

**The Geography of Legal Thought:
Reflections on Cultural Differences
Within the Legal Profession**

Address to the Shenzhen Lawyers Association

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Everyone in the administration of the Peking University School of Transnational Law knows that I will be flying to America in a few days, to attend my son's graduation from law school. But if you were to ask my colleagues precisely when I am leaving, you would almost certainly receive two very different answers, depending on the ethnicity of the person you ask.

If you were to ask my American colleague Stephen Yandle, he would probably tell you that I am flying out of Hong Kong airport on Friday.

But if you were to ask my Chinese colleague Xu Hua, and she would probably tell you that I am flying out on May 8.

Like most Americans, Stephen's fundamental time unit for thinking about the calendar is the week. He knows the day when something will happen. With a little bit of work, he can always figure out what date of the month that will be.

Like most Chinese, Xu Hua's fundamental time unit is the month. She knows the date when something will happen. With a little bit of work, she can figure out what day of the week that will be.

So if you watch a conversation about timing and scheduling in our office, you can have a good time watching us struggle, as we each try to adjust.

At one level, this is no different from the problems of feet and meters, pounds and kilograms, Fahrenheit and centigrade. People who are used to different systems have to spend time making conversions in order to understand one another.

But at another level, this question of periodicity is different. It is different because matters of distance, mass, and temperature are linear measures, and how you divide the measures up is a purely arbitrary convention. In contrast, matters of time – or more precisely time periods – do not feel quite so arbitrary.

The week corresponds to an observed natural phenomenon – the length of time between new moon and half moon, half moon and full moon, full moon and half moon, and half moon and new moon. And the month corresponds to the longer period – from same to same, new moon to new moon for example. So both time periods have deep resonance, both matter to everyone. But it feels like a real difference in emphasis whether one tends to place greater significance on the longer cycle, or on the shorter cycle, as one plans one's life.

(Of course, there is still arbitrariness in the selection of the distance between phases of the moon as the basis for a week, and there are many examples of cultures using weeks longer or shorter than 7 days, including China which has at different times used the 5-day mu or the 10-day xun.)

All of which raises the larger question, do differences in emphasis such as the week-month difference reflect nothing more than arbitrary, trivial differences, or do they represent deeper, more profound differences in orientation that correspond to significant and important differences in cultures?

This question lies at the heart of a book by the cognitive psychologist Richard Nisbett, entitled, *The Geography of Thought*.

In the book, Nisbett reviews a wide array of experiments by cognitive psychologists that test whether Westerners perceive and evaluate the world differently from Asians. And he reads these experiments to suggest that Westerners are trained from the time they are young children to think about the world differently from Asians.

Nisbett reports that baby Westerners are trained to think about objects in isolation from their surroundings. They are trained to look at objects and focus on the properties of those objects that do not change over time. Finally, they are trained further to categorize objects into classes according to those more-or-less permanent properties.

For example, an experiment was done in which a group of mothers with babies were each given a new toy to play with. The Western mothers tended to talk with their babies mostly about the toy's shape, its size, its color. They spent much less time than the Asian mothers did talking about who might use the toy in different situations, and how it could be shared with others.

Nisbett observes that this focus on objects and their properties is supplemented by two other kinds of training. One has to do with the idea of causation. Western children are trained to look at a sequence of events and try to develop a simple model of causation. Let me give an example that Professor Nisbett does not use but that fits with his description. Suppose a child sees a movie where a big boy hits a little boy and the little boy cries. In the West the child is encouraged to say that the action of the big boy caused the reaction by the little boy. And the child is encouraged to develop a simple general rule: whenever one person hits another person, the one who is hit will cry.

The other kind of training has to do with the idea of contradiction. Western children are trained to understand the world according to rules of logic whereby a contradiction is a sign that something is wrong. Systems of belief that do not include contradictions are thought to be better – more true – than systems of belief that have contradictions within them.

Nisbett suggests that these four qualities help to explain a difference between the ways that Westerners and Asians approach new, complex situations. A Westerner is likely to try to break the situation down into separate objects, classify those objects by their properties, select which objects are more important and which are less important, and then see if there is a general rule or model that describes how the more important objects relate to each other. According to Nisbett, an Asian is more likely to focus on the entire scene, and rather than stressing the properties of

the individual elements is more likely to stress the relationships among the elements.

So Nisbett gives the example of what happens when Westerners and Asians are shown two pictures of a tiger in the jungle. The pictures are similar, but not identical. The tiger is slightly different in the two pictures, and the jungle is slightly different.

When shown these pictures and asked to describe the differences, Westerners tend to focus almost entirely on the tiger, which they think of as the “most important” object in the picture. They tend not to perceive the changes in the jungle, which they think of as the “background.” Asians tend to focus on changes in the relationship among all the objects in the picture, and tend not to perceive changes in individual elements such as the tiger.

