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GLOBALIZATION OF LAW: A CHINESE PERSPECTIVE
DUNCAN KENNEDY'S THREE GLOBALIZATIONS IN THEORY AND IN PRACTICE: A CHINESE PERSPECTIVE

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On March 11, 2014 (Beijing) and March 10, 2014 (Boston), scholars from China and the U.S. attended the inaugural Renmin University International Virtual Workshop (RUIVW). A new platform for scholarly communication, RUIVW takes advantage of the internet videoconference technology to convene scholars from various parts of the world to discuss Professor Duncan Kennedy's work, three Globalizations of Law and Legal Thought: 1850–2000.

Professor Duncan Kennedy's seminal work on the globalization of law and legal thought was introduced to China in 2009, when Gao Hongjun, a Chinese legal philosopher, took on the task of translating it into Chinese.[1] *The article (hereinafter "Three Globalizations") has since been treated seriously by the Chinese legal academia, with prominent figures such as Professor Gao discussing the work in depth and a number of doctoral theses devoted to analyzing its core ideas.*[2] *RUIVW was yet another occasion for Chinese scholars to engage its ideas and try to bring its insights to the Chinese context.*

The participants of RUIVW on the Chinese side are accomplished jurists and promising young scholars in jurisprudence, private law and public law. On the American side, Professor William Alford is a leading scholar in comparative law and a long-time friend of the Chinese legal academia. Professor Kennedy is an eminent figure in jurisprudence and founder of Critical Legal Studies (CLS). The Doctor of Juridical Science (S.J.D.) candidates from Harvard Law School and Professor Shen Yuanyuan, a legal scholar teaching at Boston College of Law and Zhejiang University, attended the workshop as well. The workshop participants discussed issues such as legal transplantation, the globalization of

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[1] Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850*–2000, in David Trubek and Alvaro Santos eds. *The New Law and Economic Development: A Critical Appraisal*, Cambridge University Press (New York), (2006); the Chinese translation is also published: GAO Hongjun, 法律与法律思想的三次全球化: 1850–2000, 12 清华法治论衡 (Tsinghua Journal of Rule of Law) 47, (2009).

[2] GAO Hongjun, 美国法全球化：基于四种典型的观察与分析 (*The Globalization of American Law: Typical Examples and Jurisprudential Reflections*), 1 中国法学 (China Legal Science) 5, (2011); ZHU Jingwen, 跨越国境的思考 (*On Critical Legal Study in America*), Peking University Press (Beijing), (2006).

legal thought, the rule of law, the judicial system, the evolution of legal norms, etc. It was a fruitful and enlightening experience for all the participants.

The following is the transcript of the first RUIVIW session.

GUO Rui:

Distinguished guests, colleagues, and friends,

Good evening, Boston! Good morning, Beijing! It's my privilege to welcome you to the Renmin University International Virtual Workshop, and I am grateful that our friends at Harvard Law School have joined us in this first step to celebrate Professor Duncan Kennedy's scholarship. I would like to thank our organizers from both sides. Janice Quan from whom we have been receiving emails has done a lot of work. I also want to congratulate the Harvard S.J.D. Association as our partner on the successful convening of this workshop, after putting in so much time and energy. I will briefly introduce my colleagues who will comment on Professor Kennedy's article today, and then I will turn the floor to Professor Zhu Jingwen who will give the welcoming remarks. After that, we will go to the substantive discussion.

I will start from my right side, Professor Li Jun. She is an assistant professor of law at Renmin Law School. She is trained in continental Europe, studying Roman law and Italian law in Italy. She will comment with her expertise on the globalization of Roman law. Professor Zhang Qi, the second person on my right, is a professor in general jurisprudence from Peking University of Law. He is both a prolific writer in general jurisprudence and a pioneer in introducing the legal reasoning of the common law tradition. Recently his work on introducing the case-law method has produced a profound impact on the Chinese judicial system. The third person on my right is Professor Wang Yi. He is a professor in civil law at Renmin Law School, both a deep thinker and a master on teaching. Years ago when Professor Wang Yi was at Harvard, he took advantage of the academic resources there and had several deeply insightful conversations with Professor Kennedy. I personally benefited from these meetings. On my left side, the furthest left is Professor Charles Wharton. He is a J.D. graduate from Harvard Law School. We have been co-teachers of many classes, including the one with Professor Alford, which was a joint class between Renmin Law School and Harvard Law School. Next is Professor Zhai Zhiyong form Beihang School of Law. His work is in constitutionalism and general jurisprudence. Professor Zhai spent one year at Harvard and has done extensive research on constitutional patriotism. His work tries to align nationalism with constitutionalism, and to redirect political energy towards a more constructive direction. Next to Professor Zhai is Dr. Xiong Bingwan. Dr. Xiong has a background in both Chinese and American law. He received his Ph.D. from Renmin Law School in civil law and an LL.M. degree from Harvard Law School. His work on property, especially property takings, is very

inspiring. Professor Zhu Yan, on my left side, is a rising star in Chinese civil law. He was educated in Germany where he received a Ph.D. degree. His work has influenced both the academic circle and the legislative circle. Professor Zhu Jingwen is a pioneer in many fields of jurisprudence. He has produced great work on law and society and law and development.

Without further ado, I now turn the floor to Professor Zhu Jingwen, who will give the welcoming remarks on behalf of Renmin Law School.

ZHU Jingwen:

Friends and Colleagues,

My name is Zhu Jingwen, and I am a professor of law at Renmin University. It is my honor and privilege to welcome you to the inaugural Renmin University International Virtual Workshop. Harvard and Renmin Law Schools have collaborated on many other events, among which is our joint class taught by Professor Alford and our new faculty member Guo Rui. We work hard to make Renmin Law School a premier place for exchanging ideas on law and legal education. This workshop, I think, is a new effort in this direction. Like an old Chinese saying, we like to be the pioneers in hitting the waves. In Chinese, we are the *Nongchaoer*.

If we all were sailors, Professor Duncan Kennedy would be the great captain given his experience and great devotion to legal education and academic research. I heard from many colleagues and students how much Professor Kennedy has advanced their learning. When I was young, I read some books and articles written by Professor Kennedy. I want to tell Professor Kennedy and all the participants that some topics Professor Kennedy is concerned about, such as critical legal studies, legal education, law, and the globalizations (of law and legal thought), have been hotly discussed by Chinese scholars for a long time. Professor Kennedy's willingness to share his ideas with others and to stimulate discussion is exactly what we would like to promote through this workshop.

