Antigone in China: 
Teaching American Law and Lawyering in Shenzhen 

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ABSTRACT

This article recounts the very first week of classes at Peking University’s new School of Transnational Law. The author, who conducted 22 hours of instruction that week, grounded the introduction to legal practice in a comparison of one of the earliest and greatest courtroom dramas, Antigone, which involves the right to bury a brother’s corpse, with Melfi v. Mount Sinai Hospital, a recent New York case involving the same issue.

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After presenting a sketch of the history of law in China, the project is explained, with reference to the rich opportunities for analysis using such approaches as Positivism, Feminist Legal Theory, and Law and Literature. Reflections on the development of “rule of law” in China, recommendations for law school use of classical literature, and admonitions against Western arrogance conclude the work.

I. INTRODUCTION

Creon, the King of Thebes, was called next. Swaggering from the gallery, he sat down in the witness box, leaned back, and scanned the jury and the Defense with an arrogant stare as the Bailiff attempted to swear him in. The king erupted in hostility and condescension. “I am your king. You have no right to ask me anything. I make all the laws and you and the judges, everyone here in this court room exists solely to serve me. I am your king.” The setting: Peking University School of Transnational Law, Shenzhen, China.

Antigone in China? More specifically, Antigone as the centerpiece of Orientation Week at a brand new American-style law school in China? This article introduces Peking University’s innovative law school within the millennia-old context of Confucianism, Legalism, and explains how classical literature can be integrated into law students’ introduction to legal practice. It also reveals the students’ reactions to what one can learn about contemporary China and the globalization of legal education from this experience.

Peking University, a school that weathered the end of the Qing Dynasty, the civil decay of the Warlord Years, the anti-educational fervor of the Cultural Revolution, and Post-Tiananmen Square

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1 The famous classical Greek tragedy by Sophocles has seen many translations. That of the nineteenth century scholar J.C. Jebb (1883, reprinted 2004 Cambridge) is the most elegant and revered, but fraught with subconscious (or intentional) errors of translation that make the work into a Christian allegory. Students at STL were interested to learn that Jebb manipulated the translation to present Antigone as a faultless martyr who preferred death to renunciation of her religious duties. Other translations struggle with rhyme and meter, while some are dense and unintelligibly free-form. Antigone (George Theodoridis trans.) is available at http://www.poetryintranslation.com/PITBR/Greek/Antigone.htm [hereinafter Ant].


4 Most universities in China were closed from 1966 to 1977 and academics were sent out into the countryside to perform agricultural labor. See Joel Andreas, Battling over Political and Cultural Power during the Chinese Cultural Revolution 31 THEORY AND SOCIETY, 463-519 (Aug., 2002). An acquaintance of the author graduated with a degree in biology and was immediately ordered to a remote area of western China to grow mushrooms for six years.
repression,\textsuperscript{5} has remained robust and influential. Not only is it currently ranked the top university in China, it is among the top 50 world universities in the areas of engineering, life sciences, natural sciences, social sciences, and arts and humanities according to the 2009 Times Higher Education (THE) - QS World University Rankings.\textsuperscript{6} Although Peking University has housed an undergraduate law school for many years, the university recently decided to add a professional school to teach transnational law.

Instead of housing the new school at the main campus in Beijing, the administration decided to place it in the Peking University’s graduate school campus in a “university town” on the outskirts of one of the fastest-growing cities in China, Shenzhen.\textsuperscript{7} Thirty years ago, this sleepy fishing village, just north of Hong Kong, was catapulted into the future by Chinese Premier Deng Xiaoping, who proclaimed it the first Special Economic Zone.\textsuperscript{8} Now the sixth largest city in the country, it boasts the highest per capita number of Ph.D.s and the highest per capita income as well.\textsuperscript{9} The pace of development is dramatic, even by modern Chinese standards, giving rise to the phrase, “Shenzhen Speed.”\textsuperscript{10}

In contrast to the chaotic energy of this new city, the university town to the northwest of the main urban area is a spacious park-like environment that houses graduate programs and dormitories of three top universities: Tsinghua, Harbin Institute of Technology, and Peking University. A sinuous dragon-shaped library straddles a landscaped canal that flows through the middle of the complex.

