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**Cultural Differences and Legal Perspectives
Measuring Intercultural Interactions and Outcomes
at the
Summer Law Institute
Kenneth Wang School of Law
Suzhou, China**

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Over the years, psychological studies comparing East Asians and Westerners reveal, in a variety of ways, a statistically significant difference between the two groups when it comes to perceptions of rules and relationships.¹ For instance, studies have shown a greater proportion of East Asians tend to organize information about objects by their relationship to each other, rather than by categories devolved from abstract attributes of those objects.² Westerners showed a statistically significant difference from East Asians in the way they perceive objects in relation to their environment.³ These studies point to a cultural tropism towards organizing information, developing rules and interacting with the environment in ways which vary between Westerners and East Asian cultures. Such tendencies are reinforced by testing, even in what may be believed to be “culture free” exams. For example, a student wishing to join the Chinese Civil Service must take the Civil Service Examination given at the end of November every year. The following is a sample question in the exam meant to test logic.

What is the next number in this sequence?
256, 269, 286, 302, (?)
(a) 254 (b) 307 (c) 294 (d) 316.⁴

¹ Richard E. Nisbett, *The Geography of Thought*, 141 – 142 (2003).

² Liang-hwang Chiu, “A Cross-Cultural Comparison of Cognitive Styles in Chinese and American Children,” *International Journal of Psychology* 7, 235 – 242 (1972). This early study showed three objects to the children. The first two were a picture of a chicken and the other grass. Then a third picture was a cow. The children were asked which picture would they put the cow together with – the chicken or the grass. The study results showed a statistically significant portion of the American students preferred to group the objects in a “taxonomic” category (chicken and cow – animals) whereas, Chinese children preferred to group the objects by relationship (cow and grass – cow eats the grass). Also, see Nisbett at 140 – 141 for other studies.

³ Taka Masuda and Richard E. Nesbitt, “Attending Holistically vs. Analytically: Comparing the Context Sensitivity of Japanese and Americans,” 81 *Journal of Personality and Social Psychology* at 922 – 934. This experiment showed underwater scenes to Japanese and American university students. Each scene contained a “focal” fish – one which was larger, brighter and with more movement than anything else in the picture. The scene also contained other fish (though smaller, slower and not as notable as the focal fish), rocks, plants, frogs, snails, etc. After observation, each group of students was asked to write down what they had seen. American and Japanese students made approximately the same number of references to the focal fish. However, the Japanese students made more than sixty percent more references to the other objects in the picture than the American students. In addition, while each group made approximately the same number of references to the active moving animals in the scenes, the Japanese students made nearly twice as many references to the relationship with the background objects than did their American counterparts.

⁴ The correct answer is (b). The answer is derived by adding the individual digits of each number to the other digits in that number and then adding that to the number itself to derive the next number in the sequence. Keeping in mind that the exam is both a power and speed test, not much time can be spent on each such question. Success is gauged by quick and accurate responses. See <http://202.116.73.59/xsh/ReadNews.asp?NewsID=848>; also, see generally, *Test for Administrative Professionals*; History of Chinese Communist Party Publishing House, by the Civil Exam Textbook Compilation Group (2006).

Typically, a western reader is trained to look for differences in values of each number, seeking a pattern like Fibonacci numbers, or prime numbers. Westerners are less likely to consider the relationships of the digits internally within a number. The correct answer lies in quickly discerning those internal relationships and applying them.

The tilt in East Asian cultures towards organizing and processing information according to internal relationships, rather than by external categories defined by abstract rules. Western legal systems focus most acutely on principles of law, while the traditional Chinese view is that such abstract principles are too mechanical and devoid of substance. Rather, the emphasis has been on conflict reduction and stability.

Some have argued that these differences stem from fundamental philosophical differences in the foundational philosophies of East and West.⁵ Others believe that these variations stem from the differences in language.⁶ Others cite the traditional Chinese cultural emphasis on hierarchy.⁷ It's not that all East Asians coming from a traditional Confucian influenced cultures think one way and Westerners think another.⁸ That is patently absurd, and the studies do not support that. The results of the studies do assert that between like groups of East Asians and Westerners, a statistically significant difference does exist as to how each group on the whole reacts to relationships, categories and rules. The difference reveals a tendency in a culture, not a guarantee of certain characteristics in every individual. Regardless, these deep differences exist.

