

# ESSAY: CHINA'S FUTURE LAWYERS: SOME DIFFERENCES IN EDUCATION AND OUTLOOK

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## I. INTRODUCTION

**T**HE NUMBER OF CHINESE LAWYERS and law schools is burgeoning<sup>1</sup> as China's legal system undergoes significant substantive changes.<sup>2</sup> Whether in business transactions<sup>3</sup> or in legal disputes about

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<sup>1</sup> Kara Abramson, "Paradigms in the Cultivation of China's Future Legal Elite: A Case Study of Legal Education in Western China" (2006) 7 Asian-Pac. L. & Pol'y J. 302 (noting that in the past 25 years, China has gone from having a few thousand lawyers to over 100,000). See also Weifang He, "China's Legal Profession: The Nascence and Growing Pains of A Professionalized Legal Class" (2005) 19 Colum. J. Asian L. 138 at 145 (noting that in 1978, China had five law schools and 600 law students, but by 1998, there were 85,000 law students in schools across the country, and in 2005 there were over 300 law schools in mainland China).

<sup>2</sup> Even during the brief period that the authors were in China, the National People's Congress enacted a controversial major overhaul of real property law. See "Governing China: Caught between right and left, town and country" *The Economist* (8 March 2007), online: [economist.com <http://www.economist.com/world/displaystory.cfm?story\\_id=8815195>](http://www.economist.com/world/displaystory.cfm?story_id=8815195).

<sup>3</sup> See Anne M. Wall, "Intellectual Property Protection in China: Enforcing Trademark Rights" (2006) 17 Marq. Sports L. Rev. 341 at 364 (noting that as China has "developed a more market-oriented economy and joined the WTO, local Chinese law firms and foreign law firms worked together on mergers, acquisitions, and other foreign investment deals that became popular.")

products liability,<sup>4</sup> intellectual property,<sup>5</sup> or any number of other issues,<sup>6</sup> U.S. lawyers in this era of globalization will begin to have more frequent interactions with their Chinese counterparts.<sup>7</sup> Additionally, more and more U.S. law students and professors are involved in international exchanges with Chinese law schools.<sup>8</sup> These growing opportunities for interaction among U.S.- and China-trained legal professionals bring with them unique challenges and opportunities because of cultural, political, and legal system differences.

The authors of this essay are U.S. law professors who spent the spring 2007 semester as Fulbright Lecturers in Law, teaching U.S. law

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<sup>4</sup> See e.g. The Associated Press, "2 Chinese toy makers involved in US recalls banned from exporting" *International Herald Tribune* (9 August 2007), online: [International Herald Tribune <http://www.iht.com/articles/ap/2007/08/09/asia/AS-GEN-China-Tainted-Products.php>](http://www.iht.com/articles/ap/2007/08/09/asia/AS-GEN-China-Tainted-Products.php). Concerns also exist about the quality of U.S. goods going to China. See e.g. Ariana Eunjung Cha & Renae Merle, "In Role Reversal, China Blocks Some U.S. Meat" *Washington Post* (15 July 2007) A01, online: [washingtonpost.com <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/14/AR2007071400264.html>](http://www.washingtonpost.com/wp-dyn/content/article/2007/07/14/AR2007071400264.html).

<sup>5</sup> There have been, and likely will continue to be, many intellectual property disputes between American and Chinese companies and individuals. See e.g. Wall, *supra* note 3 at 377.

<sup>6</sup> See e.g. Peter M. Friedman, "Note: Risky Business: Can Faulty Country Risk Factors in the Prospectuses of U.S. Listed Chinese Companies Raise Violations of U.S. Securities Law?" (2005) 44 Colum. J. Transnat'l L. 241 (discussing a shareholders' class action suit against a mainland Chinese company for the company's alleged failure to disclose financial fraud).

