

Chapter 2

On the Misunderstandings Relating to China's Current Developments of International Economic Law Discipline

Guided by the righteous course set out in the Third Plenary Session of the 11th Central Committee of the CPC and inspired by the fundamental national policy of opening up, Chinese legal community has conducted serious discussion and exploration upon the novel marginal discipline of IEL. From the end of 1978, the research of this discipline has grown from scratch to initial prosperity during a relatively short historical period, which has contributed to shortening the gap of research level between domestic and abroad. It should be particularly noticed that throughout the process of research and discussion of International Economic Law (hereinafter IEL), Chinese law scholars have been catching hold of the main conflict of contemporary international economic legal relation. From the perspectives of South–North Conflict, South–North Conversation, and South–North Cooperation, they have been holding the common stand of the vast developing countries and have carried out exploratory discussion, dissection, and illustration regarding important legal and jurisprudential problems on a close combination of the actual situations of China. Under such efforts, a disciplinary and theoretical system with Chinese characteristic is preliminarily established and has henceforth been being developed in both depth and width. These Chinese scholars have contributed unremitting efforts to further establish and improve such system to make this branch of legal science serve more correspondingly and effectively the grand object of establishing new international economic order (hereinafter NIEO).

The prosperous current status and the promising development trend of the IEL research in China have been objectively recorded in a lengthy report, which has made a clear sum-up that it is exactly the opening-up policy that has propelled the rapid development of China's IEL. It is fully affirmed that as an independent legal

This article was originally the Part VIII of the previous article: On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline. For convenience of reading and in order to emphasize the theme, it is now listed hereby as a separate article. See the “Abstract” and title note of the previous article.

discipline, IEL has been preliminarily established in China. And it is further pointed out that IEL has already been enrolled as a major specialized course in most of the law schools around China and has also been treated as required course in some other specialities as international finance or world economics: "The abundant accomplishments that IEL achieved, as well as its positive impacts on the legal practice of China in international economic affairs, have all proven the scientific nature of the broad approach of interpreting and constructing IEL, and also its extensive and promising future development and vitality."¹

Confronting such thriving although preliminary academic prosperity, IEL scholars of China are encouraged, inspired, and fully aware of their responsibilities. They feel it necessary, with more efforts, to further cultivate this novel legal branch.

However, for recent years, there have emerged a number of misunderstandings or reproaches against such academic prosperity. From different angles, these misunderstandings or reproaches have brought negative impacts upon the healthy development of IEL, which could have in turn served more effectively the fundamental national policy of opening up. Such misunderstandings or reproaches are mainly rooted in the lack of comprehension upon the marginality, comprehensiveness, and independence of IEL as a novel legal branch and upon the connotations and denotations of the broad approach of interpreting and constructing IEL. Therefore, it is of great necessity to dissect and clarify several typical misunderstandings or reproaches one by one.

2.1 So-Called Nonscientific or Nonnormative

This kind of viewpoint insists that there is no IEL under the traditional demarcation of legal branches. To put IEL as an independent secondary legal discipline, thus in parallel with Public IL, Private IL, national (domestic) civil and commercial law, and national (domestic) economic law, might cause duplication in contents as well as confusion among various neighboring legal disciplines. So it is proposed to include IEL within the category of international law or economic law. Otherwise it would be either "nonscientific" or "nonnormative."

For this sort of misunderstanding, it has been actually clarified in Parts III, IV, V, VI, and VII of the previous Article No. 1² listed in this monograph/compilation, in which both the close connections and obvious distinctions between IEL and various relative disciplines have been pointed out and dissected. It is fully revealed that the marginality of IEL does not mean that it can sweep up everything, that its comprehensiveness does not refer to improvisatory arithmetic total, and that its

¹ See Shuangyuan Li (Senior Professor of Wuhan University), Status Quo and Development Trend of the Research of International Economic Law in China (Survey Report), in *Jurists Review* (Sponsored by Renmin University of China), 1996, No. 6, pp. 3–6.

