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Remarks: "Methodological Approaches to Assess the Legal Development in China's One-Party State-- A Personal Journey"

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I am quite gratified to see the growth and enthusiasm of young scholars at the annual meetings of the European China Law Studies Association. ECLSA has tended to be a group that, unlike many others, has been open to a broad spectrum of scholars and scholarship. It has avoided the difficulties of academic orthodoxy and rigidity in a disciplinary "line" that requires a certain pedigree and insists that scholarship conforms to certain basic premises and tropes.

I am particularly grateful to have been asked to participate in this year's ECLSA's Young Scholars Workshop. If nothing else, this might well prove my point about the both how China law studies necessarily has become a "big tent" and how ECLSA has been among the most important sites for realizing the potential of big tent scholarship in a world no longer always or exclusively dominated by a small group of academic high [priests](#), connected to the state apparatus (through grants or appointments). All of this suggests two things. The first is the way that an active scholarly agenda can move in quite unexpected ways, which ought to be encouraged. The second is the importance of the necessary interconnection of disciplines within the logic globalization--especially as legal, economic and political narrative.

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Why I decided to do work on issues of Chinese law, politics and economics.

A very long time ago, when I started my academic work, I was interested in a number of related themes. The first touched on how the social order worked, and especially how and to what extent law was relevant to that question. The specifics of the law didn't matter all that much, but the way that a social organism could embrace one set of rules over another, or upend its rules in favor of another, was far more interesting. The second touched on legalization and governmentalization. It seemed to at the time, the state was sucking up all possible manifestations of control and that the crude totalitarianism of religion had given way to increasingly effective control systems centered on the state. The telltale manifestations of this trend were in state control of culture, or rather the use of the state by social actors to impose official culture on a polity. The third provided a contradiction with the first two. It touched on the way that the norms and mechanics of economics was undoing the neat power systems of state and its expression through law. Even as the state became more central to politics, society and economics, it was also ceding governmental spaces to non-governmental actors who appropriated the control activities of the state in those spaces that the state appeared unable to reach.

None of this led immediately to China. It led instead to more fundamental study of what appeared to be wholly unrelated "disciples" (I have come to loathe that term as a means of control by various tribes of academic priests the original utility of which has increasingly been subsumed under an academic self-protective *nomenklatura* culture). These included the constitution of bodies corporate (states, religions, enterprises, etc.), the territorialization of these orders (public and private spheres), and the way that these bodies corporate operated within and among themselves, and the use of the law as a language of communication and control.

And then three of the core problems I had distilled for myself converged in and through China. *The first* was the problem of the legitimacy of the constitution of the state--the problem of constitutionalism that all too readily dismissed China as a sad mimicker of a decrepit and only historically interesting *European* Marxist Leninist experiment that failed. And even as the priests were insisting on this view I kept seeing a state that was both growing in power and as stable as any other on earth. *The second* was the problem posed by globalization and its challenge to the autonomy and stable hierarchy of bodies corporate operating in political space. That question, was itself prompted by a simpler one: why is it that Cuba absolutely forbade (this may be changing now) the corporate form to any but the state, but China did not? What was it about the corporate body as an economic actor that had such potent political effect? *The third* was the consequences for law based system where globalization appeared to be challenging the monopoly of the state and of law as the framework within which human activity was arranged and managed. Here China posed a contradiction and a challenge.

Oddly enough, then, for me, all roads appeared to lead, at last, to and through China. China held the key to understanding the gross transformations that appeared all around us. And so I plunged in. But that was the point: I was willing to follow where scholarship took me. I did not bother to

ask permission, and I was lucky. Before I plunged into to China from outside, I had my own sense of the outside fairly well formed.

How I go About Researching: The Feral Scholar.