The city of Shenzhen is responsible for much of the funding to create this university town, which was created to develop additional professional expertise for the city. Peking University’s own modern collection of buildings is united by a massive awning that floats seventy

\textsuperscript{5} Andrew J. Nathan, \textit{The Tiananmen Papers} 80 FOREIGN AFFAIRS, 2-48 (Jan. - Feb., 2001).


\textsuperscript{7} Although it now contains more than 12 million residents, the city has grown so quickly; it is not found on most world maps.


\textsuperscript{9} Shenzhen was the first city on the Chinese mainland to have its annual per capita gross domestic product (GDP) surpass US$10,000, an amount considered by the World Bank a threshold for an economy to be regarded as "developed." Shenzhen Daily, page 1 Jan. 30, 2008. (SHENZHEN DAILY, Jan. 30, 2008, at 1.)

\textsuperscript{10} 深圳速度.
feet above the classrooms, creating a rain-free passage between the departments. From the center rises a ten-story tower emblazoned with 北大 (Bei Da), the Chinese characters for the abbreviation of Beijing University.\(^{11}\) At the eastern edge of this compound is an egg-shaped building, housing badminton courts and a weight room. The entire complex was built to suggest an eagle and its egg.\(^{12}\)

The new School of Transnational Law shares a large four-story building with the Graduate School of Humanities and Social Sciences. It is surrounded by lush plantings of bamboo, palms, and other tropical plants. By day the air is filled with the coo of the dove and the cries of the red-whiskered bulbul. By night the classroom windows nearly shake on occasion to the deep resonance of the roars of more than twenty tigers housed at the Safari Park Zoo, which is immediately across the road from the school.

To this idyllic spot in August of 2008 came fifty-six students from all parts of China, including two from Inner Mongolia. They all arrived with the dream of becoming American-style attorneys. This was due to the core mission of the new law school: to prepare transnational lawyers with a command of transnational legal rules, “a mastery of essential skills of critical analysis, sympathetic engagement with counterargument, and oral and written persuasion.”\(^{13}\) It was also the founders’ goal to structure the education to conform to the requirements of the American Bar Association, in hopes of eventually receiving ABA accreditation. This would be the first law school outside of the United States to have such a distinction.\(^{14}\) As a result, English was selected as the sole language of instruction and law professors, with experience teaching U.S. and transnational law, were invited to form the faculty.

Just as novel was the decision by Jeffrey Lehman, the inaugural Dean of Peking University School of Transnational Law, (STL), to have students read the Greek tragedy, Antigone, by Sophocles during orientation week.\(^{15}\) I was fortunate to have been given the task of

\(^{11}\) A large lighted sign, based on Mao Zedong’s own calligraphic style, graces the central tower.

\(^{12}\) For photos of this imaginatively designed campus, see the university’s website.

\(^{13}\) Peking University School of Transnational Law Promotional Brochure (2009).


\(^{15}\) Orientation coincided with the last week of the 2008 Olympic Games in Beijing; given the Greek heritage of the Games, the law students’ study of a Greek play was harmonized with with the sports festivities. The Chinese recognized the relationship between the Games and Greece, making 2008 “Hellenic Year in China.” http://www.greece-china.com/. In Beijing, a new interpretation of Euripides’ tragedy “Medea” was staged in August. Doing Business for Aeons, THE ECONOMIST, August 23,
introducing fifty-six 1L students to this 2500-year-old masterpiece, in addition to providing seven hours of introductory instruction in the study of law.

