Book Review

The Futility of Law and Development: China and the Dangers of Exporting American Law,
by Jedidiah J KRONCKE
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The inquiry into the relationship between law and development is often focused on the post-colonial era. In this beautifully written and carefully researched book entitled *The Futility of Law and Development: China and the Dangers of Exporting American Law*, Jedidiah J Kroncke goes off the beaten path to reveal that much can be learned about law and development before World War II. Going as far back as the sixteenth century, Kroncke shows how the impetus to search for legal models that inspire and guide reforms in other countries has existed for centuries and started long before the creation of the Bretton Woods institutions and the proliferation of modern development discourse. Examining the reflections of religious missionaries about their incursions into China and their influence on American and European intellectuals over four centuries, Kroncke provides an engaging intellectual history of the idea that American law 'constituted a transplantable foundation for new legal systems' (p 166) that was consolidated in the United States (US) in the twentieth century.

In this book we see how Chinese society and legal order went from being admired and praised as a model for Europe and then America, to being regarded as a system that needed fixing. By focusing on China, and especially on how American thinkers and scholars have conceived of it, Kroncke surprises the reader with three findings. First, the religious origins of the field: the historical connection of law and development scholars with the work of Christian missionaries during colonial times. Second, an unexpected finding: American thinkers did not always embrace universalism, engaging at times in an open-minded comparative analysis; this was particularly the case for the US' founders, who regarded other countries, including China, as pragmatic inspiration for domestic reforms. Third, a novel critique: Kroncke moves away from the common place criticism that law and development reforms do not work, to ask what law and development scholars may be losing by engaging in its present-day universalism; he concludes that not only are time and money being wasted in failed attempts to export American law abroad, but that the law and development discourse has largely closed the intellectual space for enriching comparative law scholarship.

It is not the intention of this review to provide a detailed summary of the book, and it is hard to imagine that any attempt would do justice to the richness of the historical narrative and the complexity of Kroncke's analysis. It is also beyond the scope of this review to engage with or evaluate the detailed research that provides the backbone for the book's main claims. Rather, this review will focus on the implications of the author's key findings regarding the field of law and development, focusing on one central question: does the book provide support for the pessimistic view of law and development as a futile enterprise, as suggested by its title? I will argue that while this is a fascinating and worthwhile read, the negative implication of the title does not reflect the multitude of complex possibilities that this careful historical analysis opens within this field of research.

I. THE OBSERVERS: EUROPE AND AMERICA

Kroncke's exploration of the long history of Western engagement with China's legal system raises very interesting questions about the assumptions and methods of 'the observer': how the observer's role can be defined and conceived in a multitude of ways, with associated policy and political implications. This is relevant to a better understanding of the universalist assumption that many, including Kroncke, see as characteristic of the modern law and development movement.

Both American and European thinkers were inspired by Jesuit missionaries, whose work still seems to inform what is perceived as a secular (and sometimes scientific) exercise in the law and development discourse of the twentieth century. Kroncke shows how Enlightenment thinkers such as Voltaire and Leibniz, inspired by Jesuit writings, saw China as a political and social exemplar for humankind (p 19). However, this view was abandoned in the eighteenth century, when 'European writers increasingly found anew a Chinese legal system wrought with torture and corruption, a notion that fueled the growing European self-perception as the global exemplar of modern legal development' (p 20). While rejected in Europe in the eighteenth century, Sinophilia and the writings of Jesuit scholars prevailed in revolutionary America until the nineteenth century, but with one significant difference: Revolutionary-era thinkers were not in search of universal models. As Kroncke argues, '[a]lthough some Founders ultimately did not see Chinese law as worth emulating, they evaluated such potential contribution purely on its merits. Those who resisted the utility of the Chinese example did so not on cultural terms but pragmatic ones' (p 25).