Today, our highly respected captain will discuss with us his masterpiece *Three Globalizations*. I hope everyone will enjoy the discussion with Professor Kennedy, Professor Alford and all other brilliant scholars. I am really thankful for all of you sitting at this workshop, for your presence, time, and participation.

Once again I welcome all of you on board and wish you a stimulating and productive journey. Thank you!

GUO Rui:

Thank you, Professor Zhu. We now turn to the Harvard side for Professor Alford's introductory remarks.

WILLIAM Alford:

Thank you all for coming! Thank you most of all to our friends at Renda (Renmin University). This is a very distinguished group of Chinese scholars. We are honored and grateful that you have come so early in the morning to speak English. I apologize for our poor technology (low sound quality). But I am sure Professor Kennedy will later make up for this defect. We welcome scholars from Beihang and Peking.

I want to echo Professor Zhu, who is an old friend of mine for 30 years, that today is also a moment to celebrate our long relationship. Renmin University and Harvard University have a long history of working together. We teach classes together. Renda also sponsors our disability project in China. Our dean (of Harvard Law School), Martha Minow, gave a speech to a large, enthusiastic audience (at Renda) last summer. We will also hold a conference together this summer. We are very grateful for all of this. We will welcome Dean Han (Dayuan from Renmin Law School) to come next fall. I also want to take a moment to acknowledge the passing of Professor Xu Chongde, a great constitutional law expert at Renmin Law School. I would like to thank Guo Rui, Aphroditi (Giovanopoulou), Xiaoqian (Hu), and many others for putting this event together. It is wonderful to have the opportunity to celebrate Professor Duncan Kennedy's scholarship. I hope this is just one of many such celebrations this year.

Professor Kennedy's piece, *The Three Globalizations of Law and Legal Thought*, is an inspiring and provocative piece — provocative in good and all other senses. What he gives us on this issue could be a book and more than a book. It is much discussed today by many scholars. Scholars in China have raised many challenging questions some of which we will discuss today. Maybe we could say that China with its great civilization initiated the first globalization long before our first globalization in the West. Maybe in the future we will have a fourth globalization of law and legal thought, one with Chinese characteristics.

I personally would like to thank Professor Kennedy for his devotion to our students. It is very moving for me to see him as a mentor. Guo Rui can testify that he is a great, inspiring, and also demanding mentor. In China, there is a phrase *tao li man tian xia* — it is true that Professor Kennedy's students are all over the world. We can organize such a workshop not only in China but also in many other countries. Our format is that our Chinese friends offer comments, and then we take a very short break. After that we come back, Duncan gives his comments, and then we ask each other questions. Let me turn back to Guo Rui.

GUO Rui:

Thank you, Professor Alford. We will start with Professor Li Jun's comments.

LI Jun:

Good morning, our colleagues from Beijing, and good evening, our colleagues from Harvard! I am delighted to take this opportunity and participate in this event. Speaking of the integration of law, I think there are two factors in play for a successful integration. One is the good quality of the transplanted law (the law is well drafted), and the other is the social background of the recipient country.

First of all, it's easier for a recipient country to accept an abstract concept or principle than a specific institution. I think the abstract character of Roman private law is one of the important reasons for its revival and dissemination in European countries. In my opinion, France, Spain, and other south European countries have a certain affinity with Rome in language and culture. Northern European countries like Germany show great linguistic and cultural differences from the ancient Roman Empire, which was located in the plains, with warm weather and a rich economy. But the Germans also adopted Roman private law, and chose it voluntarily. Although people argue that there were historical and economic reasons for the adoption of Roman private law by modern European countries. For example, Roman private law could satisfy the economic needs of an emerging capitalist market. This is true. However, one of the main reasons was that Roman jurists created some abstract concepts and principles and refined them in interpreting the law. This left room for European legislators to domesticate Roman private law for their own needs.

For example, regarding the Roman regulation of *delictum*, Roman jurists used induction rather than deduction and created a very abstract concept of "culpa" as the core standard to decide the imputability of *delictum* and assess whether the person who did this is guilty or not. Once this concept was created, Roman jurists elaborated it in all aspects in hundreds and thousands of cases, to refine it and make it widely applicable. The praetor had a strong discretionary power to decide its meaning based on other abstract criteria. "Culpa" means not diligent as a Roman *buon pater familias* — a good citizen with an image abstracted from a group of paterfamilias who have similar social and economic status with the behavior. This abstract nature gave France and Germany the opportunity to adapt "culpa" to their native legal traditions. That is why we see a broad "culpa" in French Civil Code but a strict one in German Civil Code. The general and abstract nature of Roman law made this legal integration possible.

Now we consider the factor of the suitable soil of the recipient country in legal transplants. I think, no matter whether a law is transplanted as a result of colonial imposition or voluntary choice of the native elites, if the economic, politic, or social background is not suitable, the integration will not have a great effect. Let's recall the adoption of Western law in the late Qing dynasty. In 1900, under the double pressure from the domestic and abroad, the Qing government wanted to establish a modern legal

system, and adopted French, German, and Japanese civil law. But these laws neither save the Qing government from being overthrown nor helped the Chinese people out of poverty. Some of these laws did not even come into force. Although these laws were very good, they were too advanced to be applied in China given the bad domestic socioeconomic environment. The recipient soil was not suitable to the transplanted laws. So I think even the recipient wants to transplant foreign law and make it work, she has to have a similar social environment to that of the original country. That's all. Thankyou!

GUO Rui:

Thank you, Professor Li Jun. Next we have Professor Zhu Yan.

ZHU Yan:

My topic is the "Globalization of Law: A Matter of Academic Quality or Politico-Economic Power." At least to my knowledge, globalization of law is not a phenomenon since the 1850s. As my colleague Professor Li Jun just described, as early as in the 11th century, Roman law was discovered and disseminated to many continental European countries. Later on, through lawyers and intra-European commerce it was introduced to the Great Britain as well, particularly by the means of academic transplantation. Many British students learned Roman law in northern Italy and then went back to Oxford. So they took back with them Roman law. I think this dissemination could be regarded as the first globalization phenomenon and it has laid the academic foundation for both the civil and common legal families. The spreading of Roman law is for sure connected with the military force of Rome and the religious force of Christianity. As we know, the Roman Empire had three powers: the military, Christianity, and Roman law. The two other powers have perished but Roman law is still influencing us today.

The academic achievement of Roman law should be the key reason for its reception in continental European and later on in common law countries. For example Germany had its own law but they decided to voluntarily adopt Roman law. This was absolutely the first time that a country voluntarily adopted a foreign law. After about 100 years, China also did the same thing. It was interesting.

