

**POUND FOR POUND? ROSCOE POUND'S ADVENTURES IN
CHINA AND QUESTIONS THEY POSE FOR SCHOLARS OF
CONTEMPORARY CHINA**

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ABSTRACT

Roscoe Pound was one of the most celebrated figures in twentieth century American legal thought, having originated the field of sociological jurisprudence which presaged legal realism and having served for two decades as Dean of Harvard Law School. Less

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This paper is dedicated to R. Randle Edwards, the Walter Gellhorn Professor Emeritus at Columbia Law School. We thank Randy for bringing us together some 30 years ago. We like to think of ourselves as but one example of the many ways in which throughout his career Randy selflessly and with wisdom built bridges between China and the United States.

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We use the romanization by which individuals are most commonly known but, where helpful, also provide alternate or additional leading romanizations used and other names by which they were known.

Views expressed and/or errors made are the responsibility of the authors.

well known is his extended role in China as a principal advisor to the Nationalist government as it fought a civil war during the 1940s against the Chinese Communist Party. And even less fully explicated is the story of how Pound's ideas influenced Chinese legal thought to this day and of how China influenced his thinking.

Pound for Pound has two principal objectives. The first is to reconstruct, from archival and other materials, Pound's adventures (and misadventures) in China, and then to examine the ways in which his thought was first lionized by Chinese scholars, then denounced during the early years of the People's Republic of China, and subsequently, in the late twentieth and early twenty-first centuries, embraced there. The second is to use Pound's experience to raise questions about the role of U.S. and other foreign scholars involved in Chinese legal development over the past several decades that have not received the scrutiny warranted.

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1. INTRODUCTION

At a time of enormous tension between the United States and the People's Republic of China (P.R.C.), scholars in law involved in that relationship face a myriad of challenges regarding both their academic work and efforts to influence policy.¹ Too often, however, the complexity of navigating the bilateral interface with integrity is treated, even in scholarly writing, as unprecedented. This belies history and in so doing, denies us the opportunity to learn from it.

Roscoe Pound, who Earl Warren, the late Chief Justice of the United States Supreme Court, credited with “great contributions to the jurisprudence of our country [that] have not been exceeded in history,” provides a particularly compelling historical example.² Following two decades as Dean of Harvard Law School (from 1916-36), Pound spent extended time during the 1930s and 1940s in China, including serving as a principal advisor to both the Ministry of Judicial Administration and the Ministry of Education of the Republic of China (R.O.C.).³ His experience in those roles—as he sought to chronicle and shape legal development in China, while also trying to influence American policy toward China—is not only intriguing itself but also illuminates the challenges legal scholars face today regarding this bilateral relationship. Moreover, although

¹ For fair-minded overviews, see Mary Gallagher et al., *Higher Education and U.S.-China Relations*, NAT'L COMM. ON U.S.-CHINA RELATIONS (May 21, 2021, 9:30 AM), <https://www.ncusr.org/event/higher-education-us-china-relations> [<https://perma.cc/R73K-MKLS>] (presenting obstacles faced by universities and higher education in the U.S. due to tensions in the bilateral relationship); Margaret Lewis, *Criminalizing China*, 111 J. CRIM. L. & CRIMINOLOGY 145, 180-217 (2021) (critiquing the impact of the U.S. government's China Initiative); Sheena Chestnut Greitens & Rory Truex, *Repressive Experiences among China Scholars: New Evidence from Survey Data*, 242 CHINA Q. 349, 349-51 (2020) (regarding censorship by Chinese authorities and self-censorship by foreign scholars, predominantly to protect their sources and colleagues).

² *Roscoe Pound of Harvard Dies; Headed Law School 20 Years; His 'Social Interests' Theory Influenced the New Deal – Scholar in Many Fields*, N.Y. TIMES, July 2, 1964, at 1.

³ The idea to retain Pound seems to have originated with Xie Guansheng (Hsieh Kuan-sheng a.k.a. Hsieh Kwan Chen and Hsieh Shou-Chang), the Minister of Judicial Administration, and been approved by the leader of Nationalist China himself, Generalissimo Chiang Kai-shek. Xie Guansheng (谢冠生), *Zhuihuai Pang De Jiaoshou* (追怀庞德教授) [*In Memory of Professor Pound*], in GUIHENG TANG WENGAO (筵笙堂文稿) [GUIHENG TANG MANUSCRIPT] 129 (1973). At various points, we refer to the R.O.C. by other names by which it was commonly known, including Republican China, Kuomintang China or Nationalist China, and the Nanjing government, the latter referring to its capital city.

his efforts to have an impact on public affairs fell well short of what he desired, his influence in the world of Chinese legal thought has been, and remains, considerable.⁴ The intricate manner in which that influence has made itself felt has much to tell us about how foreign ideas regarding law may (or may not) gain traction in China and about legal transplantation more generally.

This article proceeds in five parts. Part I provides an overview of Pound's adventures in China (and adventures they were). Part II examines both his motivations and those of his hosts. Part III considers the influence of his ideas in Chinese legal academe, while Part IV makes explicit tensions evident in Pound's involvement with China. Part V concludes by considering ways in which Pound's experience points to questions to be asked of foreign legal scholars now engaged in the interface between the U.S. and P.R.C.

2. POUND IN CHINA

Nathan Roscoe Pound's adventures in China had two distinct phases. The first—involving visits in 1935 and 1937 immediately prior to and shortly after he concluded his twenty years as Dean of Harvard Law School—was preceded by the publication in the 1920s of translations of *The Scope and Purpose of Sociological Jurisprudence*, *Interpretations of Legal History*, and several other of his works. These stopovers were “private” and brief, but foreshadowed his later extended sojourns in several respects. They included high level meetings (e.g., with luminaries such as Legislative Yuan President Sun Fo, Finance Minister T.V. Soong, Dr. Hu Shih, and Dr. Wu

⁴ See generally *infra* Part III (describing the impact of Pound's ideas).

Ching-Hsiung),⁵ days packed with lectures and visits to courts and prisons, and a ready willingness to opine on matters Chinese.⁶

Pound's second set of forays was far more extensive, commencing with his appointment in 1946 as an advisor to both the Republic of China's Ministry of Judicial Administration (司法行政部) and its Ministry of Education, and including a total of more than seventeen months' residence in China between 1946 and 1948, as well as additional work done after his return to the U.S. late in 1948.⁷ Pound labored prodigiously, especially when one considers that he arrived at age seventy-six (following five years of stepped-up teaching and administrative work at Harvard owing to wartime exigencies) in a China that had yet to recover from World War II and was already plunging into civil war. Within weeks of reaching China, he launched a major survey on "the administration of justice" in East China which took him to six cities in three provinces.⁸ Aided by a team of more than a dozen foreign-trained Chinese experts under the direction of his former doctoral student Yang Zhaolong (Yang Chao Lung),⁹ the project involved not only

⁵ Sun Fo (a.k.a. Sun Ke) was the son of Dr. Sun Yat-Sen, who played a leading role in the overthrow of China's last dynasty, the Qing, in 1911 and who has been lauded by both the Kuomintang (the Nationalist Party), which he founded, and the Chinese Communist Party. T.V. Soong (a.k.a. Song Ziwen) was at various times Finance Minister, Foreign Minister, Chair of the Board of Directors of the Bank of China, and a key figure in R.O.C. relations with the U.S. government. Hu Shih, a key leader of the May Fourth Movement of 1919 which protested the Treaty of Versailles's failure to restore China's territorial integrity while also seeking to liberalize society, at different times was Chancellor of Peking University and Ambassador to the United States. Wu Ching-Hsiung (a.k.a. John C.H. Wu) was a legal philosopher, educator, and lawyer who over a long career served as president of the High Court of Shanghai, a key drafter of the 1946 R.O.C. Constitution, and Ambassador to the Holy See. Vincent Y.C. Shih, *A Talk with Hu Shih*, 10 CHINA Q. 149, 149 (1962).

⁶ His work on these trips also included serving as a council member of the Soochow Law School. Liu Zhengzhong (刘正中), *Pang De yu Zhongguo zhi Fazhi: 1943 Zhi 1948 Nian zhi Zhongguo Fazhi Lishi (庞德与中国之法制: 1943 至 1948 年之中国法制历史)* [Pound and the Legal System of China—Chinese Legal History Between 1943 and 1948], 12 FAXUE (法学) [LEGAL SCI.] 2, 6 (2000).

⁷ See *supra* text accompanying note 3.

⁸ Letter from Roscoe Pound, Advisor, Ministry of Jud. Admin., to Alfred Kohlberg (Dec. 19, 1955) (on file with the Pound Archives, Langdell Library, Harvard Law School).

⁹ Yang's principal supervisor at Harvard Law School was Edmund Morgan while Pound presided over Yang's dissertation defense—an event which took four hours resulting in a grade of "Excellent." Yang reportedly gave Pound his Chinese name, Pang De (庞德), roughly meaning someone of extensive virtue. Interestingly, Pang De is the name of a famous general in the extremely popular fourteenth-century Chinese masterpiece *Romance of the Three Kingdoms*. We thank Seungwon

the development and administration of a detailed survey instrument, but site visits by Pound and his team to courts and prisons, during which, working through his Chinese intermediaries, he interviewed prosecutors and prisoners, judges and jailors, and others.