While the US did not immediately embrace the 'naïve universalism' that prevailed in Europe, it ended up adopting a variation of it in the nineteenth century. Although sharing a strong Christian basis, the American version differed from their European counterparts in embracing universal institutions based on a *particular* legal system. In Europe, some aspects of European law were perceived as superior, but in other instances, criticisms directed at China were the very same ones guiding reforms in Europe. American universalism, by contrast, was based on an idealized view of how the American legal system worked. Indeed, religious missionaries 'became the first Americans collectively committed to the notion that what was unique about the US could and need be spread to the rest of the world' (p 53).

In addition, the nature of their 'developmental activites' was fundamentally distinct. One difference between American and European missionaries was the anti-colonial sentiment that prevailed in America. Indeed, American missionaries embraced the idea of promoting transformation, but rejected any strategy that resembled or suggested that such transformation was part of a colonizing effort. Rather, the missions of societal transformation initially were focused on a multitude of services provided by missionaries in China, especially education. Later, as extraterritorial treaties were signed and America started to control territories abroad, the 'missionaries provided the conceptual mechanism that could preserve America's self-image as a non-colonial power while formally sidestepping the thorny issues of sovereignty and still fulfilling the promise of American-influenced legal change abroad' (p 78).

At the same time, there is also a curious evolution of American thought. In the nineteenth century, there was an assumption that religious conversion would ultimately result in legal reform, ie, a Christian nation would have laws that better reflected these values. At the turn of the twentieth century, this discourse changed fundamentally in at least two ways. First, the language of international law allowed legal reforms to became the vehicle to promote civilizing cultural change. Second, while building on evolutionary and teleological assumptions very similar to prevailing religious thought, the turn of the century saw the rise of social sciences in public policy circles, and an increase in secular versions of the idea that the American model could promote social transformation abroad and should be exported. The result, Kroncke argues, is that the US became an 'empire of law', operating under the belief that American culture and success could be transplanted without operating as a colonizing force (ch 4).

These historical contrasts within Europe, between Europe and America, and within America reveal a disturbing arbitrariness in determining who is not conforming to the model of development. For instance, European scholars from civil law and common law countries

> [e]mphasized whatever particular aspect of their system they found most lacking in Chinese law … common law observers referenced the deficiencies of Chinese adjudication in the light of an absent jury or a lack of *stare decisis*, and civil law observers noted the presumed lack of rationalized statutory interpretation (p 34).

This 'selective comparison' of 'Western legal ideals to Chinese legal practice (or at least the missionary portrayal of such practice)' is not only a historical curiosity but, according to Kroncke, plague much of the comparative law of the twentieth century (p 34).

The significant variations in the so-called civilizing efforts – some based on sheer imposition by colonial powers and others on more subtle and long-term transformative strategies, such as education – lead to doubts as to whether there is a singular strategy to achieve the aspired, universal end-goal of development (assuming there is one). The disparate claims about the relative importance of the law vis-à-vis other variables (eg culture), which oscillate without apparent justification and without a clear discussion of the basis for such claims, cast another layer of skepticism onto the law and development discourse.

While Kroncke's criticisms are compelling, it is not clear whether they are still relevant today. Since its revival in the 1990s, law and development scholars have gradually but increasingly embraced a revised set of assumptions and concerns, the most relevant being the fact that context matters and universal blue prints are unlikely to promote desirable change.[1] In this context, it is not clear that the valid criticism of universalism can lead to the broader conclusion of the futility of law and development as a field of research in its present form.

II. THE OBSERVED: CHINA

Portraying their developmental targets as passive recipients of developmental efforts often obscures how 'the observed' reacts to and interacts with 'the observer', and how such interaction influences the structure and the products of their relationship. Kroncke's detailed narrative provides a glimpse into China as an active agent in the developmental relationship. In describing how the Western powers conceived of and interacted with China, the book depicts a wealthy and powerful country: one that was not colonized, as most of Africa and Latin America; one far less open to foreign influences than other independent countries, such as Japan; and one which was able to use interactions with foreign countries as strategic resources for the pursuit of its own goals. Such observations have important implications for the present-day lesson we take from Kroncke's historical study.