⁵ R.F. Logan, *The Alphabet Effect* (1986); Y. Lin, *My Country and My People* (1936).

⁶ Robert Wardy, *Aristotle in China – Language, Categories and Translation* (2000).

⁷ One example is the Chinese courts' habit of issuing short judicial opinions which completely lack any logically reasoned and persuasive discourse. The lack of discourse is seen as an example of the hierarchical nature of Chinese culture and a tradition in which public persuasion and discourse are unnecessary. However, this distinction is not helpful for an East-West comparison, as Europe is undoubtedly part of the Western tradition, and yet civil law courts, notoriously brief and unpersuasive in their decision making, are the model for Chinese judicial practices. European civil law judgments traditionally exhibit a discursive style limited to a statement of law and principle with a conclusory statement of fact, logically leading inescapably to the opinion's conclusion. As Mitchel Lasser points out, the lack of discourse in the public sphere of a published judicial opinion does not mean that there is not a robust discursive sphere within the institution of the French judiciary, only that it is not made publicly known. (Lasser, Mitchel de S.O. L'E.; *Judicial Deliberations: A Comparative Analysis of Judicial Transparency and Legitimacy*, Oxford: Oxford University Press, 2004.) Similarly, Chinese courts have internal structures for review of all decisions, in which internal committees discuss, and court leaders approve, opinions before they are issued.

⁸ Some differences in legal discourse can be explained in terms of political dynamics, rather than culture and tradition. (See for example, Ginsburg, Thomas; *Judicial Review in New Democracies*, Cambridge, Cambridge University Press, 2003.) Ginsburg proposes that the most significant factor in development of an independent judiciary is a political system in which those in power are not guaranteed to continue in power, and therefore seek a type of political insurance, using judicial power to limit excessive executive power. While political dynamics are still a part of culture, they do not support a simple East vs. West comparison.

There is a growing scholarship examining the interplay between cultural variations and legal perceptions and judgments. From the early works of Michael Saks and Robert Kidd⁹ building on the work of Daniel Kahneman and Amos Tversky¹⁰ the trajectory of this research has been the exploration of a variety of legal subject matters employing the schema of heuristics and cognitive biases to challenge the rational actor assumptions of law and economics proponents.¹¹ These heuristics and cognitive biases prove to be informed by cultural variations creating an uneven perception and application of the law. Such uneven perceptions and applications of the law create a disequilibrium in attempts to universalize the concepts of law and the rule of law.

These differences and their implications for the principles of causation and culpability in tort law are explored by Levinson and Peng in their ground breaking work "Different Torts for Different Cohorts".¹² This study demonstrated how cultural differences between American and Chinese subjects skew decisions on causality, culpability and foreseeability in legal judgments.¹³ It was built on Peng and Knowles' work which demonstrated how East Asian subjects made judgments of causality and responsibility based more upon the consequences of the action (fatal injuries versus superficial injuries), as opposed to American subjects who made their judgments of causality and responsibility based more upon the intentionality of the actor rather than the consequences of the action (intention versus accidental infliction).¹⁴

Measuring Outcomes

Each year for the past four years we have brought together Chinese law students with their colleagues from the United States and Europe at the Kenneth Wang School of Law in Suzhou, China for a three week skills course on International Business Transactions¹⁵. Informed by the research in cross

⁹ Michael J. Saks & Robert F. Kidd, Human Information Processing and Adjudication: Trial by Heuristics, 15 *Law and Soc'y Rev.* 123 (1980).

¹⁰ Amos Tversky & Daniel Kahneman, Belief in the Law of Small Numbers, 76 *Psychol. Bull.* 105 (1971); Daniel Kahneman & Amos Tversky, Subjective Probability: Judgment of Representativeness, 3 *Cognitive Psychol.* 430 (1972); Daniel Kahneman & Amos Tversky, Casual Schemata in Judgments Under Uncertainty: Heuristics and Biases, 1 *Progress in Soc. Psychol.* 49 (Martin Fishbein ed. 1980).