² See previous Article No. 1, entitled "*On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline*".

independence is not equal to deliberately seeking to be unorthodox. In a word, the reason why IEL has become an independent secondary discipline of legal science, and is juxtaposed in parallel with other disciplines, is logically decided by the very nature of such discipline itself. It is also a factual necessity of contemporary legal life. As of today, to deny the marginality, comprehensiveness, and independence of IEL is out of touch with reality and is looking without seeing the newest development of modern science and life. Such denial is like to turn a blind eye to the existence of other marginal disciplines in natural science as biochemistry, biophysics, chemicophysics, halobios, ocean physics, and thalassochemistry and should not be advocated.

Such so-called “nonscientific” or “nonnormative” viewpoints have already existed as an academic misunderstanding since the 1980s. It is originally a normal phenomenon for scholars to hold different views during academic debate, which would help the debaters enhance and deepen their original knowledge. However, once such academic misunderstanding has acquired backup from certain *administrative power*, in light of which the independence of IEL as a novel legal branch is arbitrarily negated disregarding the objective rule of academic development, and the existence of IEL as an independent secondary legal discipline in the educational system is denied, then it would not be treated as a trivial natural matter of no consequences. Otherwise, the strapping and strong-built body of IEL which is still steadily growing would be wholly stuck into a narrow corner of one particular and single relative legal discipline, which will severely restrain the normal development and weaken the disciplinary construction.

In the “Catalogue of Disciplines and Specialties”³ amended and promulgated by the Ministry of Education of PRC during 1997–1998, it was stipulated to combine Public IL, Private IL, and IEL into the international law. This is an example of the abovementioned *combination* of power and misunderstanding, which is derived from the subjectivism, and is further propelled through bureaucratic power. Several senior authentic scholars have expressed their scientific objections against such catalogue, which is worth being treated seriously.⁴ In this regard, if policy decision-makers and their “think tanks” cannot make convincing explanations, they should obviously listen to the strong voice from many legal veterans who have served in the frontier of teaching and researching and screen out some reasonable suggestions. It seems not appropriate to stubbornly persist in their old ways of paying no attention to others’ opinions, or blocking up the channels of criticisms by bureaucratically denouncing with so-called “nonacademic factors.”

As is well known, science refers to the knowledge system which objectively reflects natural, social, and mental rules: “The Sciences are differentiated precisely on the basis of the particular contradictions inherent in their respective objects of

³Full title: “Catalogue of Disciplines and Specialties Capable of Granting Doctoral and Master Degrees”, hereinafter “the New Catalogue”.

⁴See Depei Han [1]; see also On the Combination of Public International Law, Private International Law and International Economic Law, in *Journal of International Economic Law (China)*, No. 1, Law Press (China), 1998, pp. 1–8.

study. Thus the contradiction peculiar to a certain field of phenomena constitutes the object of study for a specific branch of science.”⁵ There are huge differences, although a certain amount of connections, among the objective rules respectively reflected by Public IL, Private IL, and IEL, among the specific contradictoriness researched by each of them, as well as among the knowledge systems constituted by each of them. Or we could say the differences are far more than connections. Differences are obvious and significant among their respective objects of study, their nature assignments, their subjects of jural relations, their sources of law, and their coverage. Specifically speaking, Public IL is substantial law, which normally excludes national legal rules. Private IL is essentially national law rather than international law and is mainly law of application rather than substantial law. IEL is a novel, unified, and independent legal subsystem, which, within the specific field of international economic fields or transnational economic intercourse, has combined relating *marginal* parts of international law and national law, public law and private law, and substantial law and nonsubstantial law. Consequently, one shall not take the word “international” as in the expression IEL too literally and arbitrarily classify these three disciplines simply into one general secondary subject of legal science.