Unlike Japan, 'China had not forced itself to be recognized as an equal' by implementing legal reforms that characterized what international law deemed to be civilized societies (p 43). Efforts to promote China's civilizational development using legal transplants thus produced very mixed results. For example, in 1863, the British created the Mixed Courts in Shanghai, a joint judicial project with foreign and Chinese officials serving as judges (p 46). Despite being proclaimed as an initiative with impact on Chinese officials, the jurisprudence produced by these Courts was hybrid, combining both English and Chinese influences. Similarly, in 1906, the US created the US Court for China, which was both an attempt to 'regularize Sino-American affairs' and as a 'site where the US could directly demonstrate its legal practice to a Chinese audience' (p 64). However, the court was based on a sanitized notion of American law that did not reflect the American reality. As a result, 'sensitivity to local context was the rule rather than the exception in the Court's actual adjudication – with high-minded aspirations rarely reducible to workable legal practice on the ground' (p 66).

One of the most telling examples of the failure to actually impact or influence China, however, comes from the reforms promoted during the late Qing dynasty (1861 – 1895), known as the 'Self-Strengthening movement' (p 68). China had been considered a leading source of reforms in Asia until the nineteenth century, when internal conflicts and political turmoil precipitated the need for internal reform. Chinese elites and intellectuals began looking to legal transplants as inspiration for legal reform, but the primary sources of inspiration in this process were French, German, and Japanese legal codes, despite the fact that American thinkers based in China were available and eager to share their expertise. This shows 'the early onset of quite significant gaps between the aspirations and public exclamations of American legal reformers and the realities of their influence given their marginal role in the substance of actual Chinese legal reform' (p 70).

1. Kevin Davis and Mariana Mota Prado 'Law, Regulation and Development' in David Malone et al (eds), *Development: Ideas and Experience* (OUP 2014); Michael J Trebilcock and Mariana Mota Prado, *Advanced Introduction to Law and Development* (Edward Elgar 2014).

Legal transplants remain a popular developmental strategy, but they are also quite controversial.[2] Kroncke shows that the commonly identified reasons for failures of such practices – eg failing to operate according to the idealistic assumptions of reformers and reflecting much more of the local context than would be expected or desired – can also be identified in Sino-American relationships long before World Wars I and II. Kroncke concludes that the lack of critical reflection about such experiences not only allowed them to be replicated in the modern version of law and development, but has also allowed for such practices to be continually employed today, despite their very questionable foundations.

But in the case of China, these failures were happening in a very unique context. China was more politically and socially autonomous than most recipients of developmental aid. It regarded itself as superior to its counterparts, and was able to dictate the terms of foreign influence. Indeed, in his analysis of the reforms in the Qing era, Kroncke argues that China saw itself as the center of the legal world for over a millenium, and it was hard to demote it from this status when the time for change came (p 68). China's status as former empire allowed Chinese elites and reformers to assume that subscribing to Western values was not the only way to become civilized. Considering this unique context, one cannot help but wonder if it would be advisable to use any lessons derived from experiences in China as guidance for interactions with other countries.

Considering China's uniqueness, it is not surprising that, despite repeated failures, those engaged with the idea of exporting American law might have nevertheless rationally assumed that better results might be obtained outside China. Along these lines, the idea of exporting American law was also 'tested' in India and Latin American in the 1950s and 1960s, in Africa in the late 1970s and 1980s, and in the post-Soviet world in the 1990s (p 223ff). Kroncke criticizes such efforts as uncritical replications of what was attempted in China before the rise of the Communist Party in 1949. While self-reflection may have allowed for improvements, using the failure of law and development in China alone as a basis not to engage in the exercise of promoting legal reforms abroad seems to negate the very same open intellectual curiosity and self-criticism that Kroncke considers to be so important for the field.

