



China, Law and Development

Project Summary

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Introduction

The “China, Law and Development” project (CLD), funded by a European Research Council (ERC) Starting Grant, is an interdisciplinary and multi-sited research project that aims to understand the nature of order that underlies China’s new globalism, an order that has multiple sources, one of which may be law. This project breaks new ground in analyzing Chinese approaches to “law and development” in recipient or host states in the global South. “Law and development” pertains to the role of law and legal institutions in promoting economic growth and sustainability. Whereas the study of law and development has historically originated in the U.S. and Europe, as China is projected to be one of the world’s largest capital exporters in the near future, this project will examine the logic of Chinese approaches to creating environments for transactional security, risk mitigation, and facilitating cross-border economic integration. These approaches include creating financial and legal institutions parallel to those of the Bretton Woods system, strong networks of professionals, including lawyers, judges, officials, and arbitrators, and informality, ad hoc design, and soft law over systematic formal rules. The broad categories investigated by the CLD are:

- Conflict of laws,
- Modernization of the PRC legal system,
- China’s impact on international commercial law,
- China’s impact on the legal and regulatory systems of host states,
- Dispute resolution and legal services,
- Regional legal harmonization, and
- The method and theory of a comparative law and social sciences through the lens of global China.

Such approaches touch on a wide array of legal fields including trade and investment, corporate, construction, environmental, labor, land, dispute resolution and legal services, tax, public procurement, law and technology, project finance, and cultural heritage to name a few. Conceptually, CLD examines the Chinese approaches to ordering on two levels of analysis: the first is international economic law (e.g., trade, investment, choice of law, multilateral and regional harmonization, etc.) and the second is bilateral relations with individual host states.

Objectives

The CLD project has two main objectives:

- To establish the conceptual bases for the study of China's approach to law and development by conducting the first systematic study of the impact of Chinese companies, state representatives, and civil society on a) international law and b) the legal systems of host states.
- To experiment with a comparative research design to theorize how China's approach suggests a type of order that extends through establishing financial and legal institutions parallel to those of Western states, the harmonization of macro-regional and local regulatory processes, soft law, and informal networks of professionals.

Approach

This project puts forth the question: what is the role of law in China's transnational ordering? In contemporary China, a number of different legal actors, including judges, arbitrators, officials, lawyers, and academics, are engaging in experimental brainstorming and institution design. These legal entrepreneurs are building dispute resolution mechanisms for the world (e.g., "international commercial courts"), reforming the domestic doctrine on conflict of laws to resolve foreign law matters, and participating in legal training with counterparts from Africa, Central Asia, ASEAN, and elsewhere. Nowadays, legal disputes in Kenya or Djibouti may proceed in accordance with PRC law. Chinese law firms are internationalizing at a breakneck pace. PRC regulators may, under the PRC Anti-Monopoly law, for example, regulate corporate actions half a world away. Across the board, PRC law is increasingly relevant for not just commercial matters, but a broad range of administrative and regulatory concerns. To summarize, rather than the reactive posture of a hundred years ago, Chinese legal actors who are globalizing PRC law are doing so at an historical moment when China is ascendant economically and politically. And yet, the modern Chinese legal system is itself only some forty years young

and nascent in its actual practice and implementation. As a result of this, and in tension with foregoing, some Chinese actors demonstrate an unwillingness to export Chinese law. Rather, they are more interested in building transnational law, based on international arbitration, soft law, and MOUs. This approach is complemented by both personalistic and professional-organizational networks to avoid local law, mitigate risks, and avoid or address problems, an emphasis on industrial standards to increase China's access to foreign markets, and macro-regional infrastructural projects which entail their own forms of regulatory ordering. In so doing, Chinese actors are innovating upon law and development practices and orthodoxies.

