Review of additional assignment no. 1
General comments

• In fact, there were only few proper research questions
• In most cases "research questions" were far TOO GENERAL
• The aim of comparison
  • Q: Why do you compare? A: „Because it is interesting”
• Selecting the legal system to be the ground for comparison
  • Assessing efficiency of law in other countries
WHAT IS THE PROBLEM?
Is there a problem?
Why do we ask the questions?

• Legal uncertainty: problems that still have not been addressed
  • Lack of regulation? New legal question
  • Lack of definitions?
  • Ambiguous terms?

• The change of situation: amendments

• New factual twist – not solved situation
• Social, economical problem?
Research on “rights against self-incrimination between Europe and China”

As a beginning, this topic will focus on “rights against self-incrimination between Europe and China”.

Research on this topic is much more based on a practical perspective: this right is regulated in abstractly firstly in the new amendment of Criminal Procedure which came out last year, and then some related department make out detail interpretation of this right, for the practical using of it. However, such a new regulation is very vague especially as China does not have such a tradition of protecting criminal no matter in ancient time or nowadays, it develops slowly, China has not ratified ICCPR is a very good evidence to prove this. But for European, I do not know whether this right is mature or not for it. From some cases discussed by ECtHR, such a right is going ahead step by step. For Europe, there are struggles and challenges, too. This may be a good example for us to learn something from. Thus, such a compare will concentrate on China and Europe, taking the case law developed by ECtHR and ECHR.
1.3 The possible significance of the research

Chinese economy is facing a reform again, during which a significant part is how to regulate the SOEs, who is not only the most important motivation of the development but also is the major part composing the whole national economy.
Why to research? What is the problem?

• Regarding IPO: One of the students was writing about the internship in the law firm and could observe a number of problems the lawyers used to face. The problem was connected to the number of shortcomings of the Chinese system.
1. Identifying the problem

1.1 The problem the research focusing on
In the research I would like to focus on the issue of how the European Union and China regulate the IPO in legal approach.

1.2 The reason I decide to do the research
I have interned in a law firm and participated in a project of A share issuing. This internship gave me an overview of how China regulates IPO and the problems for lawyers dealing with these cases. Although the administrative departments have tried to improve it, it remains a lot of shortcomings. During my Legal Traditions class, I have an understanding of the legal system in European Union concerning IPO, including member states’ regulations. The security have developed longer in EU than China and their experiences should be useful for China. So I hope during my course in EU law, with the help of teachers who is more familiar to EU law, I hope to develop my comparative research.

1.3 The possible significance of the research
In China, the administrative department stopped IPO for a year because the sharp crisis in security market. Recently, it is discussed when to open it again. Of course the security market is necessary for the economy and we can not cut it down because the problems. So we need find ways to solve them. Thus the regulations in EU concerning IPO problem is great reference for China. So I hope this research could provide some suggestions of regulating security market in China.
Lack of research question / problem

What is the problem?
Has there been any solution proposed? Why/Why not?

QUESTION → ANSWER

1) **Existing problem** (Legal uncertainty / New situation / Ambiguity of terms)

2) The **solution** to be offered (comparative reflections should end up with **conclusions** - for example – what law should be adopted)
Exclusionary rules: a comparative study between the USA and Germany

Subject matters and Objectives of the study

It is known that there’re two different institutions of criminal procedure – adversarial system and inquisitorial system, the former is adopted by common law countries while the latter is adopted by continental civil law countries. Exclusionary rules are of importance when studying criminal procedure law. Several differences on these rules can be found when we compare the two systems. Since the US and Germany are respectively typical countries for common law and civil law, I choose their laws and legal practices as researching materials in order to find whether these differences are in essence or just prima facie.

Methods and materials of the research
Description = a research question
or better understanding
A Comparison of French Civil Code and German Civil Code

1. Reasons for choosing this topic

As a result of legal nationalism since the 17th century, in many parts of Europe, countries started to codify their civil codes, among which the French Civil Code of 1804 and the German Civil Code of 1896 are the most important and influential ones. However, there are huge differences between these two codes, which also reflects the different models of these two states. By looking into the civil code of these two countries for a comparison, we can learn the differences of these two approaches of codification, which may also give us a hint to the unification of European legislation.