Secondly, the amendment of the catalogue should reflect the development trend of modern science, as well as the objective need of national and international economic and legal situation. As a novel comprehensive discipline, IEL exactly suits such need to research and solve complex transnational economic legal problems of contemporary world. It has broken the traditional restraint of separating national law from international law, and public law from private law and has formed an interdisciplinary marginal branch of law. It focuses on the connection of national law and international law, and the combination of public law and private law, to analyze and research the legal problems emerged from international economic intercourse. The establishment of such novel synthesis accords with the practical trend of mutual penetration and cross development of modern science. Its establishment is also acknowledged by law scholars from both abroad and domestic, mainly reflected by the popularization at the international plane of the normative terminology of this discipline. It is in light of these facts that PRC's State Education Commission (the former name of PRC's Ministry of Education) since 1982 has officially upgraded IEL as a secondary discipline in legal science. Such decision accords with the historical development trend of IEL and also links up with the common accepted terminology of this discipline at the international level. Such correct positioning of IEL has indeed made significant contributions to the construction and maturation of this discipline. Decades of practices have fully proven the scientific and normative nature and the strong vitality of such positioning. We should cherish, stick to, and promote such kind of experiences, learning from and accumulated through practices.

⁵ See Mao Tse-Tung [2]. See also the entry of “science”, in *Ci Hai*, Shanghai Lexicographical Publishing House, 1979, p. 1764, and in *Grant Chinese Dictionary*, Vol. 8, Chinese Dictionary Publishing House, 1991, p. 57.

To one's pity, the catalogue currently in force has rather rashly abolished IEL's status as secondary discipline and has categorized it under IL. This has obviously violated the natural development trend and objective rule of modern science and is thus a **historical backward**. It disaccords with the normative terminology of this discipline accepted to international society and is inconsistent with the exploration spirit of disciplinary expansion in its true sense. In a word, such catalogue is neither scientific nor normative. Past experiences have repeatedly proven that the decision violating the natural developing trend and objective rule of science is always hard to implement and would be revised in the end, so as to restore order from chaos and put wrongs to rights. Otherwise, it would inevitably not only waste time and resource but also lead to major logical and mental confusion.⁶

2.2 So-Called Polyphagian or Avaricious

This kind of misunderstanding opines that it is “**abnormal**” for more and more law scholars to recognize the broad approach of comprehending IEL. Because such approach has covered so abundant connotations, so wide a range of denotations, so many relating legal subdepartments or disciplines, and so extensive research scope, it can only be concluded that these scholars have too huge appetites or have reached too far away with their arms, so that research scopes traditionally belonged to other relative disciplines have been “intruded.” The source of this misunderstanding also lies at the failure of correctly comprehending the **marginality** and **comprehensive-ness** of IEL, for they have possibly mistaken the character of marginality as “embracing everything” and the comprehensiveness as “arithmetic sum.” The above section has already made clarifications and dissections against such mistakes, so it

⁶In contemporary academic circle, international law has long been regarded as a specific discipline targeting legal rules as between countries that adjust international relations. The New Catalogue has categorized Private IL (i.e., legal rules of conflict law that specifically adjust interpersonal rather than international relations) and IEL (i.e., legal rules that mainly adjust international economic relations) all under “international law” and has thus completely distorted the most fundamental connotation and definitive denotation of the concept of international law, causing extreme logical confusion.

For the comprehension of international law by Chinese and foreign academic circles, see *Black's Law Dictionary*, 5th ed., 1979, p. 733; and also Lauterpacht revised, *Oppenheim's International Law*, Vol. 1, Chinese ed., The Commercial Press (China), 1981, p. 3; and also Jennings & Watts revised, *Oppenheim's International Law*, 9th ed., 1992, p. 4; and also Gengsheng Zhou [3]; and also Tieya Wang [4].