Even as he was working on the survey (which culminated in a report, the gist of which is recounted in his 1948 article for a U.S. audience entitled “The Progress of Law in China”),¹⁰ Pound immersed himself in a range of other activities. Starting in 1946, he submitted a series of reports to his hosts on topics including the state of Chinese law in general, the role of the judiciary, the constitution and legislative drafting, juvenile justice, and legal education.¹¹ At same time, he met periodically with pertinent Chinese officials while also delivering lectures at universities and in government programs on these and other topics, including comparative law, legal interpretation, and the role of bar associations.¹² Throughout, he continued to publish on his own account in leading American law journals, including his 1948 essay on the tension between comparative law and history as bases for legal development in the *Harvard Law Review*,¹³ the aforementioned report on law’s progress in China in the *Washington Law Review*,¹⁴ and articles in the *New York University Law Quarterly Review* (as its principal law review then was

Chang for pointing this out. For background on Yang, see YANG ZHAOLONG (杨兆龙), YANG ZHAOLONG FAXUE WENXUAN (杨兆龙法学文选) [SELECTED WORKS OF YANG ZHAOLONG ON JURISPRUDENCE] 495-97 (Hao Tiechuan (郝铁川) & Lu Jinbi (陆锦碧) eds., 2000) (presenting a timeline of Yang’s life). See also Yang Zhaolong (杨兆龙), YANG ZHAOLONG WENJI (杨兆龙文集) [THE COLLECTED WRITINGS OF YANG ZHAOLONG] 427-75 (2018). We discuss Yang, himself an extraordinary figure, at *infra* Part III.

¹⁰ Roscoe Pound, *Progress of Law in China*, 23 WASH. L. REV. & ST. BAR J. 345, 345 (1948).

¹¹ See generally *id.* (offering Pound’s account of his findings from the reports he did on these subjects for the R.O.C. government). Several of Pound’s reports may be found in Roscoe Pound, China Survey of the Administration of Justice Files, Folder 001768-062-0001, in the Pound Archives, Langdell Library, Harvard Law School.

¹² Pound was nothing if not compendious in his record keeping. The Pound Archives, Langdell Library, Harvard Law School run to thousands of pages (on microfilm), including his diary, extensive correspondence, drafts of articles and reports, name cards and dinner invitations, as well as Christmas cards from the likes of Chiang Kai-shek.

¹³ Roscoe Pound, *Comparative Law and History as Bases for Chinese Law*, 61 HARV. L. REV. 749, 756-58 (1948).

¹⁴ Pound, *supra* note 10.

known).¹⁵ And, drawing all these threads together, in 1947 he embarked on what he hoped would be a seven volume series (each of no more than 1,500 pages) of “institutes” intended, with his typical immodesty, to bring a needed coherence to modern Chinese law through codification and annotation.¹⁶

In late November of 1948, as the Nationalist government faced setback after setback, on the advice of the U.S. Embassy, Pound hurriedly departed China.¹⁷ But his engagement with China continued. This was most notable through his support of the so-called China Lobby, including Senator Joseph McCarthy and others who sharply attacked the State Department for having “lost” China,¹⁸ and attacking those who were seen as abetting this “loss”, such as the eminent Harvard sinologist John King Fairbank (who, to be sure, had earlier criticized Pound for being out of his depth in his commentary on China).¹⁹ His continued engagement was also evident in his writing and in the professional and personal support he provided for colleagues from his days in China and their families until his death in 1964 at the age of 94.²⁰

¹⁵ Roscoe Pound, *The Chinese Constitution*, 22 N.Y.U. L.Q. REV. 194, 194 (1947); Roscoe Pound, *Development of a Chinese Constitutional Law*, 23 N.Y.U. L.Q. REV. 375, 375 (1948).

¹⁶ The work was never completed, as the R.O.C. government chose not to fund it.

¹⁷ Chen Xiahong (陈夏红), *Yang Zhaolong: Zai Huishou Yi Bainianshen* (杨兆龙：再回首已百年身) [*Yang Zhaolong: Looking Back One Hundred Years Later*], 爱思想 [AISIXIANG] (Jan. 9, 2005, 3:50 PM), <http://www.aisixiang.com/data/5315.html>. To be sure, even as the Embassy pleaded with him to leave, he did find time to ensure that the aforementioned files were readied for shipment. *Id.*; see Letter from Roscoe Pound, Advisor, Ministry of Jud. Admin., to James Bryant Conant, President, Harvard Univ. (May 5, 1950) (on file with the Pound Archives, Folder 001766-069-0064, Langdell Library, Harvard Law School).

¹⁸ See, e.g., *Reception Fetes Dr. Pound for Free China Aid*, L.A. TIMES, May 1, 1952, at A3. The conceit in the idea that China was America’s to “lose” is discussed in GORDON H. CHANG, *FATEFUL TIES: A HISTORY OF AMERICA’S PREOCCUPATION WITH CHINA* 216–17 (2015).

¹⁹ The skirmishes between these two eminent Harvard figures, each larger than life in his own field, enlivened the pages of two Harvard student newspapers, the *Harvard Crimson* and the *Harvard Law School Record*. See *Pound Declares China Misrepresented in United States; Gives His Own Views*, HARV. L. SCH. REC., Mar. 2, 1948, at 1; J. K. Fairbank, *Fairbank Asserts Condition in China Not Misrepresented in American Press*, HARV. L. SCH. REC., Mar. 30, 1948, at 1. This exchange was later picked up by the *Boston Daily Globe*. *Prof. Fairbank Challenges Dean Pound’s China Report*, BOS. DAILY GLOBE, Apr. 2, 1948, at 16.

²⁰ Including writing reference letters into his 90s for the children and grandchildren of Kuomintang friends.

3. POSSIBLE MOTIVATIONS

What, then, both led Pound, well into his eighth decade, to leave the comforts of his American academic perch for such an extended stay in war-torn China, and what prompted his Chinese hosts, beset with civil war in the aftermath of World War II, to expend so much effort in receiving him? By Pound's telling, his motivations were idealistic – with China presenting an extraordinary opportunity to put his ideas in the service of human betterment.²¹ Embedded in this was a missionary zeal, whether of the literal (i.e., religious) type that Jed Kroncke of the University of Hong Kong law faculty identifies in the chapter on Pound in his impressive book *The Futility of Law and Development*,²² or what elsewhere has been called secular missionary work,²³ in the sense of an idealized vision of American legality being disseminated in almost gospel-like terms. Witness in the former regard the correspondence upon which Kroncke has drawn between Pound and various Protestant missionaries, as well as Pound's growing conviction, as he aged, of the centrality of Christianity to the rule of law in the United States, if not well-ordered society more generally.²⁴ And consider with regard to the latter how Pound's oeuvre resonates with certitude about the intellectual and practical superiority of the common law, at least as its lessons were filtered through him.²⁵

One also needs to factor into the foregoing Pound's more personal trajectory. Whether the product of twenty-four years of being a law school dean (enough to drive anyone to despair), his proliferating intellectual battles with everyone from Felix Frankfurter to the legal realists, or his growing embitterment with events in the larger world, by the time Pound travelled to China in the 1930s, the youthful creativity and optimism that marked his

²¹ Roscoe Pound, *Annual Survey of Law: Decisions of Courts Show Some Dangerous Trends*, 33 A.B.A.J. 1093, 1093 (1947).

²² JEDIDIAH J. KRONCKE, *THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW* 201 (2016); see also Jedidiah Kroncke, *Roscoe Pound in China: A Lost Precedent for the Liabilities of American Legal Exceptionalism*, 38 BROOK. J. INT'L L. 77, 80 (2012).

²³ William P. Alford, *Of Lawyers Lost and Found: Searching for Legal Professionalism in the People's Republic of China*, in *EAST ASIAN LAW AND DEVELOPMENT: UNIVERSAL NORMS AND LOCAL CULTURE* 181, 182 (Arthur Rosett, Lucie Cheng & Margaret Woo eds., 2002).

²⁴ KRONCKE, *THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW*, *supra* note 22, at 204–06.

²⁵ ROSCOE POUND, *THE SPIRIT OF THE COMMON LAW* 32–39 (1921).

rejection of nineteenth century formalism in favor of a new, reform-oriented sociological jurisprudence had ebbed.²⁶ In its place, Pound attacked the New Deal, displayed a disturbing indifference through the mid-1930s to German National Socialism (accepting an honorary degree from the University of Berlin in 1934 at Harvard Law School—to the dismay of Harvard President James Bryant Conant and Professor Frankfurter),²⁷ and grew ever more doubtful about whether the United States would embrace his vision. China, on the other hand, presented the opportunity to start afresh, and on an unprecedented scale, in deploying and vindicating his vision that sociological jurisprudence could provide a rational and principled way to address the challenges of the twentieth century. Indeed, much of what Kroncke and Angela A. Wu, in her insightful 2006 paper on Pound in China,²⁸ aptly characterize as Pound’s misreading of Chinese conditions may also be understood in part as a product of his excitement at what he saw as a new and receptive venue for ideas that he believed were no longer fully enough appreciated at home.

Beyond the world of ideas, in endeavoring to plumb Pound’s motivations, we ought not to lose track of the possible influence of less elevated considerations. The erudite scholar Wu Ching-Hsiung and others lavished Pound (whose vanity was legendary) with praise, with Wu writing to Pound in 1935 that “your influence . . . in

²⁶ Pound believed it crucial to move beyond what he saw as the rigid categories of nineteenth-century American legal thought and in its place develop law informed by an appreciation of economic and social circumstances that could, in the hands of common law judges, address society’s current and likely future challenges. *See, e.g.*, Roscoe Pound, Address at the Twenty-Ninth Annual Meeting of the American Bar Association: The Causes of Popular Dissatisfaction with the Administration of Justice, (Aug. 29, 1906) (observing that law does not respond quickly to economic change); Roscoe Pound, *The Need for a Sociological Jurisprudence*, 19 GREEN BAG 607, 610–11 (1907) (arguing that in light of societal change, legal scholars should reexamine legal doctrine to take account of the interests and opinions of society); Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12, 34–36 (1910) (discussing the rigidity of legislation and observing the need for lawyers to embrace insights from economics, sociology, and philosophy).