Since France and Germany represent the two models of European continental civil law system and have a world-wide influence over Asia, Africa and South America, it is of great significance to understand the basic characteristics of these two civil codes. And an efficient way to learn is to compare their similarities and differences. Through this comparison between their history background, systems, values, distribution and other aspects, we can have a deeper insight of the two codes and furthermore have a better understanding of the European continental law system.
1. Identify the problem and state it precisely:
My theme of the research is whether China's unconstitutional censorship is available in European countries.
A. In China, the legislature have the power to implement unconstitutional review. European countries popular exercised by the judiciary. I think the two kinds of censorship have their advantages and disadvantages and I want to explore their own characteristics.
B. My purpose
   to get a more profound understanding of censorship
   to provide a reference model for the future development of China and Europe

Conclusion: "I think results of this study would demonstrate China's unconstitutional censorship also applies to European countries".
Too general...
structures and classifications of courts

1) Identify the problem and state it precisely. Identify the jurisdictions to be compared and their legal families:

The topic of my research is the **structures and classifications of courts**. My research mainly concerns the types of courts and its function.

First of all, after taking the course of Legal Tradition, I am fascinated by the differences between nations of courts structure. In China, we have a hierarchy of the grass-roots court, court of appeal, high court and the supreme court, we also have special court for military affairs and maritime affairs. It is amazing to hear different division in other legal system, like public courts and ordinary courts.

China has taken the step of the **reform of the existing legal system**. In recent years, the voice for the establishment of a administrative court or a constitutional court is rising. It seems that the existing structure of courts need to be improved, or at least, it is better to examine our structure to find out whether it still keep up with the changeable society. It is wise to look into other legal systems to gain some experience from them. The comparative research is of significance in the process.

The particular systems I would like to compare are the Civil Law system and the Common Law system, with brief comparison of the legal structure in China. The two system have already included the most developed countries, both in legislation and economic field, in the world nowadays. Four states will be the target for comparison:
expected results

The four countries have a more exquisite division of courts, we can learn some from them.
Good examples
• Public interest in land expropriation
  • Problem: lack of definition / how to define *public interest in land expropriation*
    • Deficiencies of current Chinese law status
Assignment No.1

1. Topic

The topic of my assignment is about the public interest in land expropriation.

With the accelerating of the urbanization and the booming of the real estate industry, land expropriation almost happens everywhere in China. Unfortunately, it is not uncommon to find conflicts even bloodshed in land expropriation. Usually the justification for the land expropriation is for the purpose of public interest, but the uncertainty of the definition of public interest does leads to numerous judicial and social problems.

Therefore, how to define the so-called public interest in land expropriation is most significant in my research. It will not only concern to the interpretation of law such as the Constitution and the Property Law, but also come to the judicial review to some extent, which related to the legal tradition.

In order to obtain a reasonable and practical conclusion, I will try to compare two legal systems of the USA and Germany.

2. How to conduct the research

The main sources I am planning to use are book, legal periodical and journal. They are available in the library and legal databases such as Westlaw, Lexisnexis and HeinOnline.

Other sources will be statutes, cases, news and so on. I will try to find these useful sources through Internet or library.

The method I am going to employ is discussing cases and comparing definitions, then try to make some conclusions. Since I cannot do field survey to collect enough cases, empirical method may beyond my ability.

3. What the expected results of the research

I would like to divide my analysis into four parts now. First, I will address some deficiencies of current Chinese law in defining the public interest. Part two tries to find the reasons why such deficiencies existed in terms of Chinese society. This part will be discussed simply. Then part three, the most important one, focuses on the definition of public interest in the USA and Germany, such as how the law regulates and how to exercise in the judicial practice. Through comparing different legal
"(...) systems, part four will briefly summarize and list some revelations to China on this issue through comparing".
Topic: Female-workers' Protection by ILO\(^1\), European and Chinese Institutions

I. Significance

Protection on female workers has been a global concern due to female’s enhancing competitiveness\(^2\). Even though employment discrimination on gender is strictly forbidden by almost every country in the world, women are still encountering various challenges in their real employment. Taking China as an example, some female applicants are asked about marriage plan during the job interview and some others are even prevented from getting pregnant during the first five years\(^3\).

The problem is so severe that active measures should be taken by the Chinese government. However, the employment protection is limited in China. Thus, it is essential to learn from the mechanism on protecting female-workers by ILO and some leading European states.

By comparing the similarities and differences, this research may find out a new way for Chinese government and institutions to provide better protection to female workers. And it is also helpful for college students to know how to defend for ourselves when we met such problems in job-hunting process.

II. Methodology

Comparative method will be used in this research so as to find out the similarities and differences among three mechanisms on female-worker’s protection of ILO, Europe and China in both legal documents and cases.