¹¹ See Jeffrey J. Rachlinski, the 'New' Law and Psychology: Reply to Critics, Skeptics, and Cautious Supporters, 85 *Cornell L. Rev.* 739 (2000); See also Christine Jolls et al., A Behavioral Approach to Law and Economics, 50 *Stan. L. Rev.* 1471, 1545 (1998).

¹² Levinson, J. & Peng, K. 2004. Different Torts For Different Cohorts: A Cultural Psychological Critique of Tort Law's Actual Cause and Foreseeability Inquiries. *Southern California Interdisciplinary Law Journal*, 13:195-226.

¹³ Id.

¹⁴ Kaiping Peng & Eric Knowles, Culture, Education, and the Attribution of Physical Causality, 29 *Personality Social Psychology Bulletin* 1272 (2003).

¹⁵ The Summer Law Institute is a multi-institutional undertaking. It is formed by 3 partner schools which are primarily responsible for the administration of students entering the program from their jurisdiction. Cornell University Law School is the American partner, Bucerius Law School is the European partner and the Kenneth Wang School of Law is the Chinese partner. In addition, the

cultural psychology, we have embarked on using the various tools available to researchers to measure the differences and outcomes of the program.

Similar to Kubler-Ross's 5 stages of death and dying¹⁶, Dr. Milton Bennett created the Developmental Model of Intercultural Sensitivity (DMIS)¹⁷. This framework grew from Bennett's observations that individuals when confronting cultural differences react in a predictable manner as they gain intercultural sensitivity or competence. He categorizes this path towards cultural competence as a linear progression through two primary phases each with three separate stages. The two primary phases are ethnocentric and ethnorelative. This model has assisted us in structuring our Summer Law Institute to provide an experience which fosters an intense intercultural experience for our students. Below is a description of the model along with our observations of how the students in our program progress through these stages. It has been a helpful model in calibrating the outcomes of our efforts.

Ethnocentricity - The first three stages of intercultural sensitivity revolves around ethnocentricity where one's own culture is perceived as "central to reality". With the exception of a few students from heritage families or who have lived or studied for a period of time in another culture, most of the students in the program are new to the intercultural experience. They predictably exhibit the following behavior patterns:

Denial – This is the initial stage where one avoids the other culture by maintaining a psychological and/or physical isolation or avoidance from another culture. This is commonly observed with foreign students on University campuses. The foreign students tend to cling together, either - if they are in sufficient numbers - their own country natives, or if not in sufficient numbers –

institute is supported by four cooperating institutions – University of California – Hastings College of Law, Tsinghua University Law School, Pacific/McGeorge School of Law and the University of Milan School of Law. Each institution provides faculty and students. Financial support for the program is shared by the Wang Family Foundation and the Zeit Stiftung Ebelin und Gerd Bucerius. The Summer Law Institute at the Kenneth Wang School of Law is now the largest and most complex summer program in China. Each year it hosts approximately 100 law students. 50 are from various law schools in China (this past year over 34 Chinese law schools were represented). The other half is split between American law students (this year representing about 14 different American law schools), and European law students (this year representing 8 European law schools).

¹⁶ Elisabeth Kübler-Ross, *On Death and Dying*, Macmillan, NY, 1969. These stages are - Denial, Anger, Bargaining, Depression and Acceptance. It should be noted that Kubler-Ross emphasized that these stages are not necessarily linear nor do all individuals experience all of them. She did claim that people experience at least two of these stages when confronted by significant personal loss.

¹⁷ Bennett, M.J. (1986). A development approach to training for intercultural sensitivity. *International Journal of Intercultural Relations*, 10(2), 179-196. Also see, Bennett, M.J. (1993). Towards ethnorelativism: A developmental model of intercultural sensitivity. In R.M. Paige (Ed.), *Education for the intercultural experience* (pp.21-71). Yarmouth, ME: Intercultural Press.

other foreign students. Sensitive to this problem, and aware that “old habits die hard”, we instituted a variety of measures to encourage our students to get past this stage.