²⁷ Peter Rees, *Nathan Roscoe Pound and the Nazis*, 60 B.C. L. REV. 1313, 1331–32 (2019). For an excellent treatment of Pound’s time at Harvard, including a detailed account of the deterioration of his relations with his colleagues and his seeming inability or unwillingness to appreciate what the Nazis represented through the mid-1930s, see BRUCE A. KIMBALL & DANIEL R. COQUILLETTE, *THE INTELLECTUAL SWORD: HARVARD LAW SCHOOL, THE SECOND CENTURY* 257–64 (2020).

²⁸ Angela A. Wu, Contextualizing “Sociological Jurisprudence”: Dean Roscoe Pound in the Republic of China (1946-1948) 12–13 (May 9, 2006) (unpublished manuscript) (on file with authors). It is impressive that this paper was written during its author’s student days.

this part of the world [(China)] has been spreading like wild fire.”²⁹ And the R.O.C. government did its best to entice Pound, with repeated invitations to dine with senior-most leaders, including on multiple occasions Generalissimo and Madame Chiang Kai-shek; medals and much laudatory press coverage; and a monthly salary comparable to his Harvard pay (and vastly more than that of senior Chinese scholars), even for those periods when Pound would not be resident in China.³⁰

The motivations of Pound’s Chinese hosts also seem to have been multi-faceted. Yang Zhaolong, who in the mid-1940s served as Director of the Department of Criminal Affairs of the Ministry of Judicial Administration and who was the most faithful renderer of Pound’s ideas in China, appears from the outset to have been highly confident that his former dean would have much to contribute. Specifically, he saw Pound as central to his hope that China would put in place the fundamentals of a rule of law as construed in western democratic nations – a position for which Yang was sharply attacked after the establishment of the P.R.C.³¹ Others shared the

²⁹ KRONCKE, THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW, *supra* note 22, at 323 n.15. Wu was not exactly stinting in his praise for prominent American legal thinkers, having during his student days cultivated a relationship with the octogenarian Supreme Court Justice Oliver Wendell Holmes. See William P. Alford & Shen Yuanyuan, “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, 45–48 (R. St. J. MacDonald ed. 1993). Kimball and Coquillette also note how Pound’s “infamous vanity . . . was exploited by the German Foreign Office” in its efforts to foster favorable attention in the U.S. KIMBALL & COQUILLETTE, *supra* note 27, at 264.

³⁰ Xie Guansheng (谢冠生), *Zhuiyi Pang De Jiaoshou* (追忆庞德教授) [*In Memory of Professor Pound*], *ZHONGYANG RIBAO* (中央日报) [CENTRAL DAILY NEWS], July 1964, at 2. Xie recalled Pound’s visits in China in his diary, mentioning that the Pounds were given numerous welcoming banquets by high officials, including Generalissimo Chiang and Madame Chiang (Soong Mei-ling), Ju Zheng, the then President of the Judicial Yuan, Zhu Liuxian, the then Minister of Education, and other senior officials of the Ministry of Judicial Administration. On July 3, 1946 the Central Daily News carried an editorial welcoming Pound, stating that his visit to China would have a long-lasting influence on the creation of a new era of Chinese legal studies. Xie recalled that Generalissimo Chiang ordered that they must renew Pound’s contract next year with a generous offer to show enough respect, and they should send assistants to Pound after he returned to the States. Pound was paid \$37,500 for his advisership. Letter from Xie Guansheng, Minister, Ministry of Jud. Admin., to Pound, Advisor, Ministry of Jud. Admin. (Oct. 28, 1945) (depicted in N. E. H. HULL, *ROSCOE POUND AND KARL LLEWELLYN, SEARCHING FOR AN AMERICAN JURISPRUDENCE* 311 (1997)). That payment would be worth more than \$500,000 today.

³¹ Zhu Xingxi (竺型熹), *Buyao Bei Youpai Fenzi Yang Zhaolong de Miulun Suo Qipian* (不要被右派分子杨兆龙的谬论所欺骗) [Don’t be Fooled by the False

view that Pound's ideas regarding codification held promise for China's fledgling legal order.³² And yet others, it appears, saw in Pound's presence an opportunity to buttress pre-existing political positions.

The foregoing seems to have been the case with Chiang Kai-shek, who soon after sounding out Pound in private in late August of 1946, sought through Minister of Judicial Administration Xie Guansheng to solicit Pound's views for public dissemination on the R.O.C.'s draft Constitution which envisioned a predominant role for the President.³³ Wu Ching-Hsiung – the draft's principal author³⁴ – in a September interview underscored Pound's agreement with it.³⁵ And Pound himself in a report to the Ministry – large parts of which were published in China – endorsed it, writing: "China requires a Constitution which suits her national characteristics and general needs It is essential to adapt . . . to the historical, social and cultural backgrounds of the nation."³⁶ This was a view that provided an endorsement of a strong presidency. Opponents of Chiang's were quick to suggest that the Generalissimo's use of Pound to enhance his legitimacy seemed a latter day version of General Yuan Shikai's efforts, following the collapse of the Qing dynasty in 1911, to cite advice from Frank Goodnow of Johns Hopkins University to cement dictatorial powers.³⁷

Theory of the Rightist Yang Zhaolong], 6 FA XUE (法学) [LEGAL SCI.] 57, 57-58 (1957). See *infra* Part III.

³² Wang Jian (王健), Pang De yu Zhongguo Jindai de Falü Gaige (庞德与中国近代的法律改革) [Pound and Law Reform in Modern China], 5 XIANDAI FAXUE (现代法学) [CONTEMP. LEGAL STUD.] 22, 22 (2001).

³³ Xie, *supra* note 30.

³⁴ For a probing study of the 1946 Constitution, see Note, *Dr. Wu's Constitution*, 132 HARV. L. REV. 2300, 2307 (2019) (depicting the drafting of the 1946 Constitution).

³⁵ Wu Ching-Hsiung (吴经熊), Wuwu Xiancao Lifa Jingshen Genju Wuquan Xianfa Lilun Zhengxie Huiyi zhi Xiuzhenggao Shangxu Queren (五五宪草立法精神根据五权宪法理论政协会议之修正稿尚需确认) [May 5th Draft was Rooted in the Spirit of the Five-Power Constitution Theory, Which Must Be Re-instated in the Revised Consultative Conference Constitution Draft], Shen Pao (申报) [SHANGHAI NEWS], Sept. 28, 1946, at 1.

³⁶ Roscoe Pound, *Roscoe Pound on China's Constitution*, Shanghai Evening Post, Dec. 17, 1946, at 1.

³⁷ Goodnow, who became president of Hopkins in 1914, played a key role in constitutional drafting for Yuan. The latter's idea of constitutionalism was to name himself emperor in 1915 and, following the long-standing practice of adopting a reign name for his emperorship, to declare himself the Hongxian (洪宪) emperor, meaning the Abundant Constitution emperor. To be sure, Yuan's ambitions played poorly both at home and with foreign powers, leading him to abdicate eighty-three

The Kuomintang's ("KMT") leadership also, it appears, thought Pound useful in its ongoing efforts to retain American political support which it deemed crucial to its survival, especially in the face of growing allegations of KMT corruption and lawless behavior made by China hands such as Fairbank, Owen Lattimore, and John Service (who all later were denounced during the McCarthy era).³⁸ And indeed Pound, while in China and subsequently, readily sang the praises of KMT officials and judges, extolling what he saw as the advances made in developing its legal system (including lauding Chiang for his commitment to a rule of law—at one point analogizing "criticisms of Chiang to charges of constitutional violations against Abraham Lincoln during the Civil War"³⁹) and castigating those individuals and media critical of China as ill-informed or biased (or both).⁴⁰ As he put it, "I have read much . . . of the inefficiency and corruption of Chinese judges. Careful observation in many courts has failed to disclose any such condition . . . there is little truth in what is written of Chinese judges."⁴¹ It was little wonder that Chen Lifu, General Secretary of the KMT Central Committee and a close political associate of Chiang, in 1950 wrote Pound to say "I hope you will sway your mighty pen to plea for Free China" — to which Pound replied "I have been exerting myself vigorously ever since I returned from China on behalf of the Nationalist government, and shall continue to do so."⁴²

days later. Goodnow's efforts on behalf of Yuan are the subject of a chapter in Kroncke's bracing study of the export of American law. KRONCKE, *THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW*, *supra* note 22, at 132-57.

³⁸ See generally E.J. KAHN, *THE CHINA HANDS: AMERICA'S FOREIGN SERVICE OFFICERS AND WHAT BEFELL THEM* (1975) (discussing how American diplomats reported the growing strength of revolutionaries and the growing corruption of the Kuomintang).

³⁹ KRONCKE, *THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW*, *supra* note 22, at 213.

⁴⁰ See, e.g., *Newspapers Garble Conditions in China, Professor Pound Says*, HARV. CRIMSON, Mar. 2, 1948, at 1 (reporting Pound's criticism of reportage about China).

⁴¹ POUND, *supra* note 10, at 361.