On the one hand, legal documents, including the constitution of ILO\(^4\) and relevant international treaties\(^5\), domestic legislation of European states and China\(^6\), should be

---

\(^1\) Short for "International Labor Organization".
\(^2\) ZHUANG Wei, Jiu Ye Qi Shi Yu Xian Fa De Ping Deng Bao Hu [Employment Discrimination and Constitutional Equal Protection], 4 Knowledge Economy 52 (2012).
\(^3\) YU Ye: Nv Xing Qiu Zhi Zao Yu Yin Xing Qi Shi: Bei Wen You Wu Non You [Female Applicants are Asked about Boyfriend as Implicit Discrimination], Western China Metropolis Daily § 4 (Mar.9,2010).
PROTECTION OF THE PERSONAL DATA

Problems and significance: Recently, as information technology, the rapid development of network technology, national, commercial organizations and even individuals compete for an important resource called personal data as the tremendous commercial and social value. But serious problem is that the abuse of the personal data exist everywhere, which is against the legitimate rights and interests of individuals and the illegal way of collection, revealing, using make over and revise damage to personal interests. Facing the growing misuse of personal data, we have to put importance on protecting personal data.

Therefore, the major developed countries and regions on the protection of personal data for a special legislation, and has achieved positive results, but there is a big difference such as the national legislation, the academic definition of personal data, the scope of protection and the choice of models between different countries. It is also for this reason, the legislation on protection of personal data and theoretical research, as a hot topic in today's world. Including the Constitution and become a science, administrative law, civil law and even intellectual property law and other subjects of common concern.

But until now, there is not any treaties, provisions, statues on the protection of personal data in my country, even the Government has also included personal data protection legislation plan. So in this thesis, comparative method is really important, and I will introduce the experience of American and European experiences form the resources of the CESL library and the international online database.
1. This comparative research is about the definition of “bribery” in criminal law, especially focusing on the scope of corresponding interest given in bribery as approaches to improper interest.

As society and economic development, the content of interest in bribery has been changed, especially in China. The form of bribery has become more and more different and unfamiliar nowadays. As a country of continent law system, China has a code of criminal law, which describes the price concerned in bribery as “property interest”, including price that can be measured as property. Therefore, some immaterial interest, things and services that cannot calculate the value as property, such as a sort of collection or sexual services are excluded from bribery, which means that even someone can gain improper interest through such immaterial means may not commit bribery. This phenomenon can be seen in China and it may seriously damage the legal order of society. The key to regulate such conduct is to expansion the scope of “property interest” or redefine it.

However, use immaterial means to offer a bribe is not a phenomenon only appear in China, but also in other countries. Both common law system and civil law system already have clear rules about bribery. Some developed countries, such as US and Germany, have already been through the stages of economic development which China faces, so their ways to deal with the problems of bribery can be of significance to China. Therefore, in this comparative research, the US and Hong Kong will be chose as representatives of common law system, which define the scope of value offered in bribery by jurisdictions; Germany and Japan will be the representatives of civil law system, which regulate the scope clearly in criminal code.

This comparative research will show how the interest offered in bribery is defined in common law system and civil law system, and to what extend the scope of the interest should be expanded. It may help to find a way of dealing with the new and destructive forms of bribery which are beyond the scope of regulations in criminal law.
What is the legal system to compare with?

- Comparative research is not only comparison between common law system and civil law system

- Do not automatically go to American/German system
- Do not analyze statues only
- Does law work effectively in practice? How do you measure the efficiency of law in particular country?
- WHY DO YOU EXPECT TO GET THE ANSWER IN THIS PARTICULAR COUNTRY’s SYSTEM?
  - “I do compare with American system because it is well developed” (?)
Limit the research

- Relatively narrow research question / research
- Present **WHAT DOES NOT WORK**
- **BE SPECIFIC:** there are "some" problems. What problems? What "some shortcomings"? "A lot".
Critical thinking

- Comparative research is not only about finding similarities & differences
- Once you have undertaken the systematic study of the similarities and differences move on to the next step:
  - exploring the reasons behind these similarities or differences and evaluating their significance
3. Specific difference in the fact-finding process (through case analysis)

3.1. The decider: judge & jury

3.2. Standard of proof

3.3. Officio doctrine & adversary doctrine (the behaviour of judges and lawyers, police’s and lawyers’ role in evidence collection)

3.4. Different approaches to witness statement

3.5. The exclusion of illegal evidence

4. Conclusion (though authoritative system is more stable without gap, the adversary system with more parties’ participation is more advantageous in revealing reality and protecting the suspect’s right)

How does it relate to the Chinese situation?
Methodology

There is no generally agreed or systematically elaborated comparative law methodology. However, there are some approaches / techniques that you may find helpful.
Techniques

What data needs to be collected to argue for or against?