For example, with housing we offer the western students a choice of a single at the University’s dormitory or a double at the University owned hotel. The doubles will pair a Chinese student with one of the western students. We’ve observed that the western students, in particular American students, have a more expansively defined sense of personal space. The natural tendency has been for them to choose a single. However, the singles are located in the foreign student dormitories which while blessedly air conditioned does not have the normal hotel services (towel and bed linen change) but does have an 11 pm curfew. It is also a longer walk from the dorms to the law school. When confronted with these factors, most western students choose the double room in the hotel. To further encourage interaction, the students are divided into teams – normally 4 Chinese, two Americans and two Europeans to a team. Each team represents a client and competes with another team. By structuring the living accommodations and teams in this manner we have created a situation where students (Chinese, European and American) have no choice but to interact.

Defense – At this stage one recognizes cultural differences, but one’s own culture is perceived to be the only legitimate one. A “them vs. us” attitude represents this stage where the psychological mechanisms of “denigration”, “superiority” are initially experienced. Finally, the mechanism of “reversal” may be observed. This is where everything in one’s own culture is denigrated and the other culture is superior.

As a result of the interactions, many of the students quickly enter into the “defense” stage. The “them” vs. “us” denigration and superiority attitude is seen (particularly among some of the American students) at the first assignment. This assignment calls for drafting a memo analyzing the legal consequences of an international sales transaction. The fact pattern is complex and ambiguous. Because of language and their training, Chinese students, while more knowledgeable on the specifics of the applicable law, do not do as well as their western counterparts (particularly American students) in spotting many of the issues. This at times leads to viewpoints in which the Chinese students conclude that the western students do not know the law and are poorly trained. Whereas, some of the western students complain that the Chinese students do not analyze the problem and simply leap to the first conclusion of law. Unfortunately, a small number of students can not move beyond this stage, and their discomfort reflexively exhibits itself in negative denigrating behavior. These students can cause a great deal of unease among their colleagues as well as faculty. On very rare occasions we have had to dismiss a student from the program.

Minimization – This stage is represented by a homogenized view of all cultural differences. There are no significant differences between cultures. “We

are all human beings with the same needs” , “We all want freedom”. The vast number of our students after the intense three weeks of cultural interaction arrive at this stage. Their perspective of each other’s culture has been changed to now minimize any differences. “People are the same the world over.” For the overwhelming number of the Chinese law students, the program would be the first time they have ever encountered a westerner. Their viewpoint is not dissimilar. “Westerners are a lot like Chinese”.

Ethnorelative - The second phase of the model is ethnorelative. Bennett again divides this into three stages.

Acceptance – this initial stage of the ethnorelative phase has one accepting that one’s own culture exists in a world of equally valid other cultures. It does not foreclose value judgments. Rather, these judgments are not ethnocentric. One is curious and respectful of other cultures and cultural differences. We hope to move some of our students to this stage, where their world view of themselves and their Chinese, American or European colleagues are now less judgmental from a cultural perspective. Our hope is for them to accept that different views exist and their perspective is just one of many other valid world views. Not many students arrive at this stage after the three week program. Those who do generally have had intercultural interactions before the program. Some are able to build on their prior experiences. Each year a few western students who have studied in China have observed that even though they may have spent a semester or a year in China (normally studying the language), they had a more engaged and rewarding experience in the three weeks where they actually had to work with their Chinese colleagues. They felt that they gained a much more meaningful insight into the people and culture as a result of the way the program was structured.

Adaptation – in this stage one’s cultural perspective has expanded to incorporate another cultural perspective, and one has developed a pluralist appreciation of another culture. A person at this stage will be able to alter one’s behavior to that appropriate in another cultural context. There is not enough time within the three weeks to have someone just beginning an intercultural experience to arrive at this point. However, for some of the students who have had significant prior interactions, the intense three week experience will reinforce behavior sensitivities which will assist them to progress to this level.

Integration – the final stage of the ethnorelative phase is where one’s view of self is expanded to a self identity which moves in and out of different cultural perspectives. This stage is not any better than the prior one of adaptation. It is a stage more commonly experienced by those who self identify as culturally marginal – expatriates, minority groups, etc. Given the youth of most of the students, with the exception of those from heritage families, most students do not approach this stage.