⁴² Letter from Chen Lifu, Gen. Sec'y, KMT Cent. Comm., to Roscoe Pound, Advisor, Ministry of Jud. Admin. (Feb. 27, 1950) (on file with the Pound Archives, File 001766-04900479, Langdell Library, Harvard Law School); Letter from Roscoe Pound, Advisor, Ministry of Jud. Admin., to Chen Lifu, Gen. Sec'y, KMT Cent. Comm. (Mar. 22, 1950) (on file with the Pound Archives, File 001766-049-0479, Langdell Library, Harvard Law School). Or, as Pound later wrote, "I have been preaching here on every occasion since my return." Letter from Roscoe Pound, Advisor, Ministry of Jud. Admin., to Chao Byng (May 5, 1950) (on file with the Pound Archives, File 001766-049-0479, Langdell Library, Harvard Law School).

American support, to be sure, was not entirely unidirectional. In 1943 the U.S. renounced the last vestiges of formal extraterritoriality, which in its heyday had enabled its companies in many instances to avoid the application of Chinese law and instead secure the protection of U.S. law.⁴³ In view of the end of extraterritoriality, and with the prospect of Allied victory in World War II looming, by late 1944 the State Department and business community began planning for a future in which U.S. companies with major operations in China would lose the privileges they had previously enjoyed as foreign companies.⁴⁴ Chinese law was viewed as far too “ambiguous,” “complicated,” and “tedious”—owing, it was thought by the Americans, in part to its drafters having relied on continental models.⁴⁵ Pound, as an outspoken critic of the New Deal regulatory state, was viewed as someone who might play a valuable role in fostering the development of law more amenable to the interests of

Pound’s efforts on behalf of the Nationalist government were also recognized by Minister Xie who in his diary noted that “[w]hen speaking in public, he denounced Communism and predicted that Communism would not last long in China.” Xie, *supra* note 3. Chen Lifu and his brother Chen Guofu who, together formed the powerful Central Club Clique (aka the C-C Clique), were described in a 1942 cable from U.S. diplomat John Carter Vincent as having “virtual control of education and propaganda” in Republican China. Memorandum from John Carter Vincent, Couns., Embassy of the U.S. in China, to Clarence E. Gauss, U.S. Ambassador to China (July 30, 1942) (available online at <https://history.state.gov/historicaldocuments/frus1942China/d177> [<https://perma.cc/ND8Z-NJY4>]). Vincent’s memorandum also notes that although Chen Lifu was U.S.-educated, “in Europe [he and his brother] would probably be called ‘fascists.’” *Id.* Perhaps one additional point of attraction between Pound, Chiang, Chen, and other KMT leaders lay in their having admired National Socialist Germany, at least prior to the commencement of World War II. For more on the KMT leaders’ view of Germany, see JAY TAYLOR, *THE GENERALISSIMO: CHIANG KAI-SHEK AND THE STRUGGLE FOR MODERN CHINA* 101–03 (2009).

⁴³ TEEMU RUSKOLA, *LEGAL ORIENTALISM: CHINA, THE UNITED STATES, AND MODERN LAW* 115–16 (2013).

⁴⁴ Tao Wenzhao (陶文钊), 1946 *Nian Zhongmei Shangyue: Zhanhou Meiguo Duihua Zhengce Zhong Jingji Yinsu Gean Yanjiu* (1946 年中美商约: 战后美国对华政策中经济因素个案研究) [*The Sino-U.S. Commercial Treaty of 1946: A Case Study of Economic Factors in U.S. Policy Toward China after the War*], in *JINDAI SHI YANJIU* (近代史研究) [STUD. IN MOD. HIST.] 236, 239–42 (1993).

⁴⁵ *Id.* Other U.S. attempts at this time to influence Chinese legal development include efforts by Judge Milton Helmick, with the support of the State Department, to encourage the Republic of China to enhance the role of lawyers, establish a system of circuit courts, and revise its company law. Although Helmick had spent a decade (1934–43) as Judge of the United States Court in China (which was abolished with the end of American extraterritoriality in 1943), these efforts were unsuccessful, save for putting in place an exchange program that helped facilitate high-level visits, such as those of Pound to China and Ni Zhengyu to Harvard. Ni would later serve as a Judge on the International Court of Justice.

commerce, especially that of the U.S.⁴⁶ The leadership of both the China-America Council of Commerce and Industry and the American Bar Association (“ABA”) accordingly reached out to Pound with congratulations on his appointment and offers of support. Indeed, Carl Rix, president of the ABA, went so far as to tell Pound that his mission was one of “tremendous importance to the world, and particularly to the United States. If you have laid a foundation for a new China, it will have a profound influence on the economic life of the United States.”⁴⁷ It is not clear from the historical record what influence these admonitions to advance the home team may have had. In spite of Pound’s belief in the superiority of the common law, he early on expressed the view that rather than discarding institutions and practices modeled on the civil law (in which the R.O.C. had invested much time and energy), China should instead enrich them by adding positive features from the common law, and temper them through interpretation and enforcement redolent with the “spirit” of Chinese culture.⁴⁸

4. THE IMPACT OF POUND’S IDEAS

The attention that the R.O.C. government and its supporters lavished on Pound notwithstanding, it appears that he had little impact on the world of affairs in mid-twentieth-century China. His praise (both in China and the U.S.) for the probity of its officials was duly noted while his many recommendations regarding constitutional revision, the judiciary, codification, legal education, and juvenile justice failed to produce sustained changes. But perhaps it is asking too much to expect that a foreigner, writing in English during a time of civil war following on the heels of decades of warlordism and world war, could or should bring about immediate institutional change. As Minister Xie put it in his diary, the larger environment was hardly conducive.⁴⁹ Where Pound did have a discernible impact – at least in the sense of being strenuously

⁴⁶ Carl Rix, *Law and Government*, 72 ANN. REP. A.B.A. 315, 319 (1947); see also KRONCKE, *THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW*, *supra* note 22, at 205–06.

⁴⁷ Rix’s 1947 message is recounted in KRONCKE, *THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW*, *supra* note 22, at 205–06.

⁴⁸ See Pound, *supra* note 13 (discussing how Chinese law might develop).

⁴⁹ Xie, *supra* note 3.

promoted and later even more strenuously rebuked—was in the world of ideas. The earlier publication of Chinese versions of his landmark works on sociological jurisprudence and interpretation was followed by translations of several other of his works.⁵⁰ And in the final two decades of Nationalist rule on the mainland, virtually all books on legal theory published in Chinese contained a treatment of his work.⁵¹

Even after the R.O.C. retreat to Taiwan in the late 1940s, Chinese scholars evidenced their admiration by continuing to engage Pound's work, as reflected not only in texts on legal philosophy itself, but as well by the incorporation of Pound's sociological jurisprudence into theoretical work regarding substantive law. Such leading scholars as Chang Wen-Pei, Tsao Wen-yen, and Ma Han-pao wrote with enthusiasm about Pound.⁵² Tsao, a diplomat and a scholar who had developed a close personal relationship with Pound when they were both in Nanjing, went so far as to write that "all his observations about our law and justice are accurate and to the point But his criticism is like the guidance to his son by a benevolent father—more encouragement than mere criticism."⁵³ Pound, continued Tsao, "in advocating the theory of social engineering actually had the same aspiration as the Confucianists."⁵⁴ To Tsao, Pound's youthful work as a botanist "enabled him to think deeply about the philosophy of coexistence in the natural world."⁵⁵ Therefore, the ideal society envisaged by him is

⁵⁰ *The Spirit of the Common Law, Law and Morality, and Criminal Justice in America* were among Pound's many works translated into Chinese in this early period.

⁵¹ See, e.g., SELECTED WRITINGS ON JURISPRUDENCE (Wu Ching-Hsiung (吴经熊), Hua Maosheng (华懋生) eds. 1935) (2003). This collection of articles by major legal scholars was published in 1935 by the Hui Wen Tang (会文堂) Press in Shanghai, and reprinted by the China University Press in 2003. In it, Pound was discussed extensively by several authors.

⁵² CHANG WEN-PEI (张文伯), PANG DE XUE SHU (庞德学述) [INTRODUCING POUND'S SCHOLARSHIP] (1967); see also Tsao Wen-yen (曹文彦), *Faxue Taidou Pang De Xiansheng Jiu Shi Er Shoudan Xianci* (法学泰斗庞德先生九十二寿诞献词) [*Praise for Mr. Pound, the Grand Master of Law, on his 92nd Birthday*], ZHONGGUO XINWEN ZHOUBAO (中国新闻周报) [NEWSWEEK CHINA], Nov. 5, 1946; Yu Ming (于明), *Ma Hanbao Xiansheng Fangtan Lu* (马汉宝先生访谈录) [*Interview with Mr. Ma Hambao*], in ZHONGHUA FAXUE JIA FANGTAN LU (中华法学家访谈) [INTERVIEWS WITH CHINESE JURISTS] 7 (He Qinhua (何勤华) & Huang Yuan-Sheng (黄源盛) eds., 2020).

⁵³ See Tsao, *supra* note 52.