- Study and interpretation of authoritative texts such as statutes, treaties, guidelines, and case law

- **Empirical research** is a way of gaining knowledge by means of direct and indirect observation or experience. It derives knowledge from actual experience rather than from theory or belief.

**COLLECTING THE EVIDENCE TO ANSWER THE QUESTION**

The hypotheses are tested against the gathered information.
Law and ....

- **Contexts** – economical, sociological, political etc.

antitrust review of cross-border merger and acquisition in EU and America, and the comparison between them. In the end, it is the Antitrust Regulation of Cross-border M&A in China, which are concluded from the substantial standards of the antitrust regulation of Cross-border M&A in EU and America.

The analytical method of law and economics may be used in the paper, as well as other comparative analysis, to deal with the substantial standards of the antitrust review in cross-border merger and acquisition in EU and America, for example, the definition of the market, the substantial test standards and the efficiency factor. Books, articles, regulations and cases should be used as sources to conduct the research. All could be found from the internet, the library, the CNKI and the LexisNexis.

I hope that, according to the comparison of the substantial standards of the Antitrust Regulation of Cross-border Merger and Acquisition in the United States and the European Union, the most developed countries in the world there will be some constructive suggestions to ours.
EXAMPLES OF COMPARATIVE RESEARCH QUESTIONS
Deposit guarantee insurance has been a very debated topic both in the USA and in Europe. Deposit guarantee insurance is considered to be a highly important mechanism to prevent bank runs and to restore depositor confidence, which is why both in the USA and in Europe during the financial crisis measures were taken to increase the coverage amounts. Interestingly, China is also considering the introduction of a deposit guarantee system. China has indeed known many cases of bank failures recently. Until approximately 20 years ago, this may not have been a big problem in China for the simple reason that all banks were state owned and an implicit guarantee system was provided via the state. However, with privatization of financial markets also occurring in China, bank runs and resulting bank failures have also begun to occur in this country.

Attempts have been taken to introduce a deposit guarantee scheme, but they were put on hold because of the financial crisis. This article looks at the particular situation of China, not only addressing some of the instances of bank failures but also studying the particular design problems that may arise in the Chinese context, in the light of experiences in the USA and Europe. Indeed, from the US and European experience, it is well known that, on the one hand, deposit insurance may have many beneficial aspects (preventing bank runs), but, on the other hand, it may also create problems of its own (in particular, creating a moral hazard on the side of financial institutions and neglect on the side of depositors). The article examines how these problems may play out in China and also argues that given the fact that the big five Chinese banks are still state owned introducing risk dependent contributions (which is now advocated in the USA and Europe) may not be appropriate in China.

http://cjcl.oxfordjournals.org/content/1/2/256.abstract
Citizenship in the age of globalisation

by Graziella Romeo

Abstract

The mass migration phenomenon calls into question the meaning of citizenship status in contemporary constitutional democracies as it represents a quest for a kind of global solidarity.

This article explores the transformation of the concept of status civitatis from a European comparative perspective. The emerging role of citizenship in today political communities will be examined through the legislations concerning the recognition and protection of social rights of non citizens since: whilst on the one hand they are tied to citizenship through a nexus of principle, on the other hand they entail individual legal rights recognised under case law as having universal status. Relevant provisions of Italian, Spanish, French, Belgian and Dutch laws will be analysed with a view of sketching a map of problems and (possible) solutions. The comparison among European legal systems is, at the end, put to the test of theories that suggest moving beyond the idea of citizenship as a solution to the human rights/universal rights dialectic.

Strange Bedfellows or Soulmates: A Comparison of Merger Regulation in China and Australia

by Deborah J. Healey

Abstract

China and Australia are extremely significant trade partners and investors. Australia has a very well established competition law, now called the Competition and Consumer Law 2010, with a well-established merger regime. China has a relatively new competition law, the Anti-Monopoly Law 2007.

This article compares merger control in the two jurisdictions. The Ministry of Commerce (MOFCOM) has already referred to an Australian decision in rejecting a merger, the only reference to a foreign decision to date, which confirms the utility of the comparison.

This article critically evaluates the determinations of MOFCOM and compares the approach of the Australian Competition and Consumer Commission (ACCC), the Australian regulator. It assesses the transparency and predictability of procedures and decision-making in the two jurisdictions.

THANK YOU!