As a senior authentic scholar of international law, Professor. Tieya Wang clearly points out that “It is not necessary to term International Law as Public International Law just in order to distinguish it with Private International Law, for they are not two branches of international law. Strictly speaking, Private International Law is neither International nor Private.” See Tieya Wang [5]. Such professional opinion is quite different to the amateur classification as adopted by the New Catalogue. In other word, to forcedly combine Public IL, Private IL, and IEL together as three branches of international law would seem rather nondescript.

is only intended here to make a supplementary illustration: For the development of modern science, it should be encouraged to break through the traditional boundaries as existed in-between different disciplines during practical research. As long as it is beneficial for the science to advance, for the understanding to deepen, and for the factual problems to solve, people shall not be limited to any sectarian views and set up separatist “academic regimes” or “academic monopolizations.” Among the many disciplines of legal science in modern China, though with significant achievements in various extents, there are still a lot of weak links to be strengthened and a lot of virgin soil or half-cultivated soil to be further reclaimed. If some “external” academic labors are willing to participate in the reclamation of these uncultivated or half-cultivated soil in *marginal regions*, from which all the nationals and citizens could enjoy the fruit of academic prosperity, then any upright scholars with broad mind, no matter which legal discipline they are specialized in, would be most likely to be delighted to welcome such volunteers.

2.3 So-Called Fickle Fashion or Stirring Heat

Such misunderstanding holds that it is only a “fickle fashion” for increasingly more and more law scholars to join in the exploration and exploitation of IEL research in recent years which has made this discipline an extraordinary “stirring-heat” topic.

As a matter of fact, in any scientific research, there are basically two kinds of attitudes or phenomena to distinguish. The *first one* is to take a broad view around the globe and take aim on the academic frontier, to devote oneself to relating research with whole heart and serve the national policy with their achievements through untiring study, and to set up the China-specific flag and ascend their achievements among international forerunners. For this end, these scholars could rather sit on the “cold bench” (冷板凳) for decades of research than to tolerate even half sentence of hollow words in their articles. On the contrary, the *second one* is to seek publicity eagerly with no intention of hard work, to seek quick success and instant benefits through copying and editing or echoing erroneous views of others, and further circulating their erroneous views. These two kinds of attitudes to carry out their study have always been existing in the research of both natural science and social science, both legal study and nonlegal study, and both IEL and other legal disciplines. For the former attitude, it should be advocated and commended in any science and any discipline, while the latter attitude should be opposed and criticized. In this regard, the same judging standard should be set up, and the same serious demand should be extended to all. In this sense and in this sense only, this kind of critical opinion, “fickle fashion” or “stirring-heat” sounds reasonable. As an ancient proverb goes: “correct mistakes if you have committed them, and guard against them if you have not” (有则改之, 无则加勉). For IEL scholars, such wisdom is worth being taken seriously and accepted with an open mind.

However, it would be extremely unfair and partial to generally comment the prosperity of the IEL in China as “fickle fashion” or “stirring heat,” disregard of the difference between wide mainstream and small tributary.

The emergence of one particular social situation (including an academic one), no matter whether it is advancing for prosperity or declination, or whether it is attracting social attention or not, has always emerged under a certain sort of background. The prosperity and popularity can generally reflect a strong need from the society. This logic has been generalized in the proverb that “it is an irresistible trend when the objective needs arise” (大势所趋, 应运而生), as one of the basic theories and common senses of historical materialism. As is mentioned before, the research of IEL in China has grown from scratch to initial prosperity for recent decades. This is all because of the fundamental national policy of economically opening up and of the consistency with the urgent need of the society to implement such policy. For historical reasons which are well known, the foster of IEL talents had been stuck in a rather backward position. Since the adoption of economically opening-up policy after the end of 1978, as a spring breeze caressing over this long frozen land, with the diligent working by people with lofty ideals and integrity, the knowledge of this discipline has thus been accumulated. This has in turn propelled the cultivation and provision of specialized manpower. It is through this process that the long-term backward situation in IEL field has been changed and the urgent need of the country and society has been preliminarily fulfilled. Specifically speaking, such urgent need mainly refers to the accomplishment of the following five goals through the accumulation of IEL knowledge and cultivation of IEL scholars: (1) to handle international economic affairs according to relating laws, (2) to perfect relating domestic and international economic legislations, (3) to legally defend China and other weak groups’ legitimate rights and interests, (4) to uphold justice in the light of law, and (5) to develop relating legal theories and gradually establish theoretical system with China’s characteristics.⁷