As your (Professor Kennedy's) paper sketches out, there are three periods of globalization of law and legal thoughts, namely Classical Legal Thought (referred to as CLT), the Social and the Contemporary. I am interested in why a national conceptualization of law could spread to the whole world, or at least partly. Should the political and economic power of the original country or the quality of the law be the dominant reason for its globalization? I prefer the latter. In other words, academic quality should play a dominant role. Let's take China's legal transplantation in the last 100 years as an example. At the end of the Qing Dynasty when the legal reform was launched, the

central government decided to adopt the civil legal system due to many reasons. For example, codification provides an abstract system without a strong adherence to the European social background. It is more systematic and its functioning is based on the interpretation of the code. All these meant that Chinese lawyers including judges and law professors could interpret the same rule as in Europe. However, given China's particular situation at that time, if China were to adopt the common law system, a prerequisite would be that judges and lawyers would have to speak English (so that they could keep up with the emerging case law in England). The doctrine of *stare decisis* would require Chinese judges to turn to the law in London because they could not accept Chinese law. But interestingly, after the reform and open-up policy in 1978, China has increasingly adopted common law, particularly in the field of business law. Even European countries as far as I observe, follow the U.S. model in business law. Why? It is no doubt that America's political and economic power plays a very important role. I also believe the academic quality in the above field (business law) should be more important. In fact, I can give a negative example to support my argument. Why do China and other countries refuse to adopt American medical insurance law? I suspect that it is because America's medical insurance law is not as good as its corporate law and securities law. Let me conclude my comments by emphasizing that it is the good quality of the law that plays a dominant role in legal globalization. Thank you!

GUO Rui:

Thank you, Professor Zhu. We will have Professor Zhang Qi to comment on the (*Three Globalizations*) paper.

ZHANG Qi:

Good morning, my friends in this room, and good evening, my friends at Harvard! I am honored to be here to celebrate Professor Kennedy's 43 years of teaching and attend this great academic conversation on the globalization of law. My topic is "Globalization of Law and the Rule of Law in Developing Countries." I would like to talk about the third globalization in particular. There are three key phrases for my discussion: judges, politics and law, and from is to ought. First, I would like to share a piece of news that I was just invited to be a member of an expert committee on the guiding cases at the Supreme People's Court (SPC). This indicates that the judiciary and law professors are starting to play a more important role in Chinese society. I am going to discuss the role of the judiciary, the relationship between law and politics, and the notion of the rule of law.

It is very interesting that all the three globalizations of law appear in China simultaneously rather than chronologically, which reminds me of the development of law. Professor Kennedy has done an in-depth study on the three globalizations of law. He

claimed that the heroes of the first globalization were professors in CLT; the heroes of the second globalization were legislators and administrative officials of Social law, and the heroes of the third globalization are judges. I would say that the heroic role of the judges is related to social circumstances, globalization of law, and the improvement of the legal system. China's rapid socioeconomic development and legal reform link accidentally with the trait of the third globalization of law. As some Chinese scholars point out, the first 30 years after the reform and open-up is an era of the legislature and the next 30 years will be that of the judiciary. In the past courts and judges were not respected or trusted in China. Currently as China entered into a transitional period and a variety of social contradictions emerge, the role of the judiciary as a dispute resolver is becoming more prominent. The rule of law as the basic strategy for building a socialist country of law is being accepted as necessary and desirable by the general public, and people are paying more attention to and harboring higher hopes for the judiciary. The SPC of China has participated in law making through judicial interpretations for at least 30 years.

There is another phenomenon that the contradiction of law and politics is one characteristic of China's judicial reform. In fact, the crucial driving force of judicial reform is politics. For example, the development of the guiding cases, as Dr. Guo Rui pointed out (on another occasion), is due to a document issued by the Politics and Law Commission of the Central Committee of the Chinese Communist Party in spring, 2010. This system of guiding cases took off in the summer and autumn of 2010, after a draft based on years of research was ultimately released by a relevant (administrative) body. As law and politics go hand in hand in the formation of China's guiding cases, we need to take the political impact on law as a constant factor. Political influence plays an important role in shaping China's judicial reform.

Next I am going to talk about the issue of "from is to ought." I would use a Chinese phrase that literally means that politics dances with law. Professor Kennedy believes that in the third globalization of law, the key issue is the relationship between law and politics. Judges have to interpret law in a political context and consider not only domestic legislation but also international political sovereignty. As to the question asked by Professor Kennedy, why judges are engaged in politics by other means, I would like to answer by quoting Professor Gunther Teubner from Frankfurt University in Germany. He said that what happened in modern society is a growth in expert language and law is such an expert language. Law is an expert language that complies with social differentiation and social division of labor and it contributes to social stability. In this period of rapid development and social transformation, Chinese society needs the judiciary to be a neutral authority to try cases independently in accordance with the law as well as with their expertise and experience. Judges discuss politics more frequently in China than in other countries. But such discussion should be mainly through law rather other, opportunistic political actions. In the current social situation, the independence and

neutrality of the judiciary is necessary not only for the establishment of the rule of law and constitutionalism in China but also for maintaining the stability of the Chinese state and ensuring the stability and sustainable development of Chinese society. As a law professor, I think Chinese judges should let the politics be governed by law and they should act in accordance to law rather than to political forces only.

My first question for Professor Kennedy is how he considers the rule of law in the context of the third globalization of law. In Professor Kennedy's article, he mentions the rule of law. In my view, the rule of law is the context, a prerequisite for the judiciary to take a prominent role in the third globalization of law. The second question is about what the difficulties that developing countries face when they are moving forward toward the rule of law. Is the rule of law a phenomenon of Western tradition? How do non-Western peoples fit the rule of law into their domestic contexts? I will be grateful for the enlightening comments from Professor Alford, Professor Kennedy and Professor Shen (Yuanyuan). Thank you very much!

GUO Rui:

Thanks, Professor Zhang Qi. Our next speaker is Dr. Xiong Bingwan.

XIONG Bingwan:

It's my privilege to provide my remarks regarding Professor Kennedy's work in the field of Critical Legal Studies (CLS). Although my remarks are loosely connected with the *Three Globalizations* (article), I will be very grateful if Professor Kennedy provides me with some feedbacks. I would like first to explain my basic motivation for exploring the dissemination of CLS thoughts in China. It was two years ago when I went back from the States. I was very surprised when I talked with some of my colleagues, especially young colleagues, about their understanding of CLS in the States. My exploration started with two of their comments. The first was that their (CLS scholars') understanding of law was very profound. The second was that they (CLS scholars) were extremists. I was kind of surprised by the divergence between my understanding and theirs. Therefore, I explored related articles written by Chinese commentators in databases. After briefly reading such articles, I found some misunderstandings.