<sup>7</sup> Martindale-Hubbell now lists 175 law firms with offices in China. See "Search Results for China—Law Firms", online: [LexisNexis <http://www.martindale.com>](http://www.martindale.com); see also Wall, *supra* note 3 at 365 (noting that American lawyers can find it advantageous to work with Chinese law firms and lawyers, especially in dealing with intellectual property disputes). There are strict rules in China governing the practice of law by non-Chinese and even by Chinese who are admitted to practice law but are employed by foreign law firms. See generally *Regulations on Administration of Foreign Law Firms' Representative Offices in China* (2002), art. 16, online: Chinese Government's Official Web Portal <[http://english.gov.cn/laws/2005-08/24/content\\_25816.htm](http://english.gov.cn/laws/2005-08/24/content_25816.htm)> ("A [law firm] representative office shall not employ Chinese practitioner lawyers; its support staff employed shall not provide legal services to clients"). Henry R. Zheng, "The Evolving Role of Lawyers and Legal Practice in China" (1988) 36 Am. J. Comp. L. 473. Consequently, most U.S. lawyers will need to work with and through independent local counsel in China.

<sup>8</sup> See generally Stanley Lubman, "The Study of Chinese Law in the United States: Reflections on the Past and Concerns About the Future" (2003) 2 Wash. U. Global Stud. L. Rev. 1; American Bar Association, "Section on Legal Education and Admissions to the Bar", online: American Bar Association <<http://www.abanet.org/legaled/studyabroad/foreign.html>> (listing 17 ABA approved US law programs in China).

courses to Chinese law students.<sup>9</sup> We taught widely different substantive subjects at schools that varied greatly in rank and reputation.<sup>10</sup> Despite the many surface differences, we had some very similar experiences. From our time in China, we came away impressed by the intelligence and diligence of that country's future lawyers. We also took away some observations about the Chinese legal education system and about our Chinese students' limited knowledge of the U.S. legal system and the U.S. generally.

In this essay we share our observations in the hope that both U.S. lawyers who will interact with their Chinese counterparts and U.S. students and professors at Chinese law schools will benefit from our learning experiences. We begin with a discussion of the significant differences in the legal education systems of the two countries and our teaching methods for bridging that gap, not because we believe the U.S. legal education system is perfect,<sup>11</sup> but because we believe that understanding these differences will help to ensure that U.S.-trained legal professionals interacting with Chinese-trained legal professionals do not have ethno-centric expectations about how their counterparts may view and analyze various legal issues. We then discuss our Chinese students' limited information about the U.S. legal system and U.S. culture in general, since this too could have profound, unintended effects on cross-cultural interactions if it is not expressly recognized.<sup>12</sup> We hope that this discussion is not filtered through the lens of American exceptionalism.<sup>13</sup> Simply because the Chinese have differing perspectives does not mean that those views are ill-founded or misplaced. Rather, we

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<sup>9</sup> U.S. law courses taught included: administrative law, civil procedure, constitutional law, criminal procedure, environmental law, intellectual property, torts, and women and the law.

<sup>10</sup> Professor Curcio taught at South China Normal University in Guangzhou; Professor Gibbons taught at Intellectual Property Rights School at Zhongnan University of Finance and Law in Wuhan; Professor McCubbin taught at Wuhan University in Wuhan; and Professor Seymore taught at Xiamen University in Xiamen.

<sup>11</sup> For recent critiques of the U.S. legal education system, see e.g. Roy Stuckey *et al.*, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Association, 2007); William M. Sullivan *et al.*, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007).

<sup>12</sup> See generally Carola McGiffert, ed., *Chinese Images of The United States* (CSIS, 2005) (discussing Chinese misperceptions); Phillip C. Saunders, "China's America Watchers: Changing Attitudes towards the United States" *The China Quarterly* 161 (March 2000) 41 (misperceptions by the expert "US watchers").

<sup>13</sup> American exceptionalism has been defined as "that bundle of self-satisfied and exclusionary conceits that [...] stress[es] American uniqueness." Charles Bright & Michael Geyer, "Where in the World is America?" in *Re-thinking American History in a Global Age* (Thomas Bender ed. 2002) at 63-64 quoted in Deborah M. Weissman, "The Human Rights Dilemma: Re-thinking the Humanitarian Project" (2004) 35 *Colum. Hmn. Rts. L. Rev.* 259 at f.n. 387.

highlight those differences to help improve communications between members of the Chinese and U.S. legal communities. We do so in the same spirit of mutual respect that guided us and our students, as together we pursued the quest for knowledge to improve ourselves and ultimately our two legal systems.