Working with the U.C. Berkeley Culture and Cognition Lab and its director, Prof. Kaiping Peng, we have been studying the outcomes of the program over the last four years.¹⁸ We tested two sets of issues in this study. The first issue we tested was for cultural differences, and how members of different cultures view themselves, their relations with others, and their judgments of legal issues. We examined whether these groups react to cultural values and legal judgments in similar ways. This set of questions builds upon the existing scholarship in the field, and establishes the base line of cultural differences to help us to address the second issue.

The second issue we tested in this study focuses on the effects of cross-cultural interactions and learning: How do culturally diverse people respond to cross-cultural learning? What factors affects the outcomes of cross-cultural learning? By focusing on quantifiable data in this study, we can empirically test some of the most fundamental questions in cross-cultural education.

Informed by the existing scholarship, we predicted that Americans would be more individualistic in their judgments of values and to be more legalistic in their judgments of legal cases while Chinese would be more likely to endorse collectivistic values and to more likely to choose equitable rather than technically correct legal judgments. We also predicted that cross-cultural legal education would fundamentally alter students' value orientations and their ways of judging legal questions, but the magnitude and scores of these effects were the subject of the empirical tests we devised.¹⁹

For the legal judgment questions, we presented the students with four factual scenarios which represent common examples of legal disputes. The scenarios are designed to approximate varying types of legal cases. All these cases were tested in a previous cross-cultural study on law and psychology

¹⁸ We must emphasize that the "results" reported in this paper are very preliminary, as much work still needs to be done in analyzing the accumulated data.

¹⁹ A 2x2 Culture by Time Between Subject Design was utilized in this study. Both groups received the test before and again after, the cultural training.

Subjects were presented with two forms of questionnaire; both forms were matched to test the same psychological variables in questions. Materials were created in English with consideration for cross-cultural understanding of the concepts. The survey was translated into Chinese and translated back into English by separate translators. The authors resolved the few discrepancies that emerged.

We used the most famous individualism-collectivism scale as a measurement of cultural values (Triandis et al, 1988). Individualism, as a psychological concept, is defined by three behavioral components - emotional distance from one's in-group (e.g., parents, siblings, relatives, etc.), personal goals having primacy over in-group goals, behavior regulation by attitudes and cost-benefit analyses, and little avoidance of confrontation (Triandis et al., 1988; 1990). Collectivism, on the other hand, is defined by family integrity, a homogenous in-group along with strong in-group/out-group distinctions, the self being defined in in-group terms, and regulation of behavior by in-group norms, and hierarchy and harmony within an in-group. Previous research has shown that individualism-collectivism affects people's self-concept, (Triandis, McCusker, & Hui, 1990), conflict resolution, (Triandis et al., 1988), and attribution (Morris & Peng, 1994).

(Levenson & Peng, 2004) that had shown cross-cultural compatibility and validity. Students were asked to evaluate a variety of situations.

While the study is continuing, preliminary results confirm the cultural differences found in prior studies, even though the subjects in this study have legal training. American law students were more individualistic in their self-image than their Chinese counterparts. The concentration on self revealed itself in legal judgments made by the American students that tended to assume more individual control of circumstances, and contrasted with the responses of the Chinese students, who tended to assume individuals had less ability to act on individual free will.²⁰ Given that base line, we looked at the second issue – the effects of cross-cultural training on our students.

In the Suzhou study, we tested the base line difference between the two cultural groups by examining Chinese students and the American students' responses in a before and after test. We found that before cultural interaction and training, there were indeed cultural differences on individualism-collectivism, such that the American students were measurably more individualistic ($M = 3.73$) than the Chinese students ($M = 3.36$).