But having led myself to China, how would I go about actually working in the area. To suggest that the challenges were large would be an understatement. I was not socialized to the exquisitely well-established disciplines of China studies. I had never been to China. I did not speak or write Chinese in any of its many variations. I was (and perhaps still am) a feral scholar, at least among those who make their home within China (law) studies. Perhaps that should have been discouraging; instead the challenge made me more interested. So, how did I go about this? Here are my fundamental operating rules:

1. Be aware of one's limits. I am not a China specialist; I continue to learn as much as I can from China specialists. And I understand my limitations. But I also understand my strengths and work toward those. The first thing I tend to, constantly, are the borders of my work. I bring to my China work a broader knowledge of the philosophy of law, of the working of globalization, and of the theories of the state. It is to those areas that I focus in China. My work reflects that. I have focused on Chinese constitutionalism, its state-owned enterprises and sovereign wealth funds, and the application of its constitutional principles to new regulatory methodologies (currently focusing on social credit). I also look at China in the world--its place within the global order.

2. Be respectful of culture but not naive. Comparative law academics constantly remind us of the difficulty of cultural immersion. But as an immigrant from Cuba I can also attest that cultural immersion is as difficult for people within a culture as it is for "strangers" seeking to acquire local sensibilities. As an immigrant to the United States I learned to navigate cultures; but that navigation also made clear that beyond generalities and inchoate "group feelings", the expressions and understanding of cultures could be quite complex exercises with little homogeneity (except when necessary to present a united front to foreigners) (I have written about that [here](#)). To study China one must embrace its culture(s) but one must always remember that one is always inside and outside. I work to study China from the inside but always mindful that the utility of that

exercise is to be able to pull out when that adds perspective. This is not to be confused with superior condescension. I have worked on this technique in all my scholarship--especially indigenous scholarship on "Western" and especially U.S. issues.

3. *Accept China as it is.* There is nothing more annoying than a foreigner coming into a place and suggesting ways that it can be improved. The helpful foreigner quickly becomes a busybody. Latin Americans have long understood this phenomenon as have the Chinese. And European and American scholars have been notorious exemplars (some of them anyway) of this missionary work (grounded in their sense of their own superiority--and that of the system, socialization in which they seek to advance). That is important *political work*--work that one begins to see the Chinese now embracing in their own way imitating (some, anyway, lamentably). My scholarship starts from the position of legitimacy. It assumes systemic integrity and sustainable self-referencing operation. The same assumptions ground scholarship in most of their home systems. And that includes the place and role of the Chinese Communist Party. Then I work from there. Much can be learned from the exercise of testing systems against their own premises and rules. And in the process one can learn much about the relationship of that operation as it seeks to interact with foreign and transnational systems. Issue of communication, compatibility, competition and harmonization then naturally follow. But they come always from a position of dispassionate respect. Again, I have to emphasize this--*otherwise one is engaging in political work, not scholarship*. That is probably, in some sense sometimes even more useful than scholarship--but it suggests the difference between work that someday will serve as primary sources, and work that examines primary sources.

4. *Do a lot of primary source reading.* The paradox of scholarship--the best scholarship starts untainted by secondary sources and the scholarship of others. That is a lesson I learned for some reason in university and it has stayed with me. It is one I have applied to all my work, including China. I prefer to draw on original sources, but to engage in conversation with contemporary scholars. That is a difference that pays dividends. It also provides the fundamental challenge to one's work. To work in contemporary China issues, one must be as familiar with the work of the great Chinese political theorists as one is with the classic Marxist Leninist sources. The old habit of dismissing much of this as propaganda is to miss much that is interesting. At the same time, a state is what it does as much as what it says. And it is necessary to develop the ability to "see" contemporary action in light of contemporary expression. But to view these first from an interior lens.

5. *Do what you can to overcome or acknowledge disability.* I will never overcome the problem of lack of fluency in Chinese. For scholars exclusively invested in China studies, language fluency is essential. But a disability does not necessarily foreclose engagement. It just increases the transaction costs and it the risk of error. I do what I can in English and Spanish translation. But I understand enough about the Chinese language to note its subtleties. I have learned to test key passages: even mechanical translation services can add windows onto alternative that enrich a translation. And there is much that can be gleaned from official translations. That insight was gained from years of reading official English translations of Spanish text. The official choices tell one as much about the projection of meaning abroad as does a subtle sense of the original language and its intent toward its indigenous audience.