## II. A DIFFERENT APPROACH TO LEGAL EDUCATION

IN CHINA, AS IN MANY OTHER COUNTRIES, law school is an undergraduate degree. Chinese law students begin a four-year law school program upon high school graduation.<sup>14</sup> Many students also obtain a post-graduate Masters degree, and a few even acquire PhDs in law. Our students were almost all either upper-level undergraduate law students, Masters students, or PhD students. We quickly realized, however, that though these students were quite talented,<sup>15</sup> they had not been taught to engage in critical legal analysis, the skill so central to the U.S.'s legal system.<sup>16</sup> Via lectures,<sup>17</sup> Chinese law students passively receive vast

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<sup>14</sup> See Weifang He, *supra* note 1 at 146-47 (noting that similar to other countries adopting a Continental model of legal education, in China, law students attend law school right after high school graduation).

<sup>15</sup> Admission to Chinese universities is highly competitive, and the process begins with exams that qualify only a fraction of students for college-preparatory high schools. In 2004, only 62.9% of students in junior secondary school (what we might call "junior high school" or "middle school") entered into senior secondary school. "21-24 Proportion of students Entering into Schools of Higher Grade", online: China Statistics 2005 <[http://www.allcountries.org/china\\_statistics/21\\_24\\_proportion\\_of\\_students\\_entering\\_into.html](http://www.allcountries.org/china_statistics/21_24_proportion_of_students_entering_into.html)>. Even with this considerable reduction of college-bound high school students, the number of students who sit for the national college entrance examination exceeds the number of seats at Chinese universities. Barry Sautman, "Affirmative Action, Ethnic Minorities and China's Universities" (1998) 7 *Pac. Rim L. & Pol'y J.* 77 at 94. In 2007, 10 million Chinese high school students sat for the National College Entrance Exam, "vying for about half that number of university places." Guo Shiping, "College entrance exams make or break in China" *Reuters* (6 June 2007), online: Reuters <<http://www.reuters.com/article/inDepthNews/idUSPEK21805120070606>>.

<sup>16</sup> Critical thinking has been defined as "reasonable and reflective thinking that is focused upon deciding what to believe or do." Stephen P. Norris, "Can We Test Validly for Critical Thinking?" *Educ. Researcher* (December 1989) at 21, quoted in Steven I. Friedland, "How We Teach: A Survey of Teaching Techniques in American Law Schools" (1996) 20 *Seattle U. L. Rev.* 1 at 7. It has been said that critical thinking is "a mode of thinking that will enable [people] on their own, to determine what is significant and what is not, to avoid being misled by personal biases and other distractions, and to get to the heart of a matter and to a satisfactory solution as often as possible." J. David Reitzel, "Critical Thinking and the Business Law Curriculum" (1991) 9 *J. Legal Stud. Educ.* 471. As Suzanna

amounts of information, which they are required to memorize and then apply to multiple choice or short answer questions.<sup>18</sup> Even in students' theses and major papers, the emphasis is on being descriptive and applying the law to a problem as if it has a single correct answer, rather than viewing the practice of law as a dynamic process in which there may be two (or more) "correct" answers, one of which is more favorable as a matter of public policy.<sup>19</sup> Chinese students simply are not often asked or encouraged to examine the assumptions underlying legal rules or decisions; nor are they asked to think of arguments for both sides of an issue, which is one of the underpinnings of legal analytical training in the U.S.<sup>20</sup>

We suspect that there are many reasons for this difference in orientation between the U.S. and Chinese legal education systems. First of all in China, the emphasis is on "knowing" the law, rather than "finding" the law and applying it to practical problems or using it creatively.<sup>21</sup> Also, Chinese law is voluminous; the Chinese law licensing examination requires students to have memorized even larger quantities

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Sherry notes, "[a]n education that merely inculcated cultural norms might be suitable for a totalitarian state, where the citizen's major responsibility is to conform." Suzanna Sherry, "Responsible Republicanism: Educating for Citizenship" (1995) 62 U. Chi. L. Rev. 131 at 172.

<sup>17</sup> Weifang He, *supra* note 1 at 147.

<sup>18</sup> Mari J. Matsuda discusses the goal of American university education as follows: "We understand, now, in the modern university, that the landscape of human knowledge is so vast that the goal of cabining all knowledge into a list that students can memorize is absurd. We have said for a while that what we are teaching is critical thinking." Mari J. Matsuda, "Who is Excellent?" (2002) 1 Seattle J. for Soc. Just. 29 at 36. Our experience suggests that this view of university education has not reached the mainstream in China.