Obviously, it is not hard to discern the fact as long as one takes off the glasses of prejudice and bias: “It is exactly the rapid development of international economic intercourse and the derivative urgent need of talents specialized in IEL, which have brought about the formation of the discipline of IEL in China. Meanwhile, the development of this discipline has in turn accelerated the cultivation of such kind of talents, who could further fulfil the urgent need of society.”⁸

The so-called “stirring-heat” view has equated a science of urgent need to a type of stock in the capital market. Accordingly, the prosperity of such discipline seems to be all because of certain stirring, speculating, and manipulating by some political or economic big shots. Such is of course only a subjective illusion, the cause of which lies mainly at the slight lack of attainment in historical materialism.

⁷For details, please see *On the Essential Skill for Carrying out the Basic National Policy of Opening up to outside : Endeavouring to study International Economic Law*, in *An CHEN on International Economic Law*, Fudan University Press, 2008, Vol. I, pp. 104–108.

⁸See Shuangyuan Li [6].

2.4 So-Called Duplicating Version or Importing Goods

This misunderstanding opines that the broad approach of constructing IEL emerged in the legal circle of China is nothing but a duplicating version of the “Transnational Law Doctrine” (hereinafter TLD) advocated by the famous American Professor P. Jessup. TLD is a doctrine that negates the sovereignty of weak nations, while preaches the hegemony of the United States and is thus a poisonous imported product. We thus could only criticize and resist such doctrine rather than learn from it, not mentioning to transplant or copy.

The main reason for people to hold this sort of misunderstanding seems to be that they have not carried out careful examination towards the broad IEL. On the contrary, they rush to the conclusion with only a distant glance, which cannot of course avoid confusing one thing with another as mistaking Mr. A for Mr. B (张冠李戴).

The basic doctrine of Professor P. Jessup as well as his followers, their basic stands, hegemonistic trend, and essence have been specifically analyzed in the previous article compiled in this monograph.⁹ There is no need to repeat here. However, for further clarifying the aforesaid misunderstanding, the principal differences between the TLD advocated by Professor P. Jessup and the IEL advocated by broad Chinese scholars are generalized as follows:

Firstly, TLD preached by Jessup is a rather extensive concept that could almost cover all legal departments. He holds the opinion that “transnational law could include extensively all laws that adjust all cross-border deeds and behaviours,” whose contents “not only include civil and criminal law, Public IL and Private IL, and also other relevant public and private laws in other countries’ national legal systems, and even legal rules that have not been covered by the above list.”¹⁰ On the contrary, the connotation and denotation of the broad IEL as recognized by many Chinese scholars are more strict, rigorous, and specific. It only includes the legal rules that adjust cross-border economic intercourse, while all the other noneconomic legal rules do not belong to broad IEL. As a result, it does not involve the numerous noneconomic rules as criminal law, general administrative law, etc. More importantly, Jessup’s TLD intends to include all legal departments into its huge sack and therefore takes a typical whole-embracing approach. On the other hand, the broad IEL only emphasizes the *marginality* of the cross-border economic legal rules as they have involved multiple legal disciplines. One obviously cannot logically equate the whole-embracing concept which sweeps up into almost everything with the marginal concept with limited boundaries. Secondly, Jessup’s TLD, by flaunting the banners of “world government,” “united sovereignty,” and “priority of IL,” intends to provide the jurisprudential basis of coveting, weakening, and negating the state sovereignty of the vast weak nations.