It is also important to ask how much of this Sino-American relationship can be considered representative of what happens elsewhere. Did the way in which China structured its encounters and interactions with Western nations make it an exception, rather than the rule? The question is still relevant to this day: recent scholarship has asked whether the impressive growth sustained by China since the mid-1990s provides a model for development (nicknamed the Beijing Consensus) or whether it is a strategy tailored to particular Chinese characteristics that cannot be replicated elsewhere.[3]

Kroncke does not make any claims to this effect, but the sweeping title of the book may mislead a reader to assume that his analysis casts a broad shadow on all kinds of law and development scholarship. The book does not aim at discussing, for instance, the fact that law and development scholarship in Europe is now flourishing and increasingly more research is being produced outside of the Global North. It is not clear if these new initiatives are guided by the same assumptions, and thus risk the same pitfalls, identified in this book. Those attracted to this book thinking – based on its title – that it will challenge the multiple embodiments of this global field of research should be alerted that this is not within the scope of Kroncke's analysis.

III. FUTILITY OR POSSIBILITIES?

What would be the impact of this book on law and development as a field of research today? If readers are convinced by the idea that law and development is a futile enterprise, it could potentially generate a similar crisis to the one experienced in the late 1970s. Back then, the publication of a scathing critique of the 'law and development movement' of the 1950s and 1960s pointed to the questionable

2. Pierre Legrand, 'The Impossibility of "Legal Transplants"' (1997) 4(2) Maastricht Journal of European and Comparative Law 111; Daniel Berkowitz, Katharina Pistor and Jean-Francois Richard, 'Economic Development, Legality, and the Transplant Effect' (2003) 47(1) European Economic Review 165.

3. Weitseng Chen (ed), *The Beijing Consensus? How China has Changed Western Ideas of Law and Economic Development* (CUP 2017).

theoretical assumptions of this kind of research and the lack of impartiality of the researchers engaged with it.[4] This critique – one of the most cited papers in the field today[5] – led to a crisis that turned law and development scholarship, yet in its nascent stages, into a dormant field for almost two decades.

This review argues that such a view should not prevail, for two reasons. First, perhaps the long shadow that the book casts is not on the entire field, but on how America has conceived of it – and some may claim that such a shadow is cast on only part, but not all, of American law and development scholarship.

Second, this historical overview is not only concentrated in a particular region of the world, but is also dated. Kroncke's main criticism is directed at the quest for a universal legal model, an intellectual enterprise that has existed since colonial times. Indeed, the book ends by mapping the similarities of this quest and much of the law and development movement in Latin American in the 1950s and 1960s under the Monroe Doctrine and in other regions in the following decades (p 224). While these practices were indeed based on questionable epistemological assumptions, they are no longer condoned in academia. Most of this discourse has been largely abandoned since *Scholars in Self-Estrangement* was published in 1974. While in practice they may still have been used, the repeated failures in Africa and Eastern European countries have necessitated a critical revision of such assumptions by policy-makers and reformers.[6] While this change in the practice of law and development may be only recent, legal academics have long since departed from the questionable assumptions challenged by the book.

In charting ways forward, the concluding chapter should have acknowledged this important divide in law and development between the academic and the policy-making world. While the primary problem in the field in the 1960s was the incestuous relationship between scholars and development agencies, what has ensued after the publication of Trubek and Galanter's article in 1974 is the opposite: a disconnect between academic and practical discourses. Thus, while Kroncke provides an accurate portrait of the practice of exporting American law as pervasive throughout history, the same cannot be said for law and development scholarship. The biggest challenge faced by law and development scholars today is therefore to find ways of opening communication channels with policy-makers and practitioners, while maintaining the required distance that allows academic analysis to be independent (and therefore critical) of practice.[7]

While the book emphasizes the 'futility' in the acritical practice of law and development, it also seems to aspire to be a reinvigorating force for law and development as a field of research. Indeed, in the book's conclusion Kroncke provides a passionate call for a return to fruitful comparative exercises, where we all could learn from our differences. The differences between how Europe and the US conceived of and interacted with China from the sixteenth to nineteeth centuries illustrate the multitude of ways in which law and development as a field of academic research with policy aspirations may be structured. If we are searching for an alternative to universalism that is not sheer cultural relativism, this historical overview could provide some possible alternatives. More specifically, Kroncke argues that the 'rooted cosmopolitanism' embraced in Revolutionary America illustrates how it is not necessary to embrace universalism to engage with a foreign legal system in an intelligent and productive way (p 25). Similarly, the fascinating case study of Frank Goodnow's

4. David M Trubek and Marc Galanter, 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States' (1974) Wisconsin Law Review 1062.