<sup>19</sup> Matthew Stephenson identifies this kind of formalism as central to the legal culture in China. Matthew C. Stephenson, "A Trojan Horse Behind Chinese Walls? Problems and Prospects of U.S.-Sponsored 'Rule of Law' Reform Projects in the People's Republic of China" (2000) 18 UCLA Pac. Basin L.J. 64 at 85-86 (noting that "the consensus seems to be that the Chinese approach to law is too formalistic, and that Chinese students tend to approach law with the attitude of wanting to know 'the right answer' rather than thinking critically about the issues involved in legal questions."). He cautions, however, that changing legal culture so that it embraces instrumentalism and critical thinking may not lead to broad legal reforms. "Social and political realities—especially the material interests of the legal elite and those members of society able to purchase their services—probably have more to do with how laws are interpreted and applied than the particular style of legal reasoning taught." *Ibid.* at 88.

<sup>20</sup> For a general discussion of the development of the current Chinese legal education system, see generally Zou Keyuan, "Professionalising Legal Education in the People's Republic of China" (2003) 7 Sing. J. Int'l & Comp. L. 159.

<sup>21</sup> See e.g. Mao Ling, "Clinical Legal Education and the Reform of Higher Legal Education System in China" (2007) 30 Fordham Int'l L.J. 421.

of information than that required by various U.S. state bar examinations.<sup>22</sup> Thus, Chinese law professors feel compelled to impart “knowledge” via lectures.<sup>23</sup> In addition, Chinese professors often teach more courses and larger classes than U.S. law professors. With enrollments well over 100 students on average, it is difficult to do much more than lecture. Moreover, China has a civil law system. Since teaching critical legal analysis is most easily done through case law analysis<sup>24</sup> and a civil law system is less dependent upon case law,<sup>25</sup> it is understandable that this critical analysis is not a formal part of Chinese legal education tradition and culture.<sup>26</sup> In addition, in China, legal training remains connected to Communist Party politics<sup>27</sup>—a political system that does not encourage the questioning of authority.<sup>28</sup> Finally, there is a strong cultural tradition of respect for teachers, judges, and authority figures,<sup>29</sup> meaning that students will not skeptically question (at least publicly) what they are told. Together these factors have led to a

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<sup>22</sup> For a description (and critique) of current bar examinations given by each state, see generally Andrea A. Curcio, “A Better Bar: Why and How the Existing Bar Exam Should Change” (2002) 81 Neb. L. Rev. 363.

<sup>23</sup> See generally Mao Ling, *supra* note 21.

<sup>24</sup> See e.g. Carl E. Schneider, “On American Legal Education” (2001) 2 Asian-Pac L. & Pol’y J. 76 at 85.

<sup>25</sup> See Weifang He, *supra* note 1 at 146; but see Mao Ling, *supra* note 21 at 427 (noting that more and more Chinese law professors are using cases to illustrate application of facts and theory).

<sup>26</sup> That is not to say that one could not teach critical legal analysis in a civil law system. As Professor Schneider notes, even civil law systems have some cases, and even without them the civil law statutes can also be used to illustrate critical legal thinking, simply by the professor posing hypothetical problems based upon the statutory language. Schneider, *supra* note 24 at 85.

<sup>27</sup> See Abramson, *supra* note 1 at f.n. 94 (noting that Sichuan University’s website describes its graduate level legal training as being designed to “cultivate high level legal workers and managers’ in line with the needs of the socialist legal structure and economic and social management. In addition, students should ‘insist on carrying out the Party’s basic itinerary, guiding principles and policies, and Chinese laws and regulations: ardently love the socialist mother land (zuguo) and possess good political qualities and professional morals.’”)

<sup>28</sup> See e.g. Pitman B. Potter, “Legal Reform in China: Institutions, Culture, and Selective Adaptation” *Law & Social Inquiry* 29:2 (April 2004) 465 at 466 (noting that despite the movement toward legal reform in China, the “role of law in China remains conflicted” in part because “fealty to socialism unavoidably qualifies and in the view of many diminishes the capacity for law to serve as an independent source of restraint on government behavior.”)

<sup>29</sup> See Clara Liang, “Note: Red Light, Green Light: Has China Achieved Its Goals Through 2000 Internet Regulations?” (2001) 34 Vand. J. Transnat’l L. 1417 at 1426 (noting that “[r]espect for authority is thus engrained in Chinese culture because it ensures stability”); see also Kam C. Wong, “Whose Life Is It Anyway” (2006) 5 Cardozo Pub. L. Pol’y & Ethics J. 233 at f.n. 156.

legal education system that focuses on imparting knowledge rather than teaching critical analysis.