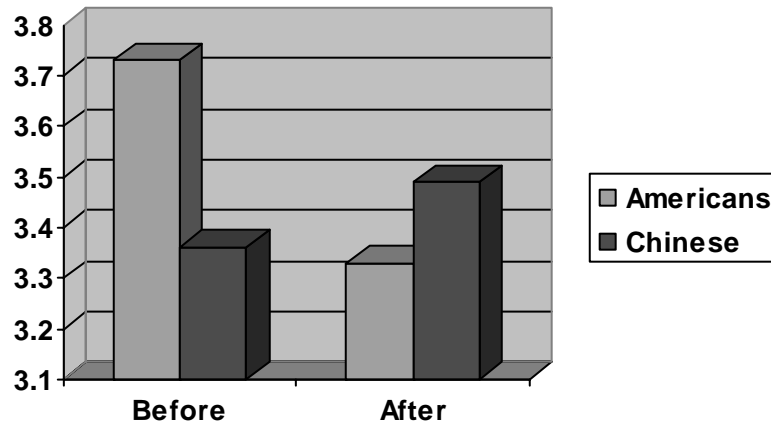
²⁰ Once again, we designed two forms for the same kind of legal scenarios. The first kind of scenario involved individual responsibility and the second kind concerned group responsibility. Form A was administrated at Time One before cultural interaction and knowledge training and Form B was administrated at Time Two after cultural interaction and knowledge training.

The first case in Form A described psychological research indicating that the perceived moral culpability of an actor affects a lay person's casual determination. Mark Alicke conducted studies in order to show that when multiple potential causes are present, people most frequently select the most morally blameworthy cause as the likeliest cause. In Alicke's studies, when presented with a hypothetical fact pattern relating to a car accident, subjects cited the driver (the actor) as the primary cause of the accident more frequently when his reason for speeding was to hide a vial of cocaine than when it was to hide his parents' anniversary gift. Perceivers also consistently selected the actor as the primary cause of the accident despite the presence of other causal factors, such as an oil spill or tree branch blocking a traffic sign. Alicke described this effect as *Culpable Causation*, "the influence of the perceived blameworthiness of an action on judgments of its causal impact."

The second case in Form A teased out cultural differences in causal explanation. In a series of studies testing cultural differences in attribution, Peng and his colleagues (Morris & Peng, 1994; Morris, Nisbett, & Peng, 1995; Peng & Nisbett, 1997) used descriptions of recent mass murders committed by either a Chinese or an American as the stimuli, and asked American and Chinese college students to explain these events. They found that Chinese indeed place more weight on situational, social, and global causes, as compared with American students. Such cultural differences were also shown to exist in people's counterfactual reasoning about the cause and effect relations of mass murders, as well as in the media reports in a Chinese newspaper (*The World Journal*) and an American paper (*The New York Times*). Such findings are significant as well as provocative, because social psychologists and cognitive psychologists have long argued that there is a strong universal tendency for people to attribute behaviors of humans and objects to internal dispositions of an individual or object, which has been called the "correspondence bias." It is well documented that such a bias exists even when situational influences are obvious, leading to the so-called "fundamental attribution error."

We then tested the cultural difference after the cultural interaction and knowledge training. We found not only that there were changes, but that the difference was somewhat reversed. While both groups had moved towards each other, the American students' responses had become even less individualistic ($M = 3.33$) than those of the Chinese ($M = 3.49$)!

Figure 1 Effects of Cultural Knowledge Training on Chinese and American Students' Beliefs on Individualism



We note that the difference between the two groups narrowed by more than 56% (from .37 to .16). This demonstrates a pronounced movement by both groups towards the mean. What was most compelling was the movement among the students – American students' attitudes of individualism moved three times as much as the Chinese students. We theorize that this large movement owes much to removing the American students from their original environment and placing them in an entirely different cultural setting. The movement of Chinese students to a more individualistic self-perception demonstrates the effects of cross cultural interactions even when remaining in one's original environment, but interacting with a different population. This measurable change occurred within a three week period of intense multi-cultural interaction. We expect an even greater movement in students who engage in a longer program or have greater opportunities for education abroad programs.

These preliminary "results" will assist in focusing our continuing research. That research will enrich our understanding of how culture and perspectives of law are intertwined. We, as teachers of the law, must inculcate in our students a sensitivity to the vagaries of cultural influence on the legal perspectives and outcomes in this interrelated but diverse world. The research suggests that such a sensitivity can be fostered by intense cross cultural interactions in a simulated real world legal environment where students from different legal and social cultures must work with each other. It is one way of preparing our students for the world they will inherit and shape.