5. Ruth Buchanan 'A Crisis and its Afterlife: Some Reflections on "Scholars in Self Estrangement" ' (2014) in Gráinne de Búrca, Claire Kilpatrick and Joanne Scott (eds), *Critical Legal Perspectives on Global Governance: Liber Amicorum David M Trubek* (Hart Publishing 2014).

6. See eg Dani Rodrik, 'Institutions for High-Quality Growth: What They Are and How to Acquire Them' (2000) 35(3) *Studies in Comparative International Development* 3; World Development Report, *Governance and the Law* (World Bank 2017) <www.worldbank.org/en/publication/wdr2017> accessed 12 February 2018.

7. Mariana Mota Prado, Diogo Coutinho and Mario Schapiro, 'Law and Development: An Evolving Research Agenda' (2016) 9(2) Law and Development Review 223.

incursion into China in the early twentieth century also suggests a potential alternative, while highlighting some of the epistemological challenges that open-mindedness and 'comparativist sensitivities' may bring. This suggestion, however, is presented simply as a hint, leaving the reader curious to learn more.

Kroncke does not explicitly state this, but his careful and insightful historical analysis suggests that the law and development movement has now come full circle. Scholars have increasingly recognized the importance of context and rejected universalist claims. Moreover, the importance of politics and political forces in reform processes have long demoted claims that these are purely scientific or technical exercises. If one considers that attention to context and issues around politicization are the most pressing concerns that inform the law and development literature today, Kroncke's book actually shows that by abandoning the questionable assumptions criticized by Trubek and Galanter in 1974,[8] we seem to have been gradually moving back to the type of legal thinking that prevailed in Revolutionary America. The questions that informed the Founders and the dilemmas faced by Frank Goodnow, and to a lesser extent by Roscoe Pound (the two case studies in the book), are similar to the ones that are pressing law and development scholars today.

By pointing to the possibilities that have always been there, this book may have the opposite effect of the article published by Trubek and Galanter in 1974, opening room for constructive renewal. This would be very welcome, considering that the field seems to be at a crossroads at the present moment.[9] What remains to be seen is how much we have changed since colonial times. As TS Eliot puts it: 'We shall not cease from exploration, and the end of all our exploring will be to arrive where we started and know the place for the first time.'[10]

reviewed by Mariana Mota PRADO*
University of Toronto

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Author's Response to the Book Review of The Futility of Law and Development

Jedidiah J Kroncke†
jedidiah.kroncke@fgv.br

I want to start by thanking Mariana Prado for her critical and earnest engagement with my work. It is all an author can ask for in a review. And I want to thank the editors of the Journal for the opportunity to respond.

There is little to quibble with in Prado's distillation of my argument. She forthrightly acknowledges what I see as the two most difficult aspects of the book for contemporary legal scholars: the deep intertwining of American religious and legal history and the negative impact of export efforts on American legal culture. There is a great deal of polarization in the different disciplines the book draws on, engaging both those that see export work as a personal humanitarian effort and those that see it as neo-colonial legal imperialism.

8. Trubek and Galanter (n 4).

9. Mariana Mota Prado, 'The Past and Future of Law and Development' (2016) 66(3) University of Toronto Law Journal 297; David M Trubek, 'Law and Development: Forty Years After "Scholars in Self-Estrangement"' (2016) 66(3) University of Toronto Law Journal 301; Michael Trebilcock, 'Between Universalism and Relativism: Reflections on the Evolution of Law and Development Studies' (2016) 66(3) University of Toronto Law Journal 330.

10. T S Eliot, 'Little Gidding' in *Four Quartets* (Harcourt 1943).

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† Professor of Law, FGV Sao Paulo School of Law.

Prado's review is especially valuable because it draws a line across a telling axis: that of the law and development academic and practitioner. It is an evocative cut because it prompts the core question of audience. The impetus of the book was both explanatory and polemical. It was meant to explain how American legal culture turned away from an earlier cosmopolitanism to the universalism Prado discusses. I refer to this as 'universal parochialism' (p 4) as it is essential to see that there was an intertwined causality between the rise of the export mentality and the decline of American comparative law. The history that I have outlined sought to explain how and why this happened, but also to trace the negative consequences this has had for American legal culture.