As the time is limited today, I am not going to introduce every misunderstanding or criticize the points raised by them. But I do think it may be helpful to clarify some of them. As I have sent an outline of my comments to Professor Kennedy through Guo Rui, here I only address two of Chinese commentators' misunderstandings.

The first is about the determinacy and indeterminacy in judicial reasoning. Chinese commentators, I think, so far take the aspects of indeterminacy and the ideological influence on adjudication as the centrality of CLS. To Chinese commentators, U.S. ritics

(CLS scholars) have excessively emphasized the influence of judges' ideological or political preferences on adjudication. It looks as if judges just interpret the law and adjudicate the case according to their political or ideological preferences. Or the process of interpretation is no more than judges' ideological manipulation, which means judges' legal interpretation and adjudication are largely indeterminate.

But such reading of U.S. critics is, at most, part of the story. Although CLS is a huge academic movement in the U.S., it cannot be regarded as one independent school of legal thought because scholars in this field diverge in a wide variety of ways. Some of them are radically critical, and some others are more conservative in one way or another.

For my talk today, I will take some thoughts of Duncan Kennedy as example to prove Chinese commentators' misapprehension. Professor Kennedy indeed argued many times that some judges would like to employ their preferences in interpreting the law. But I also noted that Professor Kennedy has many other observations on judges' psychology process and behavioral choice. My wife is a junior criminal judge in Beijing. I talked with her and her colleagues, and to a large extent it seems like that some of his observations are consistent with the practical situation.

In Kennedy's discourse, this kind of judges (deploying political preferences) is categorized as bad-faith judges. They try to maneuver the law whenever they have an opportunity to input their ideological preferences in adjudication. But they tend to disguise their personal, political agenda with various interpretive techniques, such methods of ordinary meaning, contextual analysis, purposive interpretation. Eventually, it looks as if it is the methods dictating a single, right result.

Nevertheless, there is also another type of judges according to Professor Kennedy's observation. That is, "good faith judges." In contrast with bad-faith judges, they aim at interpreting law with fidelity to the law. They are consciously faithful to some sorts of interpretive methods, and determined to preclude personal, political preferences. They try to deploy various kinds of legal methods to interpret legal texts, but it does not mean the law in adjudication is determinate since there are no super rules governing the selection of legal methods.

Now, let's go back to see the determinacy or indeterminacy of bad-faith judges. In Professor Kennedy's observation, their adjudication and interpretation of law are not necessarily indeterminate. To a large extent, in Professor Kennedy's words, the determinacy and indeterminacy of law is a contextual concept, depending on the standard by which we evaluate judges' judicial activity. In more than few occasions, there are some constraints that make it hard for judges to successfully input their political preferences. There are at least two sorts of constraints, some of which are internal and others external. The internal constraint comes from the difficulty for the judge to come up with sound arguments for a conclusion. In this situation, even if judges want to change

the law if they were legislators, they still fail to maneuver the law in the way they prefer. The external constraint, which I have discussed with some real judges in Chinese courts, is judges' concerns about the reaction of the audiences to their adjudication. Taking my wife's experiences as an example, in spite of her strong consciousness in some legal situations, she takes her audience's reaction seriously. When she projected that her audiences would probably be unhappy with her judgment, she is likely to settle. After years of interacting with judges, to my surprise, I found that she and more than a few of her colleagues tend to be judges in good faith.

The second misunderstanding is closely associated with the first one. Traditional legalists (Classical Legal Theorists described in Kennedy's *Three Globalization*) believe that legal methods can guide judges in resolving legal issues. By disclosing the indeterminate aspect of legal interpretation, the critics have forcefully broken down many illusory ideas associated with the convention. But the major concern of Chinese commentators is more concerned of the alternative theory the critics could offer thereafter. According to my tentative observation, this is also a wide concern among U.S. commentators. Some commentators even charged Kennedy as deconstructionist, extremist, nihilist, or betrayer of the ideal of rule of law.

But in my reading, Professor Kennedy is not extremist or total deconstructionist as being widely charged. Rather, he is advancing his theory to change the way we observe or interpret adjudication. Neither is he against the idea of rule of law. But he hopes to change our understanding of the ideal, and our way of approaching the ideal ofrule of law. I would like to explore other misunderstandings in near future if I have a chance. That's my remark. Thank you!

GUO Rui:

Thank you, Dr. Xiong. Let's welcome Professor Wang Yi to present his remarks.

WANG Yi*:*

Nice to meet you all again, my friends from Harvard. Thanks for your generous help during my stay at Harvard!

It's my great pleasure to discuss with all of you Professor Kennedy's work. As a civil law professor, I think if three globalizations of law and legal thought in the past 150 years did occur as Professor Kennedy argues in his masterpiece, the first one may be called the globalization of the economic function of the law, the second the globalization of the social function of the law, and the third the globalization of the political function of the law. Maybe in the near future, we would have the fourth one which may be called the globalization of the humanitarian function of the law. Of course, these conclusions are based on such a premise, that we could draw a line between economic and social,

between social and political, and between economic and political. Let me give a brief explanation.

In the early 20th century, only a person who could make rational decisions (especially in economic affairs) was qualified as a legal subject in civil law. This is the simple condition on the civil legal capacity or in other words the capacity for civil legal conduct. Such kind of civil law is essentially economy-promotion law. But beginning in the mid-20th century, accompanied with the legal protection of consumer groups, labor unions, and other vulnerable groups, civil law became law protecting vulnerable groups. Today, many new issues have arisen. The distinction between public law and the private law is not as clear as in the past. When interpreting the rules in the civil code, judges and arbitrators should take into account elements both from public law and private law. The more elements the judges and arbitrators take into account, the more important they are in reality. As you know, some of my colleagues in Renda, such as Professor Wang Liming, Professor Yang Lixin, and Professor Zhang Xinbao, insisted that in the future Civil Code of China, if we are lucky enough to have one in the near future, the law on personality rights should be part of and may be the most important part of the Code. It may be the fourth globalization of law.

Since I have sent the slides via Guo Rui to colleagues at Harvard, I am not going to talk about them here. As an old Chinese saying goes, a grain of sand can indicate a great trend. From the evolution of the types of norms in civil law, we could reach the above conclusion (that modern legislation has both public and private law elements). In the early 20th century, only simple norms and two kinds of complicated norms were in place. The two kinds of complicated norms were permissible norms and mandatory norms. In the mid-20th century, mixed norms, which are also one kind of complicated norms, came into view and attracted attention from judges, legal scholars and legislators. Today there are so many complicated norms as I mentioned in my slides. I think maybe it is some kind of symbol of the past three globalizations of law. As you know, China is a very special example because you could see signs of all three globalizations at the same time and could also see signs of a fourth globalization of law as I mentioned just now, law as protecting personality rights, if the protection of personality rights becomes a part of the civil code in the future. So, welcome to China and get a close feeling of the fourth globalization of law. This is my brief conclusion. Thank you all!