⁹Namely, the article entitled “On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline.”

¹⁰See Philip C. Jessup [7], pp. 1–4, 7, 15, 17, 106–107.

It purports to force the weak nations to discard the fence of nation and state sovereignty, so that the US expansionism and world hegemonism could go through without hindrance. This is a Guardian Doctrine that can fortify and strengthen old international economic order (hereinafter OIEO).¹¹ On the contrary, the broad IEL advocated by Chinese scholars holds the opinion of maintaining and respecting the political and economic sovereignty of all nations (especially those numerous weak ones). It recognizes the principle of sovereignty equality in cross-border economic intercourse no matter of the size, wealth, and strength of those nations. Under such discipline, fundamental jurisprudential principles as “equity and mutual benefits,” “global cooperation,” and “*pacta sunt servanda*” are fully and seriously implemented while the bullying power politics and economic hegemonism are firmly resisted. This discipline endeavors to promote the replacement of NIEO to OIEO, through expressing their views according to law, demonstrating their ideals by law, and providing legal services.¹²

Thirdly, within the theoretical system of TLD preached by Jessup and his followers, there are two detrimental tendencies which have already been discussed in the previous article. The first one is to despise the authority of certain weak nations’ domestic foreign-related economic legislations, i.e., to exclude or derogate the **territorial effects** of such legislations. The other is to exaggerate the authority of certain powerful nations’ domestic foreign-related economic legislations, i.e., to expand or strengthen the **extraterritorial effects** of such legislations.¹³ On the contrary, the broad IEL advocated by Chinese scholars has carried out consistent disclosure and criticism, resistance, and reproach upon the paradox that the legislation of powerful nations shall be respected as if they are “divine thing” while those of weak nations be despised as if they are nothing just “waste paper.”

It is an undeniable fact that the above analysis and viewpoints are scattered among various works drafted by Chinese scholars for the past decades. Compare these ideas and viewpoints with the TLD by Professor P. Jessup and others, people can conclude that they are completely different from and even opposed to each other. If one has not carried out deep research upon these viewpoints or even disregards them, and just arbitrarily sticks the “label” of “duplicating version of Jessup” to those scholars of China advocating for broad IEL, it seems without enough reasoning and is thus unconvincing. If the assertors of the so-called duplicating version can actually list out several works or papers by Chinese scholars and can sufficiently prove and reveal that they are in fact resonating or acting in collusion with Jessup’s

¹¹ See Philip C. Jessup [8], pp. 2, 12–13, 40–42; see also Gengsheng Zhou [9], pp. 10–12, 25–26, 33–35, 65–71.

¹² See International Economic Relation and International Economic Law, Fundamental Principles of International Economic Law, in An CHEN [10], pp. 1–57, 156–211; and also Basic Theories of International Economic Law, in An CHEN [11]; and also Junli Zhang & Wenxin Que [12].

¹³ See the previous article compiled in this monograph, entitled “On the Marginality, Comprehensiveness, and Independence of International Economic Law Discipline”; see also Chongli Xu [13].

TLD, then their assertions might serve as a respectable reminder with a clear-cut stand or flag. Otherwise, mere arbitrarily "labeling" without sufficient explanation can only reflect one's inability of knowledge, impetuous attitude, and fickle style and can certainly not convince others.

There has long been a non-promising "tactic" in China's academic debate history, by "striking a pose in order to intimidate people." One might "rely on pretentiousness to overawe others, believing that they can thereby silence people and 'win the day.'" However, "this method is no good, no matter whom you are dealing with. Against the enemy this tactic of intimidation is utterly useless, and with our own comrades it can only do harm."¹⁴

As to "importing goods," it is also only a label. It is obviously outdated to rely on such a label to bluff others nowadays.