Once we understood that our Chinese law students had not been exposed to the U.S. critical legal analytical approach, we all chose to use our U.S. law courses primarily as a vehicle to teach this type of analysis.<sup>30</sup> In our study questions and our in-class discussions, we asked our Chinese students to question the accuracy of statements in the various materials they read, to identify the underlying assumptions, and to consider the logical implications that flow from a particular position. We worked with them to identify the policy justifications that supposedly support a particular legal rule, to question whether the rule actually furthers that policy, and to ask whether competing policies should be supported instead. Finally, we pushed our students to reach their own conclusions on a given issue and to explain why those conclusions made sense. We also encouraged them to engage in classroom discussions because we felt strongly that these discussions helped hone their analytical skills.<sup>31</sup>

Our students eventually became adept at classroom discussions, and we found that, even given the language barriers, our students were able to grasp and analyze key issues and quickly developed critical thinking skills. In fact, overall, our Chinese students' examination answers and papers were as good as or better than those that we would get from their U.S. student counterparts. As one student wrote, "we had never looked at both sides of an issue before—it is very helpful to do that."

In sum, we found that when taught, Chinese law students learned relatively quickly to analyze a legal issue. However, Chinese lawyers generally are not trained in the kind of critical legal analytical skills that serve as the basis for much of a U.S. legal education. Thus, it is important for members of the U.S. legal community to remember that their Chinese counterparts will likely approach problems from a different

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<sup>30</sup> We had originally thought our goal was to teach a fair amount of substantive U.S. law. When we realized that our students would be better served by learning critical legal analytical skills, we adapted our teaching plans. For example, some of us began downloading cases and substantially editing them to focus students' reading on key issues. We also began assigning study questions and hypothetical problems prior to class.

<sup>31</sup> Engaging students in classroom discussions is often difficult in the U.S., and it was even more difficult in China where, because of cultural differences and because of embarrassment about their oral English skills, the students were often very reluctant to speak in class. We found that asking a question in class and having them first discuss it with each other in Chinese and/or in English both challenged them to become active learners and led to a greater willingness to engage in class discussions in English. We also found that getting to know our students on an individual basis in non-classroom settings made them feel more comfortable about speaking in class.

perspective, which may be due, in significant part, to differences in legal education methodology.<sup>32</sup>

### III. LIMITED UNDERSTANDING OF THE U.S. LEGAL SYSTEM AND U.S. CULTURE

THE OTHER REASON that Chinese lawyers and U.S. lawyers may each have their own approaches to issues is the differences in the legal structures and cultural heritages of the two countries. While that may seem obvious, it is important to recognize just how little Chinese lawyers and law students may understand about the U.S. legal system or U.S. culture generally—an information gap that may create unproductive cross-cultural interactions unless it is expressly addressed. Of course, U.S. understanding of Chinese legal structures and culture is much more limited than their understanding of ours,<sup>33</sup> but because American culture is one of the U.S.'s largest exports,<sup>34</sup> we tend to assume a familiarity by others that may not be there.

We discovered that while our students might have some familiarity with the basic structure of our legal and political system, such as the three branches of government, they lacked knowledge of the more

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<sup>32</sup> Some differences may also be a result of the lack of precise equivalents for many terms of art, for example the seminal and often discussed term “rule of law.” “[T]he Chinese term for ‘rule of law’ is *fa-zhi*. *Fa* means ‘law,’ *Zhi* means ‘to rule’ or ‘to govern.’ By itself, *fa-zhi* can mean either the rule *of* law, or rule *by* law.” Michael Dardzinski, “Hong Kong in Transition: Convergence or Divergence in the Implementation of the Joint Declaration” (1997) 91 *Am. Soc’y Int’l L. Proc.* 176 at 177 (italics in original). “According to [a leading Chinese scholar], whereas *rule by law* is concerned only with how the government uses laws to impose its rule, *rule of law* emphasizes that the government must also be bound by law.” Chris X. Lin, “A Quiet Revolution: An Overview of China’s Judicial Reform” (2003) 4 *Asian-Pac. L. & Pol’y J.* 255 at 264 (italics in original). These possible differing uses of the same term may lead to ambiguity and confusion in communications.