Two years ago I taught a course at Tsinghua University that I called, “How Americans Think.” And in one of my lectures I spoke about Nisbett and his thinking. And I was stunned by the extent to which my students, all Chinese, said, “yes, yes, this is exactly right, this is a crucial difference between Chinese and Americans.”

Is Nisbett right? The evidence is not entirely clear. But if he is, it is reasonable to ask ourselves whether these kinds of differences translate into important differences between the ways that lawyers from China and Western lawyers do their work. And it also makes it reasonable to ask whether the same pedagogy that helps to develop lawyering skills among Americans is equally effective here in China.

Over the past few months, I have been working with groups of lawyers who operate in multicultural contexts that involve Chinese lawyers and American lawyers, helping them to explore the ways in which cultural differences that are specific to practicing lawyers from different cultures might have an impact on their work. In particular, we have worked on understanding, first, how cultural differences might create obstacles to individual and group effectiveness, and second, how to develop and apply concrete real-world strategies for overcoming those obstacles.

Allow me to provide a few examples.

Business lawyers spend a great deal of time applying the legal concepts of materiality and relevance. When a company prepares a disclosure document for a securities market, it must concern itself with the relevant and material, rather than with the irrelevant and immaterial.

But those ideas are ideas about relationships between objects, or relationships between ideas. They are ideas about what things go together and what things do not go together. Something is not relevant or material in the abstract. It is only relevant or material to something else.

So what if people from different cultures actually perceive relationships between ideas or objects differently from one another? What if people from different cultures have different ideas about what things go together? That is what Nisbett argues.

This past February I facilitated a day-long discussion among fourteen general counsels and regional general counsels from a variety of large multinational companies and Chinese enterprises. Some of the participants were Chinese, others were Westerners.

And during the discussion, one of the participants, the Asia General Counsel for one of the largest companies in the world, had read the Nisbett book, and he posed the following question to the other people in the room, which he had taken from the book:

“I am going to give you a list of three things. Two of them go together, one does not. Tell me which one doesn’t belong.

“The three things are a pig, a cow, and grass.”

Which one does not belong? Well, just as Nisbett predicted, all the Westerners in the room said, “grass,” and all the Chinese in the room said, “a pig.”

So let me tell you what I think about all this. I think that these differences are real, and they are fascinating. But at the end of the day, I also think that it is important to be clear about where the differences lie.

It is not that the notions of pig, horse, and grass are necessarily different. It is not even that the core notions of relevance and materiality are

different. It is rather that people from different cultures have grown up in worlds that assign different degrees of importance to different kinds of relationships. Being well brought up means knowing what relationships are important. Some relationships are simply more important in some cultures than they are in others.

What this means is that, if one thinks of “perception” as a process through which our brains gather data and interpret the data, these differences are differences in how we have been taught to interpret the data.

And what I want to suggest to you that as we work in multicultural environments, it is helpful to recognize how often people interpret data differently, and to be alert to the possibility that differences in interpretation might be culturally based.

Two days ago I was in Shanghai, working with the in-house team of one of the general counsels who had participated in the February meeting. The people on the team discussed a variety of different incidents they had encountered in which cultural differences might have had an impact on their work.

The participants discussed incidents in which:

- * the differences may have impeded communication of a particularly important item of information,
- * they may have impeded efforts to reach agreement,
- * they may have impeded efforts to build trust, or
- * they may have distorted one person's perceptions of another's talent, ability, manners, work effort, or even their integrity or ethics.

We spent a lot of time talking about meetings between different parties to a negotiation. They talked about meetings between teams, and how in the Chinese team the only person who spoke would be the lead, and how in the Western team all different people would speak – how the Western team thought the Chinese team was stuffy and inefficient and how the Chinese team thought the Western team was undisciplined and inefficient.

We also talked about how in successive meetings the Chinese team would often return to issues that had been discussed in previous meetings, how the Western team would get upset when that happened, and how the Chinese team would get upset that the Western team had gotten upset over this.

And we talked about how, in interviewing firms that were potential candidates to serve as local counsel on a transaction, the Western decisionmakers was highly impressed by the one firm that sent a Western-trained lawyer to do the presentation. In that case, we talked about how, in different contexts, the presence or absence of Western training might be (a) completely irrelevant, (b) an essential qualification, or (c) an in-between “plus factor.” And we talked about how people from different cultures might subconsciously over-value or under-value the training, compared to its actual degree of relevance.

Of course, recognizing that cultural differences might have a disruptive impact is not enough – it is important also to have strategies for minimizing or counteracting the disruption. (staying in spoken comfort zone, watching for the flinch, maximizing diversity of teams, etc.)

So here is my bottom line reaction to the Nisbett thesis. It has three parts.

First, yes, there are systematic differences in cultural expectations between east and west, between China and the west, between China and the U.S.

Second, in terms of the size of these differences, my own experience is that in fact these differences are relatively small. They are much, much smaller than the domains in which people from different cultures are cognitively identical. And, importantly, people from different cultures seem to be identical in their ability to recognize culture-based differences as being nothing more than culture-based differences, once someone points that out to them.