⁵⁴ *Id.*

⁵⁵ *Id.*

a peaceful, harmonious and reasonable community.”⁵⁶ And Ma, who later was a professor at National Taiwan University, with stints at Columbia, Harvard, and Vienna, as well as a Grand Justice of the Judicial Yuan of the Republic of China, was effusive in extolling Pound’s blend of scholarship and character.⁵⁷

Pound’s reception on the Chinese mainland was decidedly more mixed, reflective of its changing political currents. Commencing in 1955 in the pages of the important political-legal journal *Zhengfa Yanjiu*, Pound was attacked for both his role as an advisor to the Kuomintang and his scholarship. “Pragmatism,” wrote the journal’s editors, echoing earlier attacks on Hu Shih and on John Dewey (whose ideas were influential in China in the 1920s), “is the reactionary philosophy of American imperialism Roscoe Pound, a representative of American pragmatism, actually came [to China], spreading his . . . reactionary legal thoughts.”⁵⁸ Former R.O.C. Ministry of Justice official Yang Yuqing (no relation to Yang Zhaolong) extended the denunciations to sociological jurisprudence itself. It was, wrote Yang, an “amalgam” of all reactionary legal theory, as the supposedly distinct analytical, historical, philosophical, and sociological schools Pound identified were but different instruments in the service of capitalism that sought to blur the distinctions between classes.⁵⁹ Its ideas had “enabled the American government to fully morph into a fascist regime.”⁶⁰ And worse yet, according to Yang Yuqing, Pound’s argument that reason lay at the heart of Anglo-American law was no more than a cover for imperialism, reflecting a racist belief in the superiority of Anglo-Saxon people.⁶¹

⁵⁶ *Id.*

⁵⁷ Ma first encountered Pound in 1946 when his father Ma Shouhua (who was Secretary to the R.O.C.’s Minister of Judicial Administration) arranged for him to translate for Pound. The two took to one another and subsequently met several times. Ma credited Pound for his own interest in jurisprudence and focused his first major academic article (“The Theoretical Foundation of the Doctrine of Social Interest of Pound”) on him. Yu, *supra* note 52.

⁵⁸ Yang Yuqing (杨玉清), *Pang De – Shiyong Zhuyi Faxue Zai Zhongguo de Chuanbo Zhe* (庞德 – 实用主义法学在中国的传播者) [Pound, the Propagator of Legal Pragmatism in China], 3 *ZHENGFA YANJIU* (政法研究) [RSCH. ON POL. & L.] 1, 10 (1955); Gu Weixiong (顾维熊), *Fandong de Pang De Shiyong Zhuyi Faxue Sixiang* (反动的庞德实用主义法学思想) [The Reactionary Pragmatic Legal Thought of Pound], 3 *ZHENGFA YANJIU* (政法研究) [RSCH. ON POL. & L.] 43, 43 (1963).

⁵⁹ Yang, *supra* note 58, at 11.

⁶⁰ *Id.*

⁶¹ *Id.*

These attacks paled in the face of those levied against Chinese scholars who had embraced Pound. The most notable such case was that of Yang Zhaolong, the Harvard S.J.D. graduate who was Pound's principal interlocutor in China. In spite of having been the Nationalist government's last Attorney-General, Yang chose to stay on the Chinese Mainland (rather than decamp to Taiwan) to assist in building a new legal order, forgoing invitations from the Hague Academy, a Canadian university, and Pound himself which would have allowed him to leave China.⁶² Notwithstanding having secured the release of thousands of prisoners (many of them Communists) from Kuomintang jails while Attorney-General, and becoming head of the Soochow University School of Law in 1950, during the Anti-Rightist Movement of 1957 Yang was denounced,⁶³ and in 1963 he was imprisoned as a counter-revolutionary.⁶⁴ To be sure, the attacks on Yang centered on his having in 1957 first given a series of lectures on the presumption of innocence, and then sent Dong Biwu, the President of the Supreme People's Court, a letter extensively addressing "problems with Socialist legislation."⁶⁵ But he was also denounced for "regarding America as his father" in view of his role in introducing Pound's ideas into China, including spending time translating for and otherwise assisting Pound in

⁶² HAO TIECHUAN (郝铁川), *YANG ZHAOLONG PINGZHUAN: ZHONGGUO JINDAI FAXUE JIA QUNTI DE YIGE SUOYING* (杨兆龙评传: 中国近代法学家群体的一个缩影) [AN ANNOTATED BIOGRAPHY OF YANG ZHAOLONG: A MICROCOSM OF MODERN CHINESE JURISTS] 8 (2021).

⁶³ *Faxisi Xintu Yang Zhaolong* (法西斯信徒杨兆龙) [*Fascist Disciple Yang Zhaolong*], SHANGHAI WEN HUI BAO (上海文汇报), July 4, 1957. The Anti-Rightist Movement was an effort to purge "rightists" from the Party in response to criticism from relatively independent intellectuals of the Party's leadership during the mid-1950s and concerns about loyalty in light of the failed Hungarian uprising of 1956. It is estimated more than a half million people were labeled as Anti-Rightists and killed or persecuted during the campaign. YUAN-TSUNG CHENG, *The Reverse of the Reverse: The Anti-Rightist Campaign*, in SECRET LISTENER: AN INGENUE IN MAO'S COURT, 135, 135-44 (2021). The Anti-Rightist movement was also a precursor of the so-called Great Leap Forward (hereinafter "GLF") regarding which the Dutch historian Frank Dikötter estimates that some forty-five million people died of starvation or of other premature causes. FRANK DIKÖTTER, *MAO'S GREAT FAMINE: THE HISTORY OF CHINA'S MOST DEVASTATING CATASTROPHE: 1958-62*, at 333 (2010). Based on years of research, the noted P.R.C. reporter Yang Jisheng has concluded that there were at least thirty-six million excess deaths during the GLF. YANG JISHENG, *TOMBSTONE: THE GREAT CHINESE FAMINE, 1958-1962*, at 394-430 (2012). Ironically, even Yang Yuqing who so vigorously had denounced Pound and Yang Zhaolong in *Zhengfa Yanjiu*, was himself attacked as a "rightist" during the GLF.

⁶⁴ See HAO, *supra* note 62, at 2 (summarizing Yang's life story).

⁶⁵ *Id.* at 88-89, 94.

working for the KMT.⁶⁶ Yang finally was released as part of a broad amnesty for Kuomintang members in 1975, but not before he had languished in prison for more than a decade and his wife, Sha Suoyin, had committed suicide.⁶⁷

In spite of these fervent denunciations, less than a quarter-century later P.R.C. scholars undertook to revive Pound. Following what we discern as a somewhat familiar pattern, this revival involved a tripartite process—beginning with replacing the strenuous criticism of earlier years with a much milder variety, moving to re-publication of the targeted scholar’s writings without comment, and concluding with an explicit embrace of the work in question. Mild criticism demonstrated that respectful engagement of the work in question was now possible, albeit still coupled with enough of a critique to ensure that the reviver was protected against any backlash and that a publishing house could safely bring it out. In the case of Pound, this breakthrough was undertaken by Professor Shen Zongling of Beijing University, widely considered one of the foremost experts on western legal thought of his generation.⁶⁸ Prior to the Cultural Revolution, in 1964, under a pseudonym, Shen published a short descriptive piece about Pound.⁶⁹ Shen in 1983 devoted a full chapter to Pound in what was the first major post-Cultural Revolution treatise on that topic, *Modern Western Legal Philosophy*.⁷⁰ He carefully and systematically introduced Pound’s theoretical work, noting its potential value for a China hoping to rebuild a legal order in the aftermath of the Cultural Revolution, and then offered a few paragraphs of substantive criticism, before concluding with a nod to Pound’s usefulness, going so far as to say that “some of his answers are close to scientific answers.”⁷¹ Several other scholars soon followed suit, making little

⁶⁶ *Fascist Disciple Yang Zhaolong*, *supra* note 63.

⁶⁷ HAO, *supra* note 62, at 294–98.

⁶⁸ For an insightful discussion of Shen, see ZHANG NONGJI, *LEGAL SCHOLARS AND SCHOLARSHIP IN THE PEOPLE’S REPUBLIC OF CHINA: THE FIRST GENERATION 1949–1992*, at 105–11 (2022) (discussing Shen’s background and career).

⁶⁹ Wang Lin (王林), *Pang De de Shehuixue Faxue shi Meiguo Longduan Zichanjieji Zhengce de Chanwu* (庞德的社会学法学是美国垄断资产阶级政策的产物) [*Roscoe Pound’s Sociological Studies of Law is the Product of the American Policy of Bourgeois Monopoly*], in ZHANG, *supra* note 68, at 108.

⁷⁰ SHEN ZONGLING (沈宗灵), *XIANDAI XIFANG FALÜ ZHAXUE* (现代西方法律哲学) [*MODERN WESTERN LEGAL PHILOSOPHY*] 63–95 (1983). See RODERICK MACFARQUHAR & MICHAEL SCHOENHALS, *MAO’S LAST REVOLUTION* (2006), for a leading account of the Great Proletarian Cultural Revolution (1966–1976).

⁷¹ See SHEN, *supra* note 70, at 95.

or no reference to his service on behalf of the Nationalist government. To be sure, some stalwarts, such as Gu Chunde of Renmin University (and later its law school dean), remained more critical of Pound in their writing, but they were a distinct minority by the 1980s.⁷²

As a next step, Shen and Professor Dong Shizhong of Fudan, respectively, translated Pound's *Social Control Through Law* and *The Task of Law*, arranging for publication (without a substantive introduction, as was typically not needed for translations at the time) by the prestigious Commercial Press. Because of the scarcity of materials regarding western law, these and other of Pound's classical works translated earlier provided basic materials for young Chinese scholars eager to acquaint themselves with jurisprudence beyond their homeland. In the late 1980s and early 1990s, scholars educated principally after the Cultural Revolution such as Liang Zhiping (then of Renmin University) and Zhang Wenxian (then of Jilin University) – inspired in part by Shen Zongling – began deeply to engage Pound's work, presenting it in a positive light.⁷³ Liang (writing in the influential journal *Du Shu*), Zhang and others argued that Pound was an internationally important thinker, both substantively and with respect to method, whose sociological jurisprudence could help provide a useful framework for understanding how law might speak to China's needs and how enduring challenges, such as enforcement, might be addressed.⁷⁴ This movement culminated in the ambitious plan of Deng Zhenglai,⁷⁵ one of the more creative social scientists of his time, to

⁷² See *A General Account of Bourgeois Political and Legal Thought in the Era of Imperialism* (帝国主义时期资产阶级政治法律思想概述), in *XIFANG ZHENGZHI FALÜ SHI* (西方政治法律史) [HISTORY OF WESTERN POLITICAL THOUGHT] 336–53 (Gu Chunde (谷春德) & Lü Shilun (吕世伦) eds., 1981). Gu later changed his mind and became more tolerant of Western legal thought in general and Pound in particular. See, e.g., *XIFANG FALÜ SIXIANG SHI* (西方法律思想史) THE HISTORY OF WESTERN LEGAL THOUGHT 290–94 (Gu Chunde (谷春德) & Shi Tongbiao (史彤彪) eds., 5th. ed. 2017) (introducing Pound's theories systematically).