As Prado's concept of the 'observer' highlights, this meant that the primary audience for the book was American. I see it as having generalizable lessons, and have been stimulated by the different responses it has received outside the United States (US). But this has also meant that my intended audience is the one least likely, in the near future, to want to honestly engage with its arguments. Attitudes about American legal internationalism are thoroughly embedded into popular culture. The late nineteenth and early twentieth century impact of religious missionaries was not just articulating ideas about the potential impact of American law abroad, but in diffusing these ideas to the point that they became normative for citizens far removed from academic debates. In tandem, American lawyers and legal academics enjoyed globally unparalleled status and wealth as the twentieth century progressed. This means that there are few personal or institutional incentives to challenge these ideas that are still core to contemporary American national identity.

This difficulty in audience is also an artifact of the methodological elitism that can often plague legal and diplomatic history, where the interests of elites are unconnected to popular culture or simply taken as motor forces for such. I came to see that this was not only untrue, but elite discourse at the turn of the twentieth century, especially in law, was far more sympathetic to colonialism than I had anticipated. The power of the anti-colonial frame Prado notes is only intelligible once you see how completely missionaries mediated American engagements with China and the non-European world at the personal and institutional level. In fact, I consider the fourth chapter of my book, where I detail this penetration, as the most significant of the book's arguments.

It is true, as Prado notes, that my book's focus is on China and that China was not representative of US foreign relations. However, this is exactly why it was so important – Sino-American relations initially developed in a symbolic context divorced from genuine material feedback. It is decisively telling that the 1911 Mexican revolution inspired a very different reaction in the US than did the 1911 Chinese revolution. Nonetheless, the broader penetration of missionary ideas about American internationalism was still in a large part anchored by the ideal constructed around Chinese developments.

I highlight this because the domestic support for legal export in the US has never been tethered to the academic discourse Prado describes. I often tell a story from one of my early teaching experiences about a lawyer who took a year off to engage in a rule of law project for the American Bar Association. The lawyer had no international experience and saw it as a humanitarian project. Her retelling of her experience to my students mapped onto many of the critical one-off post-mortems you find periodically in US law reviews. But in the end, her ultimate claim was that the program did not work because the country in question was not Christian. The students did not even know how to respond to this reasoning, and simply chose not to engage with it.

It is true that I assume that these projects, as they are understood to impact foreign legal development in some predictable and normatively desirable fashion, are futile. My book aims to explain why they persist when they have no successful precedents, or the precedents so asserted are more myth than fact. I would respond that my characterizations are not dated, but simply that they are accurate for ongoing dominant practices. There is a wealth of literature cited in my conclusion that more specifically engages with ongoing export work in different parts of the world – I felt comfortable describing its production and then elision by contemporary exporters as routine. Similarly, I identify pre-1960s critiques of US legal reform efforts in the Caribbean, post-World War II Europe, and elsewhere that go equally unrecognized today. Because so much is unread or deemed recursively 'pessimistic', the humanitarian impulse continues to support the idea that the burden of proof should lie on law and development critics when, after 100 years, I see the reverse as incontrovertible.

I am not surprised that Prado is drawn to the Goodnow case study. When I first discovered Goodnow's work I found its comparative rigour inspiring, and it was intimately engaged with domestic American legal reform. But even as singular as his comparative competency was, he was given an impossible project to carry out. Not because of his methodological choices, but because he was asked to pretend his expert engagement with China was anything but politics by another name. This is the technocratic seduction that even the best-intentioned and best-equipped scholars face when they engage in foreign legal reform as 'experts'. If Goodnow could not achieve this, then certainly such work is doomed to fail as such.