Third, we shouldn't get obsessed with the East-West difference, or the China-US differences. They are often much smaller than other differences:

- within-region national differences such as differences between French and German, or between Chinese and Japanese, or
- within-country differences such as differences between people from the north and people from the south,
- or even gender or ethnic differences between people from the same part of the same country.

Fourth, as a working strategy, it can be extremely dangerous to accept explanations for things you observe that rely on cultural differences, or that assume that those cultural differences are significant or necessary or permanent. If you are an American, take it seriously when a Chinese person tells you, “no, you don’t understand, Chinese people do things differently,” but don’t assume that they are right. And if you are a Chinese and an American says, “look, this is how things are in America,” it is perfectly fine to ask, “have they always been that way in America, and will they always be that way?”

All of this leads, of course, to the very important question, what is the significance of cultural difference for our work at the Peking University School of Transnational Law?

As you know, our school is a brand new part of Peking University. We began teaching in September, and our first class of students will be finishing their first year at the end of next month.

We offer a curriculum that is sometimes described as a Juris Doctor with Chinese characteristics. We resemble other law schools in China in many ways, especially those that offer a Juris Master degree for students who have already completed undergraduate training in another subject. We are not different in kind from other Chinese law schools, we are different in degree.

The differences in degree are most significant in three areas: language, pedagogy, and content.

With respect to language, all our classes are taught in English, and our goal is to have every one of our graduates speak and write English at a level of fluency that will enable them to be fully effective in transna-

tional environments where their colleagues might all be native speakers of English.

With respect to pedagogy, we place much greater emphasis than other Chinese law schools on instruction using the Socratic method. Of course, professors at other Chinese schools sometimes use the Socratic method, and our professors sometimes do not. But the balance is tipped much more heavily at our school towards the use of this teaching technique, which is designed to place a higher emphasis on making students practice their lawyering skills than it does on transmitting information from teacher to student.

With respect to content, we place much greater emphasis than other Chinese law schools do on teaching our students the common law, and especially the commercial law of the United States. And we also place much greater emphasis on the various dimensions of transnational law – public international, private international, and comparative. Obviously those areas are taught at other Chinese law schools, but we stress it much more.

Naturally, as we began, we immediately had to confront the Nisbett questions about culture and its significance for our school. Would the Socratic method work with a class of Chinese students? Would cases about fox hunting in England or race relations in America make any sense? To some people, these questions created doubts about whether STL could be successful.

Candidly, I did not have particularly strong worries about these issues. I have taught enough native-born Chinese students at American law schools, and seen how quickly they have adjusted, to believe that whatever culture-based differences might exist initially need not persist for long.

And during the winter, I had the opportunity to teach property law to our students. I used the Socratic method in my instruction, and I must say the students were fantastic. The level of discussion in the classroom was simply as high as it has been in any class I have taught.

This is not to say that I made no adjustments for culture. I did. One adjustment I made was that, whereas in the U.S. I often ask questions and wait for a volunteer, here I called on students to ask the questions. And that is because I was aware that our students here would have a different sense than American students do of whether it is polite or appropriate to volunteer in a classroom setting.

Still, the cultural adjustments for me were small. And the overall impression was, in all important respects, identical.

Next month we will have another opportunity to see whether Nisbett-based cultural differences really matter. Our school offers a year-long introduction to the skills of a lawyer, which we call Legal Practice. And the Legal Practice class will culminate with a moot court competition, in which all of our students will participate.

The problem is an intellectual property problem, involving questions of copyright, fair use, and even a picture of Barack Obama. The students will be assigned roles, they will draft briefs, and they will present oral arguments to judges. And they will be evaluated for their skill as advocates, using the same standards that are applied to their counterparts at U.S. law schools.

Incidentally, if you happen to be fluent in English and would like to volunteer your services for an evening as a judge, we would be delighted to have your help! Send me an email!

But as I mentioned a minute ago, STL is not simply offering a J.D. program. It will be a J.D. program with Chinese characteristics. We want our students to be prepared to do more than just practice law in New York. We want them to be prepared to be part of a truly transnational legal profession. We want them to be prepared to practice in New York and Shenzhen, London and Shanghai, Tokyo and Beijing, Mexico City and Hong Kong.

In other words, we want to be a school that provides the kind of education that American law schools will be providing ten years from now, when the full impact of globalization on the legal profession is better understood.

And here, I think it should be a key goal for our school that we provide our students with a greater depth of understanding about the significance of cultural differences in the practice of law. I want our students to understand cultural differences, where they matter and where they don't, how they can be significant and how they can be managed, and how they should resist the temptation to explain everything away on the basis of culture.

Will we realize that goal? I hope so. And during the question and answer period, I would be grateful for any suggestions you might have about how we can do a better job of achieving it.

Thank you very much.