GUO Rui:

Thank you, Professor Wang. It is my turn to comment and please allow me to say a few words about the previous comments by my Chinese colleagues. They raised a wide variety of issues from many different perspectives, and the central concern they all share

is what should China's next move be regarding the rule of law. Is the rule of law in danger in China? What should Chinese legal scholars do?

Next please let me give you my comments. Unlike my colleagues, who comment on the macro-level or from a broad historical perspective, my comment offers a concrete example of Chinese corporate law.

Let me introduce a bit about Chinese corporate law. The Chinese Corporate Law was passed in 1993. It has been amended several times since 1993 (the most recent one was in 2013). I regard the Chinese Corporate Law as a classic example of the third globalization. The Law contains some of the fundamental characteristics that scholars such as Professor (Reinier) Kraakman consider as key characteristics of corporate law: legal personality, limited liability, shared ownership, transfer able shares, and centralized management. This shows that the Chinese corporate law has a logical structure that share what Professor Kennedy calls the features of the first globalization of law and legal thought. However, there is more. The several amendments of the Chinese Corporate Law since 1993 seem to have followed a different rationale. The amendments were proposed and passed because the legislature wanted it to achieve some social goals. The most recent amendment is to relax the capital requirement for incorporation. The justification is to promote start-ups and increase employment. Obviously this is not a matter of logical deduction. As Professor Kennedy calls it, this shows the "social" aspects of law, which feature the second globalization of law and legal thought. The third globalization is the mixture of the two globalizations and emphasizes the balance of interests. This indeed can be seen in Chinese Corporate Law's provision on piercing the corporate veil. When the provision was discussed, the legislator recognized that the corporation is an entity that is separate from its shareholders, who are different legal subjects in the eyes of the law. Such is the traditional concept of legal personality. But when the separation is abused and the abuse needs to be addressed, the Chinese Corporate Law allows for the suspension of the logic of legal personality. It is clear from the legislative that the legal thought from the third globalization is at play.

Now how is this analysis (of three globalizations of law and legal thought) helpful in the Chinese context? In choosing between the two rationales (CLS and the social), the Chinese legislature chose different politics. In my work on state ownership and Chinese corporate law, I found the political dimension of law in the Chinese Corporate Law as well. The State Owned-Enterprises (SOEs) are the biggest player in the market. The reform of the SOEs in China was not to follow the CLS logic, but to maximize the interest of the state. By shedding off liabilities to provide social welfare, the state can extract more profits from SOEs. As Professor Kennedy points out in his paper, this politics could be reversed if we understand how it was put in law. We have good reasons to work towards reversing it because protecting the state as a shareholder has caused so many disastrous results, particularly the increasing social inequality in China.

When I was attending Professor Kennedy's class on the three globalizations of law and legal thought in spring, 2006, we had to address the issue of the left and right politics. What does politics have to do with the globalization of law? I wrote some thoughts at that time and continue to think about this issue. How will politics inform or induce legal change in China? How will law inform or induce political change? I hope to continue to be inspired by Professor Kennedy in this conversation. Thank you!

Our next speaker is Professor Zhai Zhiyong.

ZHAI Zhiyong:

Good evening, Professor Kennedy and Professor Alford! Long time no see!

I have three short comments about this great work (*Three Globalizations of Law and Legal Thought*). The first point is that in the "globalizations of law (and legal thought)," there are two themes: The first theme is relatively clear; it is the development and transformation of law and legal thought in the Western world, especially in the U.S. and Europe. In this theme, the three globalizations have developed first from Germany, then from France and Germany and last from the U.S. The other theme is the spread of law and legal thought in the non-Western world, especially in developing countries. Due to the unequal structures of global politics and economy (between the Western and non-Western countries), the globalizations of law in the non-Western world were not simultaneous with those in the Western world. The three globalizations in the Western world were diachronic, but those in the non-Western world sometimes were synchronic. For example, the transplantation of Western law in China since the 1980s was affected by all three globalizations at the same time. Different legal elites have embraced different legal thoughts. CLT, Social jurisprudence and Contemporary American legal thought have transformed Chinese legal systems simultaneously. Nowadays in China, CLT and Social jurisprudence are popular. The young scholar (Dr. Xiong Bingwan) has just talked about CLS from the States. I agree with Professors Zhang Qi and Wang Yi that the three globalizations co-exist at the same time.

The second point is about the politics that has been discussed by scholars today. My question is whether "politics" can be the integrating concept in the third globalization? The reason I am asking this question is that Professor Kennedy argues (in his article) "there is no discernible large integrating concept, parallel to the will theory or the notion of adaptation to interdependence, mediating between normative projects and subsystems of positive law." Meanwhile, he also considers that the third globalization diffuses a *langue*, which includes neo-formalism, rights/identity, and judicial supremacy, and in contemporary legal consciousness, the question is the relationship between law and

politics. I am wondering why politics cannot be the integrating concept in the third globalization, and what the role of politics is in the third globalization. We are concerned about politics because in China, politics plays a very important role in law making.

The third point: What was the dynamic mechanism of the globalization of law and legal thought? Why has Western legal thought spread globally? Professor Kennedy considers that the dynamic mechanism of the first legal globalization was power/ colonization, that of the second the reform movement, and that of the third the American victory in World War II and the Cold War. Can we use a unified mechanism to explain legal globalization in general, such as the mechanism of power and capital? Behind the globalization of law and legal thought was the proliferation of power and capital. It is just the unequal structure of global power and capital that made globalization of law and the transformation of hegemony into legal thought. Does this mean that with the changing global structure of power and capital, the globalization of law will correspondingly present a new trend, such as from developing countries to developed countries? If politics is law by other means as Professor Kennedy has said in his article, can we say that law is politics by other means, or that law is power and capital by other means? That's all. Thank you!

GUO Rui:

Let's welcome Professor Zhu to give concluding remarks.

ZHU Jingwen:

These are very great comments. I learned that Professor Kennedy has a very wide range of research fields, like CLS and the globalizations of law (and legal thought). What concerns me is how CLS and the globalizations are connected. I understand CLS exposes politics in law, which means that politics and law are connected. CLS also focuses on differences, which means that different persons may get different benefits from law. I also understand that CLS focuses on differences between the rich and the poor, between the white and the black, and between the female and the male. In addition, different countries may have different views on globalization. How do such differences exist in the globalizations (of law and legal thought)? I know Professor Kennedy has good answers for us.

