi Han*, when there were no definite rules by which to assess the amount of damages, he used “common principles of justice and reason” to make a ruling.<sup>90</sup> This is consistent with the sources of Chinese civil law at that time: when there were no express provisions, then custom, principles of reason, and right prevailed. The Chinese judicial system had also been applying express provisions and custom in the past. However, general principles, especially ones originating from western legal systems, such as the doctrines of voidness against public policy, and good faith, were new to Chinese people. By applying common principles of justice and reason, Judge Wu once again helped “lay down a sound basis for the Chinese legal system.”<sup>91</sup>

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<sup>87</sup> See *Rizaff Freres v. The Soviet Mercantile Fleet*, 3 CHINA L. REV. 15 (1926).

<sup>88</sup> *Id.*

<sup>89</sup> WU, BEYOND EAST AND WEST, *supra* note 13, at 114.

<sup>90</sup> See *Loo Shen Kong v. Lan Chi Han*, Shanghai Provisional Court, Civil Division, 3 CHINA L. REV. 27 (1926-1929).

<sup>91</sup> Ting-Kwei Loh, *The Provisional Court of Shanghai*, 3 CHINA L. REV. 1 (1926).

As a judge, he never hesitated to fight against corruption. He once said “[a] judge is like a virgin who must guard her chastity with the utmost jealousy” and admitted that some of his family members called him “a fool because of [his] uncompromising attitude against bribery.”<sup>92</sup> He believed financial independence is imperative for maintaining judicial independence. In 1947, when he was asked to head the Ministry of Justice, he required that three conditions be met before he would accept the post: first, “absolute non-interference on the part of superiors;” second, good “salary of the judges” so that they can “guard [their] integrity;” and third, promotion of the “education of the prisoners.”<sup>93</sup>

## V. WINTER - JANUARY 1947

*Frozen walls and hoary-headed frosts  
Join in weaving gloom and sending doom  
To the flowers, whose tender roots are snapped asunder,  
And whose fragrant souls have breathed their last!  
The wax candles weep tears of blood,  
Lamenting the coming of the dawn.*

- *Winter (冬) by  
Li Shang-yin*<sup>94</sup>

Winter is never the worst season because it always signals that spring is coming. After defeating the Japanese, China welcomed its new Constitution in January 1947. As noted above, this Constitution was mostly based on another important constitutional document, the 1934 Draft Constitution, of which Wu was the author. That 1934 draft was passed in 1936 but never enacted due to the outbreak of the Japanese war in 1937. Wu is the author of this important work.<sup>95</sup> It is unsurprising, therefore, that this Constitution reflects comparative law influences. In order to draft this Constitution, he reviewed written constitutions of the United States, Germany, France, Japan, and Estonia, as well as the unwritten constitution of the United Kingdom. He also researched the principles, ideas, and philosophies behind these

<sup>92</sup> WU, BEYOND EAST AND WEST, *supra* note 13, at 131.

<sup>93</sup> *Id.* at 337-38.

<sup>94</sup> WU, THE FOUR SEASONS OF T'ANG POETRY, *supra* note 2, at 30.

<sup>95</sup> On January 1, 1933, Wu joined the Legislative Yuan and served as a Vice-Chairman of the Constitution-Drafting Committee. He took on the duty to make a first draft of the Constitution and finished it within one month.

Constitutions, such as the philosophies of Montesquieu, Rousseau, Lolme, and James Wilson.

From a modern perspective, the significance of this Constitution is not that it recognized and borrowed western conceptions of laws and principles, but that it further revised and adapted those laws and principles based on China's own interests and needs. As Dean Pound commented, "[T]hey have made an intelligent selection of constitutional ideas from the best modern constitutions without slavish following of any, in a constant and consistent endeavor to make the whole instrument a Chinese constitution for China."<sup>96</sup>

The 1947 Constitution was based on three fundamental principles: the "principle of nationalism," the "principle of democracy," and the "principle of livelihood."<sup>97</sup> The fundamental goals, as stated in the preamble, were to "consolidate the power of the State, safeguard the rights of the people, ensure social security and promote the welfare of the people."<sup>98</sup> Chapter I stipulated that the Republic of China was a democratic Republic. Chapter II guaranteed citizens' fundamental rights and duties. The Constitution reflected Dr. Sun Yetsen's idea of five governmental branches under the principle of checks and balances, further revised from the western principle of "checks and balances" among three branches. In order to improve education, Wu specifically provided that the national budget for education would be no less than fifteen percent; in the provinces, no less than twenty-five percent; and in the counties, no less than 35 percent of the total budget.<sup>99</sup>