The history of human civilization during the past thousands of years have revealed that for any nation's civilization and culture to make progress, except for the creation and accumulation of their own people, learning from and absorbing of the positive and beneficial nutrients of foreign cultures play an extremely important part. For thousands of years, different cultures collide and engage with each other, they sublate and improve each other, they access and penetrate to each other, and they blend and melt with each other. Such process has never stopped and, with time advancing, has even accelerated. Through this process, the culture of each nation and the world as a whole has been upgraded onto a whole new level and prosperity.

There is no need to mention examples in natural science, nor distant and unusual examples in social science. Just take the birth and diffusion of Marxism as an example: It is well known that if it were not for the critical absorption of classical philosophy of Germany, classical political economy of Britain, and the utopian socialism of France, there would be no Marxism at all with its three main components, i.e., dialectical and historical materialism, political economy, and scientific socialism. For Marx himself and numerous other Germans, aren't the abovementioned doctrines of Britain and France pure "imported goods"? And for Lenin and numerous other Russians, isn't Marxism pure "imported goods"? Without the development of Marxism based on Russian realities, where would Leninism come from? As is depicted: "The Salvos of the October Revolution brought us Marxism-Leninism."¹⁵ For the vast Chinese masses, if it were not for these "imported goods," there would not be the latter two historical leaps by combining such Marxism-Leninism with Chinese realities, which had given birth to Mao Zedong Thought and Deng Xiaoping Theory,¹⁶ as the guidelines of Chinese revolution and construction, which have led to continuous great victories.

¹⁴ See Mao Tse-Tung [14].

¹⁵ See Mao Tes-Tung [15].

¹⁶ See Jiang Zemin, To Hold High the Great Flag of Deng Xiaoping Theory, and to Advance the Course of Building Socialism with Chinese Characteristics onto 21st Century, Report at 16th Party Congress of CPC, Section III.

The birth and diffusion of IL theory, as a relative disciplines to IEL, serve as another fine example. Grotius, the founder of modern IL, is a Dutchman, well known for his masterpiece, *De Jure Belli Ac Pacis*. If all nations other than the Netherlands had rejected such “imported goods,” would there be a chance to form the prosperity of IL as is witnessed nowadays? For the vast Chinese intellectuals, *Oppenheim’s International Law* is also an imported masterpiece. And although such monograph contains therein a number of dross advocating and defending the old international political and economic order and even some poisonous theories that preach power politics and international hegemonism, there are few IL scholars in contemporary China who, with righteous attitude and hard research, would refuse to take it seriously and critically absorb and utilize the useful parts of such “imported goods.”

The renowned cultural standard-bearer, Mr. Lu Xun, is respected by most Chinese. As is described in his poem, he had the courage to “glare angrily at those strong but reactionary powers’ condemns” (横眉冷对千夫指) in China or abroad, without any slavery faces or bones of being subservient to powerful foreigners. But it is also Mr. Lu, who, with farsighted view and resolution, first advocated adopting “take-over policy” as the righteous strategy towards advanced and useful foreign cultures. He emphasizes that as to those “imported goods” possibly contaminated or even poisonous, we must use our brains and wipe clear our eyes so to distinguish and make use of them. Otherwise, we would be like cowards to reject them all for mere fear of being polluted, or like dumbheaded for discarding them all simply for they are “imported”, or like disabled to willingly take them all with no distinction.¹⁷ It is obvious that Mr. Lu proposes to selectively take over and learn from the “imported goods” through rejecting the dross and absorbing the essence therein.

¹⁷ See Lu Xun [16]. Mr. Lu has used the following vivid analogy to comment different attitudes towards the imported goods:

Suppose one of our poor youths, thanks to the virtue of some ancestor (if I may be permitted to suppose such a thing), comes into possession of a large house – never mind whether obtained by trickery, force, lawful inheritance or marriage into a wealthy family. What then? That would be no time for nicety, I fancy. “Take it over!” But if he dislikes the previous owner and therefore hovers timidly outside for fear of being contaminated, he is a weakling. If he flies into a rage and sets fire to the place to preserve his integrity, he is a fool. If he admires the old master but accepts the situation and marches cheerfully into the bedroom to smoke all the opium left, he is clearly even more worthless. This is not what I mean by the policy of “Take-Over”!