GUO Rui:

With a warm applause, we conclude the first part of the workshop. We will take a coffee break for ten minutes. Then we will be back and turn to Professor Kennedy for comments.

DUNCAN Kennedy:

I am incredibly honored and grateful that this is organized by Guo Rui, and all of you who arranged it and who came. It is moving. It is touching. I am going to retire next year and this is just the perfect thing that happens at this stage of my life and my work. I was always very curious, anxious, and interested how this kind of legal thinking can work across cultural and national divides and how they can be interpreted and reinterpreted. This, to me, is fascinating. It (the virtual workshop) is very moving. Before I respond to the questions and comments of our Chinese colleagues, I would like to make two very general, very preliminary remarks about my article.

First, as I see, there is one great weakness in the article. The article is from the point of view of someone trying to write a universal history for a large part of the world. What is inevitable and also a complete failure of the article is that it does not engage communism and post-communism, except viewing it as a threat operating politically on the non-communist world. Communism is something with its own internal history; it existed in Russia and China, and many other countries. But this internal history is not part of the article. In my general point of view, my intention was to write a comparative piece, with no intention at all to apply any part of the three globalizations analytic to a communist or post-communist situation. The whole premise of this article is deeply inductive. It is based on an attempt to accumulate from discrete instances a sense of how the system works from the inside.

For the purpose of our conversation today, my article is problematic also for a second reason, and I think this relates to the question Professor Zhu raised as well. My interest in globalization is not abstract, it is the interest of a person from the left who is committed to and interested in the exact differences, as Professor Zhu suggested, between black and white, men and women, poor and rich, and so forth. I undertook the project as part of an attempt to move beyond the national scale and inquiry into how law is either complicit in, or a mode of resistance to, power, oppression, inequality and differences. So I don't see any discontinuity at all. I see the *Three Globalizations* article as an attempt to project the more national, parochial American preoccupations with law in more clear light and transform them in the process.

As I said, the article is problematic for another reason. It has a problem in the post-communist situation on which Rui has made a number of observations. In the story that Rui just related about the class, Rui mentioned to me the exam question of my class. He said that the question about the left and the right didn't make sense for the Chinese. My course was driven by the idea of the distinction between the left and the right, which was very important in understanding the history of law and legal thought in the universe in which I was interested. Guo Rui said that what I had said about the left and the right didn't make any sense at all in the Chinese context. I took his comment very seriously

and completely accepted it. After that I wanted and I still want to find out something about the unexplored universe of the communist and post-communist countries, about China and its politics. Because I know that I do not understand the context or the politics of China, which might be even more interesting, I can't tell you much about the usefulness or the lack of usefulness of my "three globalizations" analytics in in your universe. I can react to your comments and questions from my side as though you were an American or a German, as I would give the kind of answer to you as I would to them. But I may not even understand your question accurately.

I will approach our Chinese colleagues' questions and comments in terms of some common themes. The first theme is the comparative law methodology. What is comparative law? What are its basic preoccupations? The *Three Globalizations* article is quite unusual. It is provocative, as Professor Alford correctly summarized, in a good and bad sense, because it involves rejecting or departing from some basic ideas and preoccupations of conventional comparative law. It is not comparative law in the sense of comparing the positive law of different jurisdictions. Instead, it is a comparison of legal thought. The globalization I am studying and trying to represent is not about, for example, Roman law, but more about Roman legal thought. It is very important to distinguish between law and legal thought here. In gross terms, the globalizations are about the *langue* versus the *parole*, that is, the language versus speeches or utterances in the language. So the idea was to compare a way of thinking, which includes vocabulary, a set of concepts, legal arguments, and that could be understood in an infinite variety of ways, just as learning French is subject to a set of constraints of French language but you can say a million of things in French. CLT as a language provided an infinite set of particular positive norms to be put forward or formulated in language. The same was true with the other two globalizations. This idea is closely connected to the notion that contradictory politics can be pursued within the mode of legal thought. It is exactly like this because it is a language. So, just as we did have a battle between the left and the right in English, you can have a battle between the left and the right in CLT, or in Social Legal Thought, or in Contemporary Legal Thought. So a basic idea is that the study of globalizations of legal thought is a study of one of the places where political conflicts over the differences not only between the rich and the poor, but also between the imperial subject and imperial object, and racial, ethnic, religious dominance, etc., unfold. One of the sites of these world-class conflicts is legal thought. They are fought out in legal thought because law is not only a product but also an instrument of power. Law is a reflection of power and also constitutes power. So that would be the first distinction of my article from classical comparative law.

The second distinction between this article and comparative law is that an intense preoccupation of classical comparative law is the distinction between common law and

civil law. According to classical comparative law, law fulfills social needs with the idea that the diffusion is closely related to social needs that law fulfills in a given country. Successful diffusion is successful because the law at issue is suitable to the local place. Alan Watson's legal transplant account is a brutal attack on the idea that law diffuses according to social needs. Diffusion means the law is adopted in another place. Watsons, who is the person in Contemporary Legal Thought, says to the Social theorists, who are the people in the second globalization and believed all about social needs: That's nonsense! Legal transplant is just as likely an accident, just as likely a function of elite deal, just as likely as if I met somebody at the airport who was flying to somewhere when I came back from an international conference and had a conversation with him about family law. He told me, "look at what we are doing." I wrote it down, took it home and gave it to my cousin who was the minster of the country, and then all of a sudden we had the most advanced family code in the world.

Those are the three approaches of classical comparative law: comparing positive law, the common law/civil law division, and the theories of law as social adaptation and of legal transplant. I am trying to do something different from all of them just in the way I do in CLS. My idea is to look at globalizations as a product of strategies of actors, not of other systems of law or social systems. The idea is focusing on things like colonial power, but not just power of capital but also of prestige. Take ideas like prestige seriously. Take seriously the idea that bargaining, capitulations, and unequal treaties were a result of direct colonial imposition. But capitulations were also calculations on the part of the colonized/weaker state: We need to modernize, what do we do? We have to know how to modernize. That is, there are strategies of the colonial powers, strategies of the states being (or about to be) colonized, and the counter-strategies of resistance. Law is actually a means of resistance. A very striking example is the modernization of the Thai legal system, which is a successful attack in dealing with unequal treaties. Thailand used the institution of capitulations to get rid of the unequal treaties with the West and finally got rid of illegal treaties. The idea is complicated back and forth, so I am not in favor of a simple power or capital thesis. I am not in favor of any simple thesis. It's some complicated mixture of all of these things. The idea that is more interesting to me is the strategies of various actors. The globalization of the Social took place as a move by fragmented colonies that were radically or religiously divided. The Social Legal Thought was used to celebrate the organic unity of these post-colonial states, not because there was an organic unity in these new nations, but precisely because the nation was not organically unified. In adopting a unifying legal thought, the elites were saying: We need a slogan before we disintegrate into civil war. In other words, the idea is that to shift the emphasis of the idea from the idea of diffusion based on civil law or common law to that of a political story; we need to look at the role of political ideology in the domination and resistance across the globe.