Judged by modern Western standards, this Constitution is not perfect.<sup>100</sup> Nonetheless, it may still have been a fit Constitution for China's circumstances at the time. It reflected a balance of individualism and collectivism, a hope of synthesizing idealism and materialism, or, in Wu's own words, "[i]deals, like lotus flowers, can only grow from the mud of matter. .... only through a fit arrangement of material things can ideals be

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<sup>96</sup> Roscoe Pound, *The Chinese Constitution*, 22 N.Y.U.L.Q. REV. 199 (1947).

<sup>97</sup> See The Constitution of the Republic of China, enacted Dec. 25, 1946, effective Jan. 1, 1947, art. 1 (1947).

<sup>98</sup> *Id.*

<sup>99</sup> See The Constitution of the Republic of China, enacted Dec. 25, 1946, effective Jan. 1, 1947, art. 164.

<sup>100</sup> E.g. see Thomas E. Greiff, *The Principles of Human Rights in Nationalist China: John C.H. Wu and the Ideological Origins of the 1946 Constitution*, 1985 CHINA Q. 441 (1985)

created, or at least be made to emerge. Even justice depends upon a harmonious distribution of material wealth.”<sup>101</sup>

## Conclusion

*To my mind, the excellence of justice consists in the fact that it is a compound of the True, the Good, and the Beautiful.*

- *Towards a Christian Philosophy of Law* by John C.H. Wu<sup>102</sup>

Wu's life was full of colorful seasons. As a scholar, he published over twenty articles on many areas, including legal philosophy, comparative law, international law, and Chinese law. He exchanged thoughts with the most distinguished legal scholars in the world—Justice Holmes, Dean Pound, Justice Cardozo, and Professor Stammler. As a judge, he helped shape the development of modern Chinese law. As an educator, he was an indispensable part of one of the best law schools in China's history. He also lectured in many law schools in both China and U.S. In fact, Wu's contributions to legal development did not end in 1947. He served as Chinese ambassador to the Vatican from 1947 to 1948. In 1951, he became a law professor at Seton Hall University Law School. In 1957, he was appointed as a judge of the Permanent Court of Arbitration in the Hague.<sup>103</sup> Rather than focusing on his later contributions in these roles, this article will conclude by describing the relevance of his comparative law research and practice to current issues.

No one would disagree that Shanghai today is a totally different city than it was eighty years ago. However, the problems that China faces today possess characteristics surprisingly similar to the problems it faced eighty years ago. Wu's understanding of comparative law, legal education, justice, and law and culture can help solve China's current problems.

## Legal Transplant: China v. West

Wu's observation of Chinese society in the 1920s probably still holds true: “Customs and ideologies have been changing with such feverish rapidity that sometimes I have a queer feeling as though I had already been carried

<sup>101</sup> WU, BEYOND EAST AND WEST, *supra* note 13, at 91.

<sup>102</sup> John C.H. Wu, *Towards a Christian Philosophy of Law*, 37 WOMEN LAW. J. 34 (1951) (*hereinafter* Wu, *Towards a Christian Philosophy*).

<sup>103</sup> *Ex-dipolmat John C.H. Wu*, 86, CHI. TRIB., Feb. 12, 1986, available at [http://articles.chicagotribune.com/1986-02-12/news/8601110538\\_1\\_mr-wu-nationalist-chinese-government-taiwan](http://articles.chicagotribune.com/1986-02-12/news/8601110538_1_mr-wu-nationalist-chinese-government-taiwan) (last accessed on Dec. 4, 2012).

along by a whirlwind and had never set my feet upon solid ground.”<sup>104</sup> Cultural clash still exists almost everywhere in China. A reader may find discussions about China’s cultural clash in publications ranging from the *New York Times*<sup>105</sup> to *China Daily*,<sup>106</sup> from *Nature*<sup>107</sup> to *Harvard Business Review*.<sup>108</sup> Cultural clash impacts China’s legal reform. On the one hand, China, after entering the WTO, started its legal reforms at an amazing speed. The practice of borrowing from the laws of western countries, such as the U.S. and Germany, became common. Legal transplantation is a complex process that involves “multiple exchanges” of “peoples, laws and legal tradition.”<sup>109</sup> To understand and adapt those laws to China’s own circumstances is a problem that every Chinese law scholar strives to solve.