⁷³ Liang Zhiping (梁治平), *Wenming, Falü yu Shehui Kongzhi, Tongguo Falü de Shehui Kongzhi Falü de Renwu, Duhou* (文明、法律与社会控制, 通过法律的社会控制/法律的任务读后) [Civilization, Law and Social Control – After Reading “Social Control Through Law and The Task of Law”], 7 *DUSHU* (读书) [READING] 40, 40 (1987); ZHANG WENXIAN (张文显), *DANGDAI XIFANG FA ZHIXUE* (当代西方法哲学) [CONTEMPORARY WESTERN LEGAL PHILOSOPHY] 2 (1987).

⁷⁴ Liang, *supra* note 73.

⁷⁵ See, e.g., DENG ZHENGLAI, *GLOBALIZATION AND LOCALIZATION: THE CHINESE PERSPECTIVE* (2012) (featuring a collection of Chinese scholars' works on globalization and localization). Deng completed a translation of two volumes. Deng Zhenglai (邓正来), *Maixiang Quanqiu Jiegou Zhong de Zhongguo Faxue – Pang De*

popularize Pound, believing that Pound's breadth of learning and perspective might inspire Chinese scholars to move beyond their national stage and see law in a global frame. Alas, Deng's plan to translate all five volumes of Pound's *Jurisprudence* was cut short by his premature death in 2013.⁷⁶

Pound's work also arguably has permeated the law itself in the P.R.C., albeit via an even more circuitous route. Key academics involved in the drafting of the P.R.C.'s monumental (1,260 articles) Civil Code, which took effect in January 2021, openly drew on the work of such prominent Taiwan-based legal intellectuals as Wang Tse-chien (Wang Zejian), the eminent civil law scholar and Grand Justice, who was importantly influenced by Pound.⁷⁷ In a 2015 interview with P.R.C. legal scholars, Wang Tse-chien spoke of Pound's impact on his thinking, noting that when he was in college, classmates seeing him at dinner would, on occasion, joke that they "saw Roscoe Pound coming," because he so liked reading Pound.⁷⁸ And, in turn, Wang Liming, former Dean of Renmin University of China School of Law, a deputy to the National People's Congress (and member of its Law Committee) and a principal figure in the drafting of the Civil Code, specifically referenced Wang Tse-chien in describing his work on the Code's novel provisions on personality rights.⁷⁹

So it was that, once reviled both for his involvement with the Nationalist government and for a philosophy considered antithetical to Marxism, Pound's ideas found a new audience in twenty-first-century China. Indeed, even as Chinese scholars began to acquaint themselves with the work of other important western theorists from Weber and Durkheim to Parsons, Foucault, Luhmann, and Bourdieu,⁸⁰ Pound continued to occupy a position of

Fali Xue (迈向全球结构中的中国法学—庞德法理学) [Chinese Jurisprudence in the Global Structure—Preface to the Chinese Translation of Pound's Jurisprudence], 3 JILIN DAXUE SHEHUI KEXUE (吉林大学社会科学) [JILIN UNIV. J. SOC. SCIS.] 5 (2004).

⁷⁶ DENG, Chinese Jurisprudence in the Global Structure, *supra* note 75, at 5-6.

⁷⁷ Wang Liming (王利明), Minfa Dian Rengequan Bian Caoan de Liangdian Ji Wanshan (民法典人格权编草案的亮点及完善) [Highlights and Improvements of the Draft Personality Rights Part of the Civil Code], 1 ZHONGGUO FALÜ PINGLUN (中国法律评论) [CHINA L. REV.] 96, 98 (2019).

⁷⁸ Yu Ming (于明), Wang Zejian Jiaoshou Fangtan Lu (王泽鉴教授访谈录) [Interview with Professor Wang Zejian], in INTERVIEWS WITH CHINESE JURISTS, *supra* note 52, at 348.

⁷⁹ Wang, *supra* note 77, at 98.

⁸⁰ For more on the introduction into China of these thinkers, see Song Weizhi (宋维志), Xin Zhongguo Fa Shehuixue Yanjiu Qishi Nian (新中国法社会学研究 70 年) [Seventy Years of the Study of the Sociology of Law in the New China], 4 TIANFU

some prominence, as evidenced by translations, for instance, of *New Paths of the Law* in 2016 and *An Introduction to the Philosophy of Law* in 2019, as well as of four of the five volumes of *Jurisprudence*.⁸¹ And even today, major textbooks on jurisprudence contain a chapter regarding Pound's thought or his work on sociological jurisprudence,⁸² although, with intellectual constraints tightening sharply, several universities are replacing more general theoretical texts with those focused more on Xi Jinping thought.⁸³

It is hard to pinpoint the reasons for Pound's allure to Chinese thinkers, particularly given how his work has been embraced by scholars ranging from the mainstream Zhang Wenxian, former President and Party Secretary of the High People's Court of Jilin Province (and, before that, Dean of the Jilin University law faculty) to the more eclectic and independent Liang Zhiping.⁸⁴ Perhaps in part it is owing to his unusual blend of characteristics. Trained initially as a botanist,⁸⁵ Pound's emphasis on the appropriate classification and systematic exposition of knowledge may have

XINLUN (天府新论) [NEW HORIZONS FROM TIANFU] 1, 72 (2020) (discussing Chinese scholars on the study of the sociology of law).

⁸¹ ROSCOE POUND (罗斯科 庞德), FA DE XIN LUJING (法的新路径) [NEW PATHS OF THE LAW] (Li Lifeng (李立丰) trans., 2016); ROSCOE POUND (罗斯科 庞德), FA ZHEXUE DAOLUN (法哲学导论) [AN INTRODUCTION TO THE PHILOSOPHY OF LAW] (Yu Baihua (于柏华) trans., 2019); ROSCOE POUND (罗斯科 庞德), FALI XUE (法理学) [JURISPRUDENCE] (Yu Lüxue (余履雪) et al. trans., 2007).

⁸² Jurisprudence in China has been divided into two branches: the History of Western Legal Thought, or Xifang Falü Sixiang Shi (西方法律思想史), and Jurisprudence, or Fali Xue (法理学). Texts of the former variety typically have included a detailed chapter on Pound's sociological jurisprudence focusing on social engineering and social interests while a shorter version of his theory is discussed together with sociological jurisprudence more generally in the latter. Pound is discussed in almost all books systematically addressing issues of legal theory, including several twenty-first century versions of major textbooks. See, e.g., *Pangde de Shiyong Zhuyi Faxue* (庞德的实用主义法学) [*Pound's Pragmatic Jurisprudence*], in XIFANG FALÜ SIXIANG SHI (西方法律思想史) [A HISTORY OF WESTERN LEGAL THOUGHT] (Yan Cunsheng (严存生) ed., 2006); XIFANG FALÜ SIXIANG SHI (西方法律思想史) [A HISTORY OF WESTERN LEGAL THOUGHT] 236, 242–46 (Xu Aiguo (徐爱国) ed., 2014); FALI XUE (法理学) [JURISPRUDENCE] 50–70 (Sun Guohua (孙国华) & Zhu Jingwen (朱景文) eds., 4th ed. 2015); FALI XUE (法理学) [JURISPRUDENCE] 33–39 (Shen Zongling (沈宗灵) ed., 4th ed. 2014).

⁸³ Vivian Wang, *How China Under Xi Jinping Is Turning Away from the World*, N.Y. TIMES (Feb. 23, 2022), <https://www.nytimes.com/2022/02/23/world/asia/china-xi-jinping-world.html> [https://perma.cc/7TUY-GYTX].

⁸⁴ See THE HISTORY OF WESTERN LEGAL THOUGHT, *supra* note 72.

⁸⁵ Michael Ray Hill, *Roscoe Pound and American Sociology: A Study in Archival Frame Analysis, Sociobiography, and Sociological Jurisprudence 189–249* (May 8, 1989) (Ph.D. Dissertation, University of Nebraska) (ProQuest).

both resonated of historic Chinese approaches to law and appealed as scientific while also being relatively accessible.⁸⁶ An advocate for the common law, he was nonetheless both intimately familiar with European legal theory and cognizant of the richness of Chinese civilization, leading him to argue that law reform would inevitably involve drawing on both indigenous and foreign resources.⁸⁷ And, of course, there was the appeal of sociological jurisprudence in its determination to be practical in looking beyond “law on the books” to “law in action” in the hope of using law as a tool of social engineering and societal development.