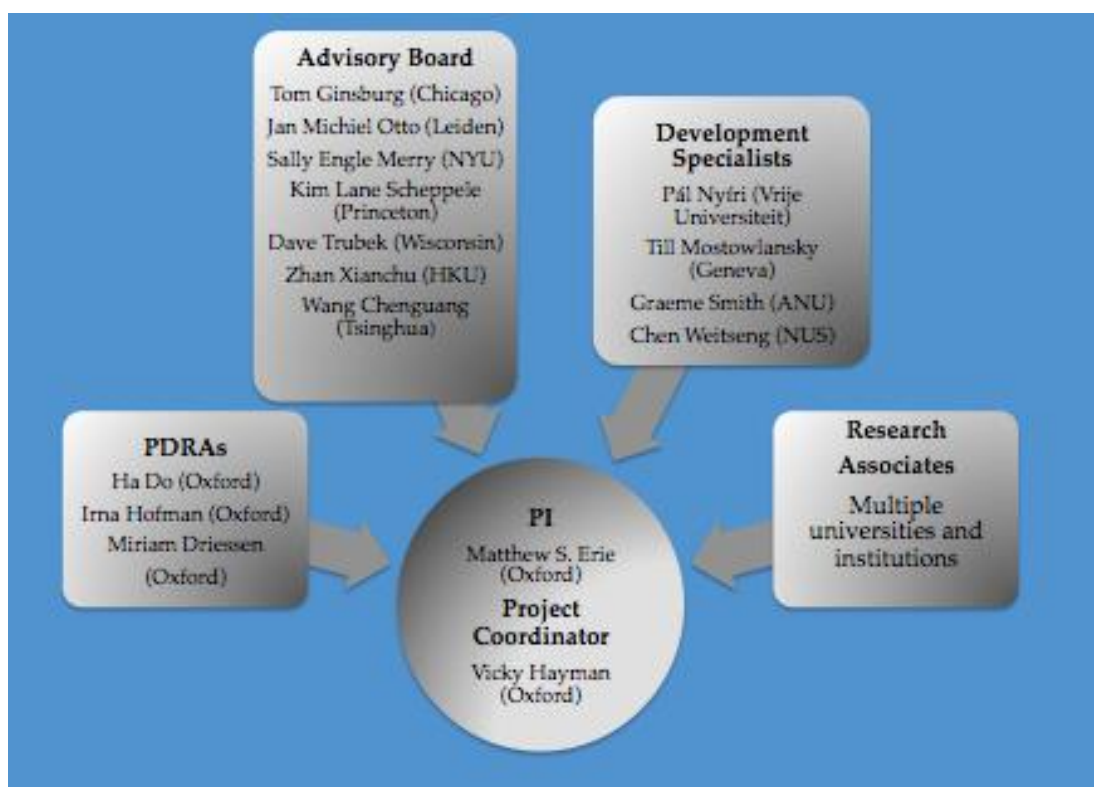
Whereas much of the popular commentary is focused on the role of China and Chinese companies, in particular, in post-industrial Western economies, the CLD project submits that it may be in weak and fragile states where China's footprint will be most felt. Consequently, how China engages with trade and investment regimes and domestic legal systems of host states may shape global governance with normative implications for economic development.

Case Studies

The CLD project focusses on a number of case studies that will be conducted in regions that are experiencing high volumes of Chinese investment and trade. These case studies, in Southeast Asia, Central Asia, Africa, and South Asia will be conducted in 2020 by the three Postdoctoral Research Associates (PDRAs) and the Principal Investigator. In addition, four Development Specialists are conducting on-going fieldwork in countries from Vanuatu to Hungary that will contribute to four micro-studies in 2021. The aim of the case studies and micro-studies is to a) develop rich empirical data on the impact of Chinese capital in fragile legal and regulatory environments to understand how both Chinese economic actors and counterparts in the host state are reacting to the new normal, and b) develop a comparative research design to theorize how CLD suggests a type of order that extends through a conjuncture of multi-scalar cross-border, regional, and local processes. The ultimate aim of the CLD project is to inform both the academic discussion of China's ascendance and the role of law therein, and also popular perception of such questions.

The Research Team

The core research team comprises a number of scholars from around the world, who represent the social sciences of law and a number of different yet reinforcing approaches to studying the research question. The PI, PDRAs, and Development Specialists are joined by a select number of Research Associates who are experts on specific questions related to the themes of the CLD project. The Research Associates contribute to the scholarly discussion of the research team by participation in online discussions and possible participation in research team seminars to be held at the University of Oxford throughout the project. The Research Associates are also invited to join the Silk Road Legal Exchange and Research Network (please see below). Lastly, the Research Associates contribute at least one Research Brief (no more than 2000 words) during the duration of the grant, which will be published on the CLD project website. Lastly, the research team includes an Advisory Board, comprised of senior academics representing the fields of law, anthropology, sociology, and development, and who provide guidance on the project's implementation.



The Silk Road Legal Exchange and Research Network

The Silk Road Legal Exchange and Research Network (“The Silk Road Network” or “SRN”) is a discussion group for practitioners and academics, including judges, arbitrators, lawyers, officials, members of think tanks, and scholars, who are interested in the legal and regulatory dimensions of China’s “Belt and Road Initiative” (BRI) and China's broader presence in international law. The impetus of the SRN is to pool resources and talents to better understand what is happening, how, and why. Specific areas of law include: international commercial law, investment, trade, dispute resolution, energy, infrastructure, project finance, labor and environment, security, law and technology, “smart courts,” macro-region development, law and development, and so on. This is an academic forum and is meant to foster increased understanding, particularly between and among BRI countries and other interested parties. All political views and perspectives are permitted. Members are encouraged to post any relevant material, including inter alia cases and controversies, analyses, governmental notices, academic and policy analyses, news items, and conference announcements. In addition, the SRN is developing a database of primary source material related to BRI contracts and disputes. *Each Member must submit a primary source material to join the SRN.* Through the SRN, Members can develop collaborations for teaching, research, and practice. The SRN also serves as a platform for face-to-face meetings. The first of which was held at the Shanghai University of Political Science and Law in April 2019. It is hoped that the SRN will facilitate additional seminars, workshops, and conferences in the future.

Outputs

The CLD project will produce several books, both single-authored and collaborative, as well as peer-reviewed journal articles and law review articles. In addition, Research Briefs will be generated to inform both academic and non-academic specialist audiences such as lawyers, judges, international arbitrators, government policymakers and business communities. A conference at the end of the grant period will disseminate results.