As someone well-trained in both China and the U.S, and who devoted his whole life to researching, comparing, and synthesizing Chinese law with western laws, Wu’s thoughts and wisdom on how to adapt these laws to China’s own circumstances to solve the particular problems that China faces can certainly be helpful to Chinese people and scholars today. Just as Wu wrote in his casebook, *Jurisprudence: Cases and Materials*: “It is true that there exists the greatest diversity in the legal rules of different countries and ages. Yet there is a remarkable similarity and unity in the methods of judicial thinking.”<sup>110</sup>

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<sup>104</sup> WU, BEYOND EAST AND WEST, *supra* note 13, at 5.

<sup>105</sup> Kevin Holden Platt, *Public or Private? The Culture Clash in China*, N.Y. TIMES, June 12, 2012, available at <http://www.nytimes.com/2012/06/13/arts/13iht-rartchina13.html?pagewanted=all> (last accessed on Dec. 4, 2012).

<sup>106</sup> Huawen Chen, 当前几种激烈的文化冲突 (2011), [http://paper.people.com.cn/rmlt/html/2011-07/01/content\\_866545.htm?div=-1](http://paper.people.com.cn/rmlt/html/2011-07/01/content_866545.htm?div=-1) (last accessed on Dec. 4, 2012).

<sup>107</sup> *Culture Clash in China*, NATURE, Dec. 4, 2008, available at <http://www.nature.com/nature/journal/v456/n7222/full/456545b.html> (last accessed on Dec. 4, 2012).

<sup>108</sup> Katherine Xin & Haijie Wang, *HBR Case Study: Culture Clash in the Boardroom*, Sept. 2011, available at <http://hbr.org/2011/09/culture-clash-in-the-boardroom/ar/1>. (last accessed on Dec. 4, 2012).

<sup>109</sup> Prakash Shah, *Globalization and the Challenge of Asian Legal Transplants in Europe*, 2005 SINGAPORE J. LEG. STUD. 348, 349 (2005).

<sup>110</sup> JOHN C.H. WU, *JURISPRUDENCE: CASES AND MATERIALS 2* (St. Paul, Minnesota: West, 1958).



## Legal Education Reform: Theoretical v. Practical

The reform of legal education is a pressing issue around the globe. Law schools in China are facing several problems. For example, Chinese law students not only lack practical skills but also lack analytical thinking skills due to the commonly used lecture methods as well as the design of the bar exam, most questions of which only test students' ability for memorization, not analysis.<sup>111</sup> Legal ethics which "appears to be a fringe subject in Chinese legal education,"<sup>112</sup> needs to be strengthened.

How to design or develop a legal education system that will effectively meet the needs of a changing society is a problem that needs to be solved quickly. Wu's vision and works on legal education, as well as the success of the Comparative Law School of China, can offer useful lessons today. Globalization demands legal practitioners who are trained not only in domestic law, but also in international and foreign law. Furthermore, the need to train lawyers in practical skills is consistent with the need to train students in the "comparative technique of studying the various subjects."<sup>113</sup>

## Judicial Reform: Traditional Values v. Modern Rights

The clashes between modern law and traditional standards have haunted Chinese people for many years. The tension between individualism and collectivism continues to puzzle each individual Chinese. Knowledge of tradition is important to understand the present: as Wu said in *Jurisprudence as a Cultural Study*, "to be truly progressive and creative we must build on a living tradition. A man does not really know the present unless he knows the past, nor can be making a sensible forecast of the future without viewing history as a whole continuing process."<sup>114</sup> On the other hand, if a tradition turns out to hinder the pursuit of fundamental justice and the progress of society, then the persistence of that tradition may need to be reduced to a minimum.<sup>115</sup>

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<sup>111</sup> Dayuan Hai, 大陆法学教育：现状，挑战与展望（2010）.

<sup>112</sup> Judith A. McMorro, *Professional Responsibility in an Uncertain Profession: Legal Ethics in China*, 43 AKRON L. REV. 1081 (2010).