5. WHAT CHINA REVEALS ABOUT POUND

The Chinese, of course, are not the only ones in this tale replete with inconsistencies, for Pound himself in both thought and action embodied profound contradictions. One notable example of this concerns his views on state power. Pound’s early work on sociological jurisprudence exuded hopefulness about the ways in which law could be enlisted to improve society and therefore assumed the possibility of an affirmative role for governmental authority.⁸⁸

But long before his time as an advisor to the Chinese government, he had begun to grow deeply skeptical of government in the U.S. (if not Germany of the early and mid-1930s), culminating in his all-out attack on the New Deal as abridging liberty and exemplifying a state out of touch with its populace.⁸⁹ And yet, Pound seemed to accept Chiang Kai-shek and the Nationalist government essentially without reserve. This was evident not only in his taking on a very visible consulting role, which the KMT and its supporters used for legitimation, but also in his writing—as in piece after piece, academic and popular, he painted the Nationalist government in glowing terms while overlooking its authoritarian nature and the abuses it perpetrated.⁹⁰ In the former regard, Pound’s

⁸⁶ For a revealing discussion of the importance of taxonomy in late imperial Chinese law, see WILLIAM JONES ET AL., *THE GREAT QING CODE* 22–28 (1994).

⁸⁷ See Pound, *supra* note 13.

⁸⁸ See, e.g., Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, *supra* note 26, at 23.

⁸⁹ DAVID WIGDOR, *ROSCOE POUND: PHILOSOPHER OF LAW* 266–77 (1974).

⁹⁰ See generally XU XIAOQUN, *TRIAL OF MODERNITY: JUDICIAL REFORM IN EARLY 20TH CENTURY CHINA* (2008) (exploring the influences on, circumstances

praise for prison administration in Nanjing and elsewhere stands in sharp contrast to well-documented scholarly accounts of torture in Nationalist prisons.⁹¹ And in the latter, whatever shortcomings administrative agencies spawned by the New Deal may have had in their infancy, they surely were vastly more transparent and democratically accountable than the wartime Nanjing government, which at best could be described as paternalistically authoritarian.⁹² To be sure, as Angela Wu has observed, tucked away amidst Pound's extensive praise for the Nationalist government and its work regarding legal development were the occasional expressions of concern about the thinness of institutional checks, though, as she notes, Pound himself undercut the effect of such caveats by ultimately always giving his hosts "the benefit of the doubt."⁹³

One could endeavor to explain Pound's inconsistency regarding state power (and other key dimensions of his portrayal of Republican China) in a variety of ways. Most harshly, it could be seen as a product of the flattery and fees his KMT hosts bestowed upon him and that he seems to have relished. In a more generous light, perhaps one could ascribe it to a romanticism about China that provided an aged Pound with the opportunity to vindicate ideas about the possibilities for a sociological jurisprudence that as a young man he had advanced with an idealism that seems to have eroded in the course of his engagement with American academic and political life.

But the oddities in Pound's treatment of China may also have been attributable to his scholarship in a more basic sense. As Angela Wu and Jed Kroncke each identify in their distinct ways, Pound's engagement of China in key respects belied the theoretical and methodological approaches that he believed he was applying and that he hoped the Chinese would vindicate.⁹⁴ At a fundamental

surrounding, and practice within the justice system under the Kuomintang government). As Kroncke's careful research points out, some liberal Chinese legal activists did write to Pound to apprise him of the Nationalist government's shortcomings. Kroncke, *Roscoe Pound in China: A Lost Precedent for the Liabilities of American Legal Exceptionalism*, *supra* note 22, at 126. There is no evidence of Pound having taken such missives to heart.

⁹¹ See FRANK DIKÖTTER, CRIME, PUNISHMENT AND THE PRISON IN MODERN CHINA, 1895-1949, at 270-80 (2002).

⁹² *Id.* at 286-94.

⁹³ Wu, *supra* note 28, at 15.

⁹⁴ See KRONCKE, THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW, *supra* note 22, at 210-12; Wu, *supra* note 28, at 31.

level, Pound's work concerning sociological jurisprudence, legal interpretation, and legal history had as a central tenet the importance of moving beyond formalism in order to understand each society's cultural traditions and contemporary political and economic situation, so that the law could speak to society's needs and be interpreted consistent with its values.⁹⁵ Nonetheless, his efforts to understand China were ultimately sharply constrained by the language barrier, his reliance on his KMT "handlers" as intermediaries with those institutions he chose to study, his proximity to those in power, and his own political proclivities. It would be unrealistic and unfair to expect a seventy-six-year-old to master a new language or forge his own links to institutions in a war-torn setting; but given these limitations, one might hope that Pound would have acknowledged and taken account of them, and so, approached the Chinese case with greater humility, understood better the limitations of relying on doctrine and official pronouncements (he being an anti-formalist, after all), and so, been less extreme in his judgments.

Beyond these matters of method, the China case also illustrates other tensions in Pound's thinking. His famous 1948 essay on comparative law and history as bases for legal development is appealing in eschewing the type of binary approach that characterized (and still characterizes) too many other scholars, and in suggesting the advantages and disadvantages of an emphasis on one or the other.⁹⁶ And yet at a more granular level (or, for that matter, even a boulder-like level), it leaves hanging virtually as many conceptual questions as it answers. Surely Pound is right in that essay in declaring that law is both found and made, but where does one go from there? Pound is mindful of how different the China of his day was from the West and at times seems more appreciative of strengths of Chinese culture than many of his scholarly contemporaries. At other points he speaks of what he describes as Chinese backwardness in a manner that not only is condescending, but also leaves the impression that while he thought there were important lessons China might learn from the West, the obverse was much less the case for him.⁹⁷ Moreover, "the West" is hardly monolithic, and Pound does not fully engage the question of the extent to which China optimally should be looking to the civil

⁹⁵ Pound, *supra* note 13, at 761.

⁹⁶ *See id.*

⁹⁷ *See, e.g.,* Pound, *supra* note 10, at 349-51, 362.

law (which Pound acknowledges got a head start in China), whether directly from the Continent or as mediated through the Japanese experience, or to the common law (which he sees as more responsive to society and ultimately superior). And how is the actual process of melding whatever is borrowed with the best of China's own tradition to occur?

To the extent that Pound descended from his Olympian heights to address such matters (which was not often), he seemed to look toward two principal avenues for bringing together one's own law (here including custom) and that transplanted from abroad. Explicitly, in "Comparative Law and History"⁹⁸ he looks to judges to provide that bridge, drawing on their nation's past to interpret laws and, in particular, fill any legislative lacunae. Implicitly, through his own ambitious, if ultimately unrealized, effort to codify and annotate all of Chinese law in a series of volumes that he projected would run from 6,000 to more than 8,000 pages in total, he seems to be conveying the idea that masterful scholars can bridge worlds. And yet, in neither case does he provide a full picture of what that means in terms of deciding between potentially incommensurate concerns. He seems not adequately to appreciate that the role of a full-time professional and independent judge in the manner he is envisioning comes more from one than the other of these two poles and that the mere act of according them such centrality itself represents a value-laden choice. And nor does he acknowledge that those who would bridge, be they judges or scholars, ultimately in their work are products of their environment and its particular values, and hence, try as they might to be neutral, that work will have a political valiance, as Angela Wu has observed.⁹⁹ To note this is not to disparage Pound, but to underscore how very challenging the issues implicated have been – and still are.

6. QUESTIONS FOR TODAY

It is easy, for many a reason, to find fault with Roscoe Pound's forays into Chinese life. We have no direct personal links to the people and events involved and so can view them with more detachment than could he. With the vantage point of history, we are

⁹⁸ Pound, *supra* note 13, at 762.

⁹⁹ See Wu, *supra* note 28, at 31–32.

now removed from the immediate passions of a China enmeshed in a bloody civil war and have access to well-documented scholarly treatments of the Nanjing regime's approach to governance and law unavailable at the time. To this one might add that Pound himself was hardly an attractive figure. Politically, after all, he was willing to take an honorary degree from the University of Berlin in 1934, he was a strident opponent of the New Deal, and later as a McCarthyite, he excoriated the State Department for having "lost" China.¹⁰⁰ And at a personal level, his self-importance was all too apparent both in his readiness to opine on matters near and far about which he lacked deep knowledge, and in his having been an easy mark for flattery.

We had best, however, be none too smug about Pound, for many of the challenges that his involvement with China evoked have clear counterparts with respect to foreign engagement with Chinese legal development since the end of the Cultural Revolution almost a half century ago. The impact of contemporary counterparts to the challenges of Pound's era on legal academics has not received the serious academic attention it deserves, arguably not only because Chinese legal development today remains a "work in progress," but also because, like Pound, those who now write about such challenges as scholars often were also participants in that work.¹⁰¹ What follows are questions that one could imagine future historians raising as they look back on scholars today, much as we have looked back on Pound.

As Pound's case suggests, the question of individual motivation in engaging China is intriguing and important, albeit very difficult to ascertain. Extrapolating from his case might lead future historians, in thinking about today, to consider a range of possible elements generally insufficiently remarked upon, from material blandishments to what former California Governor Jerry Brown suggested is the "psychic income" that academics receive.¹⁰² In the

¹⁰⁰ See KRONCKE, *THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW*, *supra* note 22, at 217-19 (citing William Homer, *Ex-Law Dean Says U.S. Policy "Messed Up China Dreadfully,"* BOS. SUNDAY HERALD, Apr. 10, 1949).