The second theme, which is also about CLS and globalization, is the idea of the rule of law. My knowledge about the discussion of the rule of law in China comes from your exposure of the discussion to me. I am very aware that when I talked in my office with some of you, the rule of law has been a significant topic every time. I have given some thought about it. In these conversations, it has slowly become clearer to me: the CLS attitude toward the rule of law. Well, in fact, there is indeed one attitude of CLS toward this, at least of the faction that I represent. As Bingwan rightly pointed out, there is no single thing called CLS. The CLS is against the argument that law is in general understood by lay people, by the population, by judges, by law professors, and by lawyers as generally clear, determinate, unequivocal in what it commands and what it prohibits; as a clearly defined legal skeleton or infrastructure, in which all action in civil society occurs. In CLS, we have two critiques of this argument. One is an internal critique. In the actual practice of law, in its evolution over time, and in changing social circumstances, there were a great deal more potential choice, indeterminacy, and situations where opposite positions exist, although they don't admit it. Law is a political activity in the sense that what they — the judges, the professors, the legislators — were doing was making choices that had high stakes. They portrayed an image of law as determinate, as "Law" and repressed the idea that law will inevitably involve choices that are politically charged. This is the first idea (of legal orthodoxy in the U.S.).

The second idea is that this determinate block of law was represented in culture, in law schools, in songs, in stories, in national holidays, as a non-political framework for political and economic activities, in which politics, economy and family unfolded. The framework itself was not political, although everything that happened within it was. The framework was not understood as a political choice itself, or a constitutional political choice. The CLS idea is: On the contrary, it is!

These Crit ideas may not be of any great interest in the Chinese context. It is completely possible that they are both obvious and irrelevant, because this theory was a 1960s, 70s, 80s, 90s critique, directed to the American elites, to their ideas of power and positions. It made them furious. In law schools, they denied many (CLS) people tenure, and many (CLS people) were fired. We were more successful in changing the tone when people talk about the legitimacy of the system. It is just not your problem. As I understand to a very limited extent the rule of law, as the way an American would look at it, it would be something like this: The rule of law is not the goal *per se*; the goal is the limitation of the arbitrariness of power holders by giving them an alternative, a separation of powers, an independent check: That's the institutional definition. It is not about the content of the rule of law, but about the basic institutional structures; the power is subject to the review by the judge. The CLS idea is totally not in contradiction with this understanding. What is it like in the Chinese context? If you believe the reason for giving power to the judge is that the law is determinate, it always has an answer, and it is always

the right law, and the judges are not political; if you understand the goal of the rule of law to be getting rid of politics, then the Crit analysis is problematic because we can't pretend to think that you can get rid of politics via creating judiciary review. You can, I would say, reduce arbitrariness by doing that for sure. I would say that the Crit would suggest drawing a sharp distinction between the rule of law as an institutional mechanism in which you can sharply reduce arbitrariness and make power holders act in a more decent way and the idea that you could de-politicize law via the rule of law. You can't get the power of politics to disappear through the rule of law; this idea in the Western conception of the rule of law is false. There are always likely to be large political stakes that are being disposed of by people who claim just to be applying or administering the rule of law. That would be the way, based on my experience, of the rule-of-law discourse in other places in the Middle East and a little bit in Latin America. A large part of the enthusiasm of the rule of law is often based on the idea of de-politicizing law, not just getting rid of arbitrariness. We Crits tend to be skeptical about it. Of course what I am talking about is our attitudes toward the rule of law in the U.S. I am not talking about what I would think if I were a Chinese. Regarding the left and right wings of American politics, I have no idea what it would mean in China. I don't know if based on my said arguments I would be defined as a person for or against the rule of law in China.

I will conclude by saying this. I really think that the situation of the Chinese academics, from my limited understanding, is dealing with a concrete problem: the potential for law to address serious issues that pertain to social, economic, and humanitarian developments. It would be unbelievably satisfying to me if my stuff would be even slightly helpful to you in that situation. I am just more than anxious to continue this conversation. The time is limited today. I see this event more as an occasion for me to investigate you. Thank you!

CHARLES Wharton:

I have some short comments. I am excited to listen to presentations by Chinese colleagues, as well as by Professor Kennedy. I am sorry for not taking your (Professor Kennedy's) class. You (Professor Kennedy) look wonderful today. I wish I had taken your class. I would like to just offer a few short comments. When you think about the communist or post-communist context, which China is a little bit of both (it is post-communist in the sense of the economy, but it is still politically communist), the biggest issue at my heart and the heart of many Chinese scholars is representing or protecting the rights of disadvantaged groups. They are a little different in China than in America. The minority groups in China are much smaller. It is more social and economic rather than racially based. I think this is the most important factor I would like to apply to this communist or post-communist setting. The best way to represent or protect the interests of disadvantaged groups is some form of accountability. That's why so many

Chinese law scholars are so interested in the idea of the rule of law. In the Western context, the rule of law is the best example of accountability and the most effective way to provide accountability for people in weak positions in society. I think the difference between America and China in this context is that the rule of law is not the only method of accountability here. Politically and historically, under the leadership of the Communist Party, there are going to be other methods of accountability. I, in some way, think there are currently three choices for China. One is a form of accountability that is not based on the rule of law or legal institutions. I think it was represented last year by the political leader, Bo Xilai. He was a very arrogant politician. He based legitimacy on a direct connection with the people rather than on the Constitution. This method is more political than legal. Many reformers in China didn't support this kind accountability because they saw its fundamental flaw, and feared that it would lead back to a previous era, the era of the Cultural Revolution. There was too much politics and none of law. Going along with your question of whether and how law holds things together and provides a skeleton of framework, there are many rule-of-law advocates in China that are interested in eliminating politics from law, but the political leaders want to preserve that. In this debate that you raised about whether and how the rule of law can reduce arbitrariness rather than eliminate all the politics from law, I think CLS is very relevant to China because that is the goal of the nation right now, from the leadership to many legal scholars. Political connections in China are not unique, but we would love to reduce arbitrariness. The goal of the core communist leadership, as well as of many legal scholars, is to reduce the arbitrariness of power. This is in the interests of foreign companies in China or working with China too.