In this light, Prado's criticisms are natural, as our audiences are so very different. If everything produced under the rubric of law and development followed the methodological debates among the academic discourse Prado participates in, then we would be in a different world. I would further argue that the practitioner-academic divide she highlights is ultimately irreconcilable. If you read grant proposals for rule of law projects today, they still promise social change from foreign legal projects on a scale that would never be presumed for parallel efforts in the US. Critical legal scholars are not sought out by agencies or foundations, only those who will toe the universalist line in practice. For many reasons that ex-practitioners have identified, the popular support – whether through American civil society groups, government agencies or private foundations – for law and development in practice flows from, and needs answer to, the cultural history that I identify now at the heart of American legal identity.

The law and development rubric has traveled the world and found root in other countries. Yet, I would reply that, for example in my recent home of Brazil, law and development abroad simply means little more than legal realism and the relevance of legal scholarship for social change. Many American legal academics still misconstrue the draw of foreign lawyers to US law schools as sourced in a particular admiration of American law, and not in the desire to engage in interdisciplinary legal study that is still very new in many parts of the world. In Brazil, law and development means exactly the opposite of what it does in the US – engaging with the global legal experience to improve Brazilian legal institutions. In China, law and development has little cachet, while comparative scholarship has been growing.

It is for this reason that I do not see what is gained today by pursuing the law and development frame. I see its potential purchase abroad, but again my primary audience is American. There is still a presumption that to do law and development work simply requires being an American lawyer (or even a law student) and nothing more. Most American legal academics doing this work only peripherally engage with Prado's discourse. Some may have learned to speak in more relativistic terms, but still follow the same export assumptions in practice. Given the structure of American legal education and the legacy of comparative enervation therein, how could they do any different? The scholars associated with Prado's discourse are regularly multi-lingual interdisciplinary comparativists drawn from around the world. They are the exception, not the rule.

Ultimately, the law and development frame cloaks more than it reveals. If we called our cosmopolitan legal science something else, such as comparative legal development, then the dissonance with export projects would be evident. Continuing to use the frame provides indirect legitimacy to export efforts and does not confront head-on the damage they do to comparative legal sensibilities in the US (and sometimes elsewhere) more broadly. I would note that one of the original co-authors of *Scholars in Self-Estrangement*,[11] Marc Galanter, never again used the frame, and went on to be an internationally engaged and esteemed legal scholar who used his comparative work to critique access to justice in the American legal system.[12]

But it also follows then that Prado's point about the American-centric nature of my argument is 100 per cent true. There is no reason why movements toward comparative legal empiricism elsewhere should be burdened by these American sins. I do think she underestimates the impact they still have

11. Trubek and Galanter (n 4).

12. See eg, Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9 Law & Society Review 95 and Marc Galanter, 'An Oil Strike in Hell: Contemporary Legends about the Civil Justice System' (1998) 40 Arizona Law Review 717.

abroad, especially given how national academic (and funding) asymmetries still persist worldwide. And for Sino-American relations, these dynamics are still highly detrimental. Chinese scholars have always been disappointed when they discover the realities of American law, but have made use of its symbolic force in their struggles with authoritarianism. Yet, the export mentality not only continues to warp productive engagement, but the now globally evident failures of American law are now used against those very same reformers. I see Roscoe Pound's gravest error in China not as methodological, but as hiding the repressive nature of Chiang Kai-Shek's regime and declining to give voice to legal dissidents in service to American presumptions. This is why I ultimately argue in my conclusion that promoting legal cosmopolitanism in the US is not only good for American legal innovation, but also good for those who seek to learn from our legal experience.

In the end, language matters. I toyed many times with an alternative title to my book, 'China and Death of American Comparative Law'. I used this for talks in countries where 'law and development' has little resonance. Certainly, many in the US have reacted to the book solely based on its title, but they might have never otherwise seen comparative law as relevant to their work. Ultimately, my audience is not Prado's cosmopolitan scholars, open to my history as they may be, but American legal culture writ large. That this may, for now, be the least receptive audience for my work, is a challenge. All I ask those like Prado who exemplify cosmopolitan sensibilities is to recognize the costs to American law of law and development work that flies below their academic radar, and to work together to promote a healthy comparative legal discourse, even if this is one that increasingly leaves American law out.