¹⁰¹ See Jerome A. Cohen, *Was Helping China Build Its Post-1978 Legal System A Mistake?* 61 VA. J. INT'L L. 1, 1 (2020); Jedidiah Kroncke, *Moving Beyond the Future Now Past of U.S.-China Legal Studies: Re-opening the American Legal Mind?* 61 VA. J. INT'L L. 115, 115 (2020); *see also* Alford, *supra* note 23, at 181-82.

¹⁰² Former California Governor Jerry Brown in his first term resisted widespread calls by University of California faculty for a pay increase they considered long overdue by saying that the "psychic income" they derived from the job more than compensated for any shortfall in more material rewards. Teresa

former regard, for instance, without positing simplistic causation or disparaging sincerely held views, one could imagine subsequent generations of historians wanting to know more about consultancies or other forms of remuneration or material support enjoyed today by key participants on any side of current debates about engagement with China.¹⁰³ And, in the latter, they might have interest in applying to legal academe the inquiry of Richard Madsen's insightful 1995 book *China and the American Dream* which examines how selected scholars (in several humanities and social science fields but not law) in both countries used or envisioned using interaction with the other as an opportunity to vindicate their prior theoretical work, promote academic or political positions that were not gaining traction at home, or otherwise boost their stature.¹⁰⁴

Again, projecting outward from our examination of Pound, future generations might want to know more about how representative, direct, and deep the involvement of foreign legal scholars with China is and what has been driving Chinese interlocutors in their interactions. Regarding the former, to what extent is the window of foreign legal scholars on China a broadly revealing one—which is no easy task, given China's size and the considerable and growing restraints on open academic interchange, limits on social scientific survey work, and the nature of state media?¹⁰⁵ And as regards P.R.C. interlocutors, there is also the question of disentangling strands of motivation including but not limited to pure intellectual inquiry, the hope for future material opportunities such as time abroad or grants (from domestic or

Watanabe, *UC System's Global Rankings Slip Amid Funding Cuts, International Competition*, L.A. TIMES, Feb. 28, 2018.

¹⁰³ The debate is crystallized in a 2018 article by Kurt Campbell and Ely Ratner in *Foreign Affairs* and responses thereto in the same journal by a range of observers including Wang Jisi, Stapleton Roy, Thomas Christensen and Patricia Kim, Aaron Friedberg, Joseph Nye, and Eric Li. See Kurt Campbell & Ely Ratner, *The China Reckoning: How Beijing Defied American Expectations*, FOREIGN AFFS., March/April 2018; Wang Jisi et al., *Did America Get China Wrong? The Engagement Debate*, FOREIGN AFFS., July/August 2018.

¹⁰⁴ RICHARD MADSEN, CHINA AND THE AMERICAN DREAM: A MORAL INQUIRY 28–30, 33–38 (1995). For more somber musings on the same subject, see Richard Madsen, *The American Dream and the China Dream: Unpeaceful Evolutions*, in ENGAGING CHINA: FIFTY YEARS OF SINO-AMERICAN RELATIONS 120 (Anne F. Thurston ed., 2021) (applying his approach to the period since his book was published).

¹⁰⁵ See Chestnut Greitens & Truex, *supra* note 1, at 349–51.

foreign sources), career advancement, and the chance to advance agendas already held.¹⁰⁶

No less complicated is the question of discerning the assumptions informing scholarly work. Pound may at times have been inconsistent, but several of his assumptions about what he called the backwardness of China, the advantages of a common law system, and the role of the judiciary were relatively apparent. Some assumptions informing the work of many of today's foreign scholars who work on China may also be readily obvious—concerning, for example, their faith in the importance of institutions in the development of a rule of law. But arguably, others—regarding matters such as the relationship of legal, economic and political development; whether and how the best of indigenous and foreign ideas about law can be reconciled; how what Annelise Riles calls the epistemology of legal thought may shape our inquiry;¹⁰⁷ and ultimately, the larger purpose of the whole endeavor—all too often remain under- or un-specified. Perhaps historians will be able to gain traction as to the extent to which this may be attributable to the conceptual difficulty of such matters or insufficient self-reflection on our part or the perceived political sensitivity involved in writing about such questions with regard to today's China.¹⁰⁸

The question of political context appears to have been a consideration informing Pound's work, as he seems to have been very careful in how he voiced any doubts he may have had about R.O.C. constitutional and legal development, whether that be due to concern about offending his gracious hosts or about weakening the R.O.C.'s position in the U.S. during the Chinese civil war. And beyond whatever Pound may consciously have been striving to do (or not do), there is also the intriguing question of how others, such as the China-America Council of Commerce and Industry or the American Bar Association, may have sought to use his presence to advance their interests. As concerns today, the question of how foreign scholars address challenges regarding the role of law and rights in an authoritarian society is one that will require increasing attention, especially as the Party-state advances its idea of a "rule of

¹⁰⁶ See Samuli Seppanen, *After Difference: A Meta-Comparative Study of Chinese Encounters with Foreign Comparative Law*, 68 AM. J. COMP. L. 186, 201-06 (2020) (examining differences among P.R.C. legal scholars regarding foreign models).

¹⁰⁷ See Annelise Riles, *Comparative Law and Socio-legal Studies*, in THE OXFORD HANDBOOK OF COMPARATIVE LAW 773, 781 (Mathias Reimann & Reinhard Zimmerman eds., 2d ed. 2019).

¹⁰⁸ See Greitens & Truex, *supra* note 1, at 349-51.

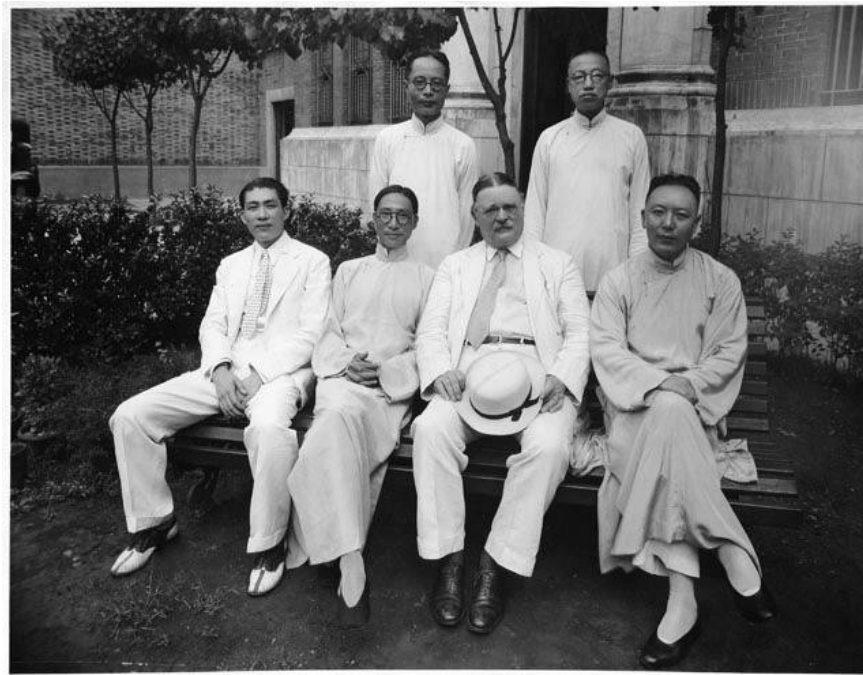
law with Chinese characteristics.”¹⁰⁹ Our own sense is that an overarching consideration, as foreign scholars seek to navigate the P.R.C. political context, has been and remains the protection of one’s P.R.C. colleagues and sources—a view that finds empirical support in the work of Sheena Chestnut Greitens and Rory Truex.¹¹⁰ But future historians would likely be remiss were they not also to inquire into the impact of the desire of foreign scholars to maintain access to the P.R.C. for professional and personal reasons, as well as the far more attenuated ways in which the broader political economy context (akin to the Chamber of Commerce and Bar Association in Pound’s day hoping his work would smooth the way for U.S. business) may have explanatory force.

Finally, there is the question of the influence of one’s ideas. As the experience of Yang Zhaolong, Yang Yuqing, Shen Zongling, Liang Zhiping, Zhang Wenxian, Wang Liming, and others shows, influence is hard to trace and even harder to prove, especially in the Chinese setting where larger political forces clearly shape what may or may not be possible and how it is expressed. Nonetheless, in assessing the influence of foreign scholars today on legal development in China since the end of the Cultural Revolution, future historians will want to probe carefully how foreign ideas were absorbed and utilized, mindful of how clearly they were introduced, the degree to which they (and their prerequisites, linkages to other ideas and implications) were fully understood both by advocates and others, the rationale for which they were embraced, the agendas they served, and the constraints imposed by the larger context.

In the end, there is much to learn from Pound’s adventures in China, both about a massively intelligent and curious, if no less self-absorbed and deeply flawed, individual and his times, and through that, about ourselves.

¹⁰⁹ *Xi Focus: Xi Jinping Thought on the Rule of Law guides law-based governance in China*, XINHUA NET (Dec. 10, 2020), http://www.xinhuanet.com/english/2020-12/10/c_139578646.htm [<https://perma.cc/394R-7MV9>].

¹¹⁰ See Greitens & Truex, *supra* note 1, at 366.



Roscoe Pound with faculty members of the Soochow University School of Law and government officials in 1935. Credit: Harvard Law School Library, Historical & Special Collections.



Dean Roscoe Pound (center, with hat) visits the Hebei No. 1 Prison in Beijing (1937). Credit: Harvard Law School Library, Historical & Special Collections.



A photo signed by Generalissimo Chiang Kai-shek to Pound in September 1946 (above). A letter to Pound reflecting his title (below). Credits for both: Harvard Law School Library, Historical & Special Collections.