6. *Connect, connect, connect.* The great danger of contemporary scholarship is also the royal road to promotion, tenure and a comfortable place among the community of scholars working on a field. Academic orthodoxy increasingly demands not just specialization that conforms to the "basic line" of the field and its guardians (usually senior academics and the high value presses that publish articles and other work necessary for promotion and a healthy career). Yet the most interesting part of the work of scholarship is its ability to connect the very specific to much more important and general trends, that is to "jump fields." I always try to connect my work in China to the larger themes that drive my work. That provides a larger focus and frames a challenge that analysis that might prevent a hyper specialization within which a scholar can sometimes lose their way.

7. *And back to Methodological Approaches.* The musing above provide the skeleton of a methodology for research and more importantly for thinking about China within the context of my research and writing interests. Always start from a larger picture; even the most granular study inevitably fits within larger structures. These larger structures have an ideology; and those ideologies bend reality to suit their ends. That is not a bad thing; it is indeed useful--for those in the business of developing and applying ideology. Less so for you (unless you are in that business). The problem isn't ideology, it is the indifference of scholars and writers to the way ideology shapes the way the world is seen, understood and interpreted. Especially interpreted; there is a world of ideology built into something as simple as the designation of a flower as a weed or as a garden specimen. One cannot engage in rigorous China work (or work in any ideological universe) without a keen sense of the way that ideological embedding drives reality--and analysis. *The essence of methodology to the assessment of China's vanguard party state:* primary sources; primary sources accepted and judged on their own terms. Secondary sources as useful engagement or themselves as politics disguised as analysis. one interacts with secondary sources. All work is political in this sense, but it is always better to have a firm grasp on the politics that drives your work. And it is even better to be explicit about it. Most are not. In other words; it is not what you know, but your ability to rigorously and with a clear head "see" what stands before you that will allow you to flourish in this as in any other area.

8. *And the lessons. . . kids, don't try this at home.* Now I will walk back the high rhetoric of the last paragraph, by emphasizing one of its propositions: all work is political. That is what the scholar must remember in all her work, and not just in the study of the Chinese vanguard Party-State system. The Ph.D. student must navigate the politics of the discipline necessary to acquire the doctorate. That political process is well known and well understood as a delicate, perhaps indelicate balance between the idealized objective to master a field and conform to its general precepts by adding to its knowledge production objectives and the reality of the egos and affiliations of those who make these determinations, usually arranged in power hierarchies dictated by the reputations of the universities whose collars the academic wears. One must please one's masters to survive long enough to write another day. And that carries over into one's career. Every choice of research topic and every decision about the premises and interpretative framework used to produce knowledge carries political calculation--one must please the colleagues in one's field, one must please the state and foundations both bloated with specific politics, objectives and funds for supporting research--their way. One must please the publishers through which an academic reputation is built. And academic reputations evidenced through position in the university hierarchy, through the "quality" and quantity of grants, and through publication ranking all tend to

amplify or diminish voice, influence and the ability to effectively engage in one's work. And all of this depends in part on the relationship of the academic to the small universe of colleagues whose reviews, willingness to cite and use one's work, and open doors to foundations and state organs are essential to the way in which conventional career success is measured. And so, the best answer to the methodological question is the least satisfying--mimic those who appear to possess the sort of success you are looking for. Find and please a class of academic master and join their pack. In return for the loss of autonomy one will have the comfort of a long and possibly conventionally distinguished career.



A standard medieval [allegory](#) of Foolishness, painted by [Giotto](#). This

9. *Final thoughts.* I have counseled young scholars against taking the path I (inadvertently) made for myself. It is risky and does not guarantee conventional success. Yet it does not foreclose a measure of such success conventionally measured. And that is the essence of an effective methodological approach to assess legal developments in China's Party-State system--to be [a part and apart](#) ([Here](#)).