<sup>113</sup> BROWN, LEGAL EDUCATION AT THE UNIVERSITY OF MICHIGAN: 1859-1959, *supra* note 17, at 146.

<sup>114</sup> John C. H. Wu, *Jurisprudence as a cultural study*, 33 U. DET. L. J. 277, 295 (1956).

<sup>115</sup> See *supra* note 26.

A way to build an effective legal system that will value good traditions and high moral standards, as Wu suggested, may start from this point: "The justice of a law or a judgment depends on whether it is based on truth, whether it is directed toward the good life, and whether its dispositions are fittingly adapted to the end."<sup>116</sup>

## VI. A BIBLIOGRAPHY OF WU'S LEGAL WORKS

The following selective bibliography includes Wu's major books and articles on legal topics, in both English and Chinese. It does not include his works in other non-legal areas, such as on Chinese literature and religion.

### *Books:*

- Juridical Essays and Studies (Shanghai, China: Commercial Press, 1928)
- The Art of Law and Other Essays Juridical and Literary (Shanghai, China: The Commercial Press, 1936)
- With Kung-chueh Huang, 中国制宪史 (Chung-kuo chih hsien shih) (Shanghai, China: Commercial Press, 1937)
- Essays in jurisprudence and legal philosophy (Shanghai, China: Soochow University Law School, 1938)
- Beyond East and West (London, UK: Sheed and Ward, 1952)
- Fountain of Justice: A Study in the Natural Law (New York, NY: Sheed and Ward, 1955)
- Law (The Gilmary Society, 1955)
- Justice Holmes: A New Estimate (Philadelphia: Brandies Lawyers Society, 1957)
- Cases and Materials on Jurisprudence (St. Paul, Minnesota: West Pub. Co., 1958)

### *Articles & Book Chapters*

- Legal Philosophy & Comparative Law
- The juristic philosophy of Judge Cardozo, 2 China L. Rev. 109 (1925)
- The three dimensions of law, 3 China L. Rev. 126 (1927)
- The Juristic philosophy of Roscoe Pound, 18 Ill. L. R. 285 (1923)
- The mind of Mr. Justice Holmes, 8 China L. Rev. 77 (1935)

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<sup>116</sup> Wu, *Towards a Christian Philosophy of Law* 37 Women Law. J., *supra* note 102 at 35.

- The Juristic philosophy of Justice Holmes, 21 Mich. L. Rev. 523 (1922)
- The Legal Theories of James Wilson, 2 China L. Rev. 13 (1924)
- The province of jurisprudence re-determined, 3 China L. Rev. 52 (1926)
- Scientific method in judicial process, 3 China L. Rev. 7 (1926)
- The Logic of Would-Be in Judicial Decisions, 2 China L. Rev. 329 (1924)
- Truth and fiction in the art of justice, 36 U. Det. L. J. 130 (1958)
- Quest of Justice: Reflections on interpretations of modern legal philosophies, 33 Iowa L. Rev. 1 (1947)
- The Natural law and our common law, 8 China L. Rev. 77 (1935)
- Problem and Method of Psychological Jurisprudence, 2 China L. Rev. 214 (1924)
- Jurisprudence as a cultural study, 33 U. Det. L. J. 277 (1956)
- Justices Holmes and the common law tradition, 14 Vand. L. Rev. 221 (1960)
- Religion and law in the American way of life, 31 Conn. B. J. 17 (1957)
- The common law approach to international law, 5 Cath. Law. 295 (1959)
- Stammler and his critics *in* Rudolf Stammler, The theory of justice (1925)
- Towards a Christian philosophy of law, 37 Women Law. J. 34 (1951)

### *Chinese Law*

- C.H. Chang, Y.L. Liang & John C. H. Wu, Persons in Chinese Law, 2 China L. Rev. 257 (1924)
- C.H. Chang, Y.L. Liang & John C.H. Wu, Sources of Chinese Civil Law, 2 China L. Rev. 209 (1924)
- Readings from Ancient Chinese codes and other sources of Chinese law and legal ideas, 19 Mich. L. Rev. 502 (1921)
- Two forms of tortious liability in the modern Chinese law, 4 China L. Rev. 321 (1931)
- The problem of extraterritoriality in China, 24 Am. Soc'y Int'l L. Proc. 182 (1930)
- The struggle between government of laws and government of men in the history of China, 5 China L. Rev. 53 (1932)