<sup>33</sup> For example, few Americans understand that Chinese culture has shaped the Chinese view that a contract does not embody a final agreement, but rather is a document reflecting a desire to work together in a long-term fluid relationship where the terms may be changed as needed. Nor do most Americans understand the cultural perspective that informs the Chinese view that it is efficient and not illogical to have the same person be a mediator and an arbitrator. For a discussion of these cultural-legal differences, see William K. Slate II, “Paying Attention to ‘Culture’ in International Commercial Arbitration” *Dispute Resolution Journal* 59:3 (August/October 2004) 96 at 100-101.

<sup>34</sup> See e.g. Martha Bayles, “Now Showing the Good, the Bad, and the Ugly Americans: Exporting the Wrong Picture” *Washington Post* (28 August 2005) B01; John Rockwell, “The New Colossus: American Culture as Power Export” *The New York Times* (30 January 1994) B1.

specific aspects of our system, many of which we simply take for granted.<sup>35</sup> For example, few students had an understanding of precisely how our statutes are made and how they bind the citizenry, much less the subtle nuances of the administrative law state or the broader ramifications of federalism. In addition, they were unfamiliar with the role of attorneys in questioning witnesses or more generally investigating the facts of a dispute, because in China, judges, rather than attorneys, undertake these tasks. Similarly, the concept of our jury system was foreign (but fascinating) to these students, since judges, rather than juries, decide cases in China. Indeed, one professor's students asked a very fair question, but one we rarely stop to consider: why would a legal system want cases decided by people without any legal training?<sup>36</sup> More generally, the students had little sense of the role of our judiciary (and, again, were fascinated by it), since it is vastly different from the role of judges in this civil law society. The students, for example, were not familiar with the responsibility of our courts to determine the constitutionality of statutes,<sup>37</sup> interpret statutes, create common law doctrines or establish binding precedent. In sum, we found that our Chinese students were not familiar with the U.S.-style "rule of law" in both the large sense (a nation governed by fixed laws, not by the whims of individuals, at least in theory<sup>38</sup>) and in the small sense (how stare decisis and an independent judiciary lead to predictable outcomes that people can rely on in their everyday life).<sup>39</sup>

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<sup>35</sup> Much of this knowledge may have been gained informally by watching U.S. motion pictures and television shows or through media coverage, rather than through formal courses on U.S. law or courses in comparative law. Consequently, there are always concerns about the accuracy and depth of the students' pre-existing knowledge.

<sup>36</sup> There were other things about the U.S. justice system that surprised our students. For example, students found it interesting that a U.S. citizen may sue to enforce her constitutional rights, since the Chinese Constitution creates no private right of action. This is not to say that Chinese citizens have no statutory redress against arbitrary government action. See Mei Ying Gechlik, "Judicial Reform in China: Lessons from Shanghai" (2005) 19 Colum. J. Asian L. 97 at 102-03. Nor are all Chinese unaware of their rights; 27% of the individuals surveyed in Shanghai would sue an agency that denied them a license. *Ibid.*

<sup>37</sup> Hal Blanchard, "Constitutional Revisionism in the PRC: 'Seeking Truth from Facts'" (2005) 17 Fla. J. Int'l L. 365 at 400. ("Under China's system of legislative supremacy, the [National People's Congress], by the very act of passing laws, certifies their constitutionality thereby rendering all legislation immune to judicial review.")

<sup>38</sup> We did find it interesting that our Chinese students seem to believe that American judges are not political and strictly follow a "rule of law."

<sup>39</sup> The four essential characteristics of the rule of law are: "(1) fidelity to rules (2) of principled predictability (3) embodied in valid authority (4) that is external to individual government decision makers." Ronald A. Cass, *The Rule of Law in America* (Johns Hopkins University Press, 2001) at 4. This is not to suggest that

Some of that can be attributed to differences between China's civil law society and our common law one. But some of it also stems from the fact that China's modern legal system is still in its infancy and so far lacks important elements—such as an independent judiciary resistant to corruption—that may help it become more effective in the future.<sup>40</sup> The dialogue about legal reform in China continues apace, but in the meantime, U.S. lawyers, professors, and students need to be aware that what we take for granted—for example, the willingness and ability of a court to enforce its order<sup>41</sup>—will not be so plainly evident to the Chinese, and the differences in perspective may have significant implications for U.S.-Chinese interactions.