A man of this sort must exercise discrimination. If he sees shark’s fins, he must not throw them down on the road to show his affinity to the man in the street. If they are nourishing, he can share them with his friends like turnips or cabbage, but he need not keep them for banquets. If he sees opium, he must not throw it publicly into a cesspool to show that an out-and-out revolutionary he is. He should send it to a pharmacy for use as medicine, not try to trick people by announcing a bogus clearance sale.

...

In brief, we must take things over. We must use them, put them by, or destroy them. Only so can the master be a new master and the house a new house. But we must first be serious, brave, discriminating and unselfish.

Those Chinese scholars supporting broad IEL takes exactly such way to deal with TLD. They disclose and criticize the stands and viewpoints by Western advocates for TLD, by pointing out those toxic opinions with a strong scent of expansionism and hegemonism. Meanwhile, they admit that there are certain aspects regarding the methodologies of TLD which can be learned from and transplanted. In other words, the broad IEL as in the Chinese context has only borrowed and critically absorbed the methods adopted by TLD of analyzing the legal problems emerged during international economic intercourse. According to such methodology, it is required to start from the objective facts and the need to solve practical problems. By focusing the real legal problem and breaking through the limitations of traditional legal departments, one can thus take a synthetic interdisciplinary discussion upon and effectively solve relating legal problems.

“Stones from other hills may serve to polish the jade here at home – advice from others may help one overcome one’s shortcomings and create a much better thing than others”¹⁸ (他山之石,可以攻玉). Diligent and wise Chinese people have summarized such valuable experience even since the ancient age of “the Book of Songs” (BC 1100–500), which had then turned into an excellent national tradition of China. Chinese always emphasize: The development of any country’s culture cannot be separated from the common achievements of global human civilization as a whole; we should resolutely resist the erosion of all the decayed foreign theories, while at the same time persist the principle of “take-and-use” to broadly learn from the advantages of foreign cultures, so as to present to the world the accomplishment of China’s cultural construction.¹⁹ The history has already proven and will still prove that to stick to and carry forward such excellent national tradition is exactly the key for Chinese culture to keep prosperous for thousands of years and also for its increasingly flourishing and marching towards the world.

To sum up, it can be discerned: One of the main reasons for the above-dissected misunderstandings or reproaches is due to the lack of comprehension towards the *marginality, comprehensiveness, and independence* of the broad IEL. And some of these reproaches have dimly reflected the affection of “academic enclosure movement,” setting up separated “academic territory” or “academic monopolizations” which is quite disadvantageous for the general prosperity and future development of China’s legal science. For China’s legal science, there is no comparison between its delighting prosperity nowadays and the fallen scene in those earlier years. However, people shall not neglect that there are still lots of uncultivated and half-cultivated fields within many legal disciplines. There is and shall be no “exclusive zone” or “prohibited area” for academic research, into which outsiders are forbidden to enter. As a result, all those Chinese scholars with far vision and lofty ideal shall discard any parochial prejudices, no matter which fields they are specialized in;

¹⁸ See A collection of Chinese Ancient Poems & Songs (《诗经》)—Xiao Ya—Tweet of Crane.

¹⁹ See Jiang Zemin, To Hold High the Great Flag of Deng Xiaoping Theory, and to Advance the Course of Building Socialism with Chinese Characteristics onto 21st Century, Report at 16th Party Congress of CPC, Section VIII.

shall do their best and make concerted efforts respectively from different fields; and coordinately endeavor to take exploration and produce as many China-specific research results as possible. In this way, we can make our significant contributions for the revival and prosperity of legal study in both China and the world.

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