GUO Rui:

Let's ask our Harvard friends to comment.

Aminu Gamawa:

My name is Aminu Gamawa. I am a S.J.D. candidate here, a student of Professor Duncan Kennedy. I work on legal education in Africa. I am a very good friend of many Chinese people. China is now expanding globally. After Professor Kennedy's three globalizations class, many of my Chinese friends denied that China has any imperial expansionist ambition. But I know as someone mentioned in the room that the expansion of capital and power is often associated with the expansion and globalization of law itself. We see Chinese companies all over the world, in Africa, in Latin America. I would like to hear from Duncan and our Chinese colleagues on the other side your vision based on Duncan's brilliant analysis. Are we also going to see a fourth globalization starting from Renmin and Peking and other law schools in China to complement China's economic and

political interests globally? I understand that this is a very critical question, but for me there is something real because I see China's influence on different parts of the world. China has been a recipient of law. Will it become an exporter of legal thought? I asked this question as a friend.

ZHANG Qi:

Let me respond to Professor Kennedy's response. I accept your clarification. Thank you! In China, although people talk about the relationship between politics and law, the situation and the context are different, particularly from those of the U.S. When Chinese judges talk about politics in law, they are passive, and rough. So sometimes I joke that Chinese judges take political strides and put law aside. What I suggest in "From Is to Ought" is that judges should talk about politics in the context of law. I accept your classification that the idea of the rule of law portrays law as an institutional framework, as institutional infrastructure. We had a debate among Chinese legal scholars on whether the rule of law is a goal in and of itself or the goal should be something else. I do not think the rule of law is a goal, but I do think it is a minimal requirement for China to move forward, no matter what stage of development and social stability China is in. We are working on it. I think some scholars in this room would share with my idea.

To my African friend, your question is great. I don't think many Chinese scholars are thinking that ambitiously. Currently, the major issue for us is to deal with the difficulties and challenges in our current legal and social development. We are inspired by the legal thought of foreign scholars as well as by traditional Chinese philosophy. We also have a lot of wisdom to learn from ancient China. If another country is interested in Chinese law and legal thought, we will share our ideas with them. So far so good! If there is another opportunity, we would like to share and exchange ideas.

DUNCAN Kennedy:

When you say that the rule of law is a prerequisite, I don't know what you mean by that. Would you define it as an institutional structure that involves the ability of a person who thinks they are being arbitrarily repressed to turn to a third party, the judge understood as a force outside the control of the power? Or would you define it much more than that, as involving some substantive content understood outside of or prior to politics? I am a Crit. In our Crit-ish tradition, we like activist judges. The Crits had a major agenda to support judges in the U.S. who did left wing disruptive things against the power structure. We like the idea of an active judge, rather than a passive judge. An active judge is a judge who takes political responsibility. The rule of law, what is it?

ZHANG Qi:

Thanks! I have two responses to your question.

The first is what is the rule of law? I still remember the conversation between you and me in your office years ago. We talked about the thin definition and the thick definition of the rule of law. After I left your office, I moved from the thick to the thin definition of the rule of law. I hope the rule of law is a structure in which there is law, and the constitution, and the law is followed. That's the rule of law, whether the content, the substance of the law, is good or bad. The following question still remains: Why is the rule of law sometimes failing? Maybe the content of the law has something wrong. Still the rule of law in my definition requires that judges play a neutral, independent role. Now the society starts to accept this sort of idea.

The second is about the passive situation of judges. I am not referring to judges in the U.S. context; I am talking about the Chinese context. Chinese judges simply accept the political order, and enforce the order without the legal language, or disguise the political order in some uniform legal argument. But (when they disguise) we can easily see the political consideration in it. These judges do not consider substantive law, and not even legal procedure.

XIONG Bingwan:

Perhaps it helps to make a divide between the political influence on the judiciary from internal perspective and that from the external direction. You mentioned that in the U.S., there is the internal critique of the politics of adjudication: the internal motivation of judges to realize their personal, political preferences. In China, the politics of adjudication is not internal but external. It comes from the external pressure of the government. Officially, we see the rule of law as an idea to build up the authority of legal rules as applied by judges. In reality, there is strong political pressure from the government, and sometimes from the governing party, I mean various sectors of the Communist Party of China, on legal interpretation and adjudication by the judiciary. The political concern associated with the judiciary in the U.S. and that in China are two different things. In the U.S., the political perspectives are the judge's personal preferences. In China, the political implication of the rule of law is how to keep the government's hands away from the judges' interpretation and implementation of the law.

William Alford:

We are approaching the conclusion. I would like to offer a few comments. This was a wonderful evening, a very exciting evening, despite the technical difficulty. Let me offer a few personal remarks about the substance. I don't count myself as a Crit, but I find great explanatory force in Duncan's writing. I do think it poses some great challenges. A

moment ago, Zhang Qi, you made the comment about the Chinese past. I'm all for searching from the Chinese past. Bingwan, I agree with you about the current challenges of the Chinese judiciary and the importance of building an institution that seems to adhere to rules. But even as we do that, we want to be mindful of what Duncan says, the more subtle message, that rules have a political content. In our very understandable desire to embrace the rule of law in the way we are talking about, we could be a little bit too romantic. For example, in talking about property, land expropriation, in some cases, land expropriation is legitimated in legality. We have to be careful when interpreting this kind of legality as well.

This has been a great session. We are just at the beginning, and I would like to close by proposing that we see this as a beginning. As I have said to Duncan many times, I would like to get him to China, and his wife as well (Duncan's wife is also with us tonight). We have 30 witnesses here. Any time China wants to have Duncan, we will get him there. It is one of the many ways to celebrate the vitality of these extraordinary ideas, whether I agree with them or don't agree. Thank you, our friends in China for all the time and effort you have put in this event! Thank you, Aphrodite, and Xiaoqian, and many others! This is just the beginning.

GUO Rui:

Thank you all for your comments! I'd like to mention that although our Dean, Professor Han Dayuan, couldn't come today. He asked me to send his regards to Professor Kennedy, Professor Alford, and Professor Shen. Since before this workshop our Dean has already expressed his intention to invite Professor Kennedy to visit, I think Professor Kennedy now has a standing invitation from Renmin Law School. We also want to once again thank Janice and Aphrodite, who worked so hard in putting this workshop together.

Thank you all. This has been a fruitful and enlightening discussion. I hope with this workshop we build friendship among the participants, and our conversation on the globalization of law will continue after the workshop. Thank you again!