Members of the U.S. legal community also need to understand that just as Chinese lawyers and law students may not accurately understand our legal system, they also may have limited or incorrect information about U.S. culture generally. We found in talking with our students in the classroom and after class that many of them had ideas about the U.S. that were based upon myths, stereotypes, and the U.S. movies they see or music they hear. For example, after the massacre of 32 students at Virginia Tech in the Spring of 2007, we found ourselves correcting our students' notion that all Americans owned guns. Students were sure that everyone in the U.S. believed in God, which explained for them the rise of the Religious Right in U.S. politics. In combining these two ideas, one student assured one of us that all Americans would like to shoot gay people if given the opportunity. Students were surprised to discover that women often take their husbands' names upon marriage, since Chinese women always keep their own names. Similarly, the debate over abortion in the U.S. was inexplicable to students who viewed the

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we saw ourselves as—in Judge Jack Weinstein's words—proselytizers of the rule of law. See Jack B. Weinstein, "Proselytizers for Our Rule of Law" (2003) 28 Brooklyn J. Int'l L. 675. In fact, some of the earliest questions we received from students, and which we tried to address honestly, were about the apparent failings of the U.S. in following "the rule of law"—questions about whether the U.S. violated international law in invading Iraq, whether the Supreme Court's decision in *Bush v. Gore* was an example of mere politics in judicial decisions, and whether the U.S. was abiding by its treaty obligations in detaining prisoners in Guantanamo Bay, just to name a few. We were also aware that trying to import "U.S.-style" rule of law can be seen as "legal imperialism." Stephenson, *supra* note 19 at 65-66 & 85-86.

<sup>40</sup> See e.g. Graig R. Avino, "China's Judiciary: An Instrument of Democratic Change?" (2003) 22 Penn. St. Int'l L. Rev. 369 at 382-384 (discussing the current lack of independence and corruption within the Chinese judiciary).

<sup>41</sup> Nathan Greene, "Note: Enforceability of The People's Republic of China's Trade Secret Law: Impact on Technology Transfer in the PRC and Preparing for Successful Licensing" (2004) 44 IDEA 437 at 452 (Chinese judges lack the political power to enforce judgments, must rely on local officials, and may not impose criminal contempt or similar sanctions to aid in their jurisdiction.).

fetus as the woman's property. Students also took a very different view of the Watergate scandal and viewed Richard Nixon as heroic for being the first U.S. president to visit China. It is not surprising to find such views, when we too have our own myths and stereotypes of Chinese culture, and significant gaps in knowledge as well. One of us received immediate correction in making an unthinking reference to "the country of Taiwan." In China, of course, that would be the province of Taiwan, which is in no way an independent country! The important thing to realize is simply that such misperceptions by either party may substantially affect any U.S.-Chinese interactions.

#### IV. CONCLUSION

IN THIS ESSAY, we share some of our insights about the different perspectives that Chinese lawyers and law students may bring to their interactions with their American counterparts. Our goal is to help members of the U.S. legal community avoid "cultural encapsulation"—the "tendency to see the world through one set of assumptions based on [one's] own self-referenced experience."<sup>42</sup> Culture is very powerful because of its invisibility. But if U.S. lawyers, law students, and professors stop to examine their assumptions and those of their counterparts, they may be better able to address those issues in their cross-cultural exchanges.<sup>43</sup> Thus, to the extent that one hopes to have successful interactions with the Chinese, it is critical to be aware that each party may come to the table with different skill sets, based upon different legal education methodologies, as well as misperceptions of each other's legal and political systems and general societal culture. Just as Chinese law and culture remain a mystery to many of us, the U.S. legal landscape and our culture remain a mystery to many of our Chinese colleagues. If we approach U.S.-China interchanges from this perspective, they will no doubt be more fruitful for all parties involved.

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<sup>42</sup> Nancy Arthur, *Counseling International Students: Clients from Around the World* (2004) at 68 cited in Teresa Kissane Brostoff, "Using Culture in the Classroom: Enhancing Learning for International Law Students" (2007) 15 Mich. St. J. Int'l L. 557 at 564.

<sup>43</sup> As Clifford Geertz has noted, "[M]ost of what we need to comprehend—a particular event, ritual, custom, idea, or whatever—is insinuated as background information before the thing itself is directly examined." Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973) at 9.