Each morning, I taught the students the standard fare: sources of US law, the US courts system, rule identification, issue drafting, and how to read and brief cases. Each afternoon, I mentored the students in applying their new skills to the Greek tragedy. At mid-week, the students presented a staged reading in a Greek-style stone amphitheater on the campus. On the final night of orientation week, they mooted the case of “The City of Thebes v. Antigone.” This paper recounts the activities of that first week and analyzes the effectiveness of such a radical project, concluding with musings on the globalization of legal education and its likely impact on American education.

II. THE PROJECT

In preliminary discussions in Ann Arbor, Michigan, the members of STL Legal Practice team, Howard Bromberg, Ann Burr, and the author, had agreed that the two biggest challenges facing the students would be attaining first-rate English skills and learning to think from a more individualized perspective. Although the admitted students had all demonstrated basic abilities in English, their submission autobiographies revealed significant problems with grammar and usage. We expected that listening to lectures in English and speaking in class would be difficult for many and worried that, without considerable instruction, they would not be able to function as competent transnational attorneys. Luckily, Dean Lehman had already hired four Teaching Fellows, recent college graduates who were native speakers of English. It would be their task to meet twice weekly with each STL student and review short writing exercises for grammar and usage. Nonetheless, we believed that an intense introductory week of reading, writing and speaking English would “jump-start” the language training.

Because of scheduling conflicts, Professors Burr and Bromberg were unable to travel to Shenzhen for Orientation Week; therefore, I flew alone to Hong Kong, and then traveled by car into China, rather than by

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2008.


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18 Some expressions, such as, “the night will stay green in our hearts” were quaint and charming, if not American English. Others, such as, “very procedure” were inexplicable. (Student autobiographies are in the author’s possession).
the more-convenient ferry, due to the impact of a typhoon that had temporarily closed all water transport. I was given a roomy and modern suite on the ninth floor of one of the university’s dormitory buildings and began two days later to conduct Orientation classes.

In the morning sessions, I emphasized active reading, writing, and pair and small group discussions (in English). Three minutes into the first class, I put this plan into practice by having the students form pairs and answer the question, “What is the law?” This provoked a surprising list of metaphors. “Law is a stone, a machine, a creature, a box, an illusion,” and others. I was struck by the idealism and lyricism of the students. No one said that law is “the regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society.” Nor did they come near expressing it as “that which binds the conduct of those individuals who are subject to the authority of the lawmaker,” the definition chosen for printing in our orientation materials. Rather, law was a relational device ensuring the rights of the weak or making concrete the social contract (yes, one student did refer to Rousseau and another to Plato). To assure continuity between the morning classes and with the Antigone project, students analyzed Melfi v. Mt. Sinai Hospital et al., a recent New York appellate case that concerned the same issue as the Greek play: the right of a person to bury his dead relative.

Afternoons and evenings were spent dissecting Antigone, a total of fifteen hours, twice the amount of time spent on teaching the study of law. The heavy emphasis on Antigone during orientation may appear to many as ill-judged. What is the relation between this ancient fictional account of a woman’s defiance of an edict and the rudiments of the study of law that are the expected heart of an orientation week? How does staged reading and debate of an old story prepare students for law practice or law school?

Based on the students’ response to open questions, the comments of other professors who were present, and my own evaluation, the benefits were numerous. The play successfully introduced Chinese students to the classical foundation of Western law, culture, and the Socratic Method. It also taught students how to recognize the similarities and differences between a literary and a legal analysis of a story.

Of more narrowly pedagogical value was the exposure of students to aspects of legal education and practice that would be further developed during the year, including the Socratic method, fact finding, case analysis, advocacy, and witness examination. In addition, the play reinforced the

19 BLACK’S LAW DICTIONARY (pg #) (8th ed. 2004).
20 In-class handout.
21 Melfi v. Mt. Sinai Hospital, 64 A.D.3d 26; 877 N.Y.S.2d 300 (2009).
students’ understanding of the role of sentiment in the creation, administration of law, and the benefits of governmental checks and balances. The play also encouraged reading out loud and public speaking in English.

More importantly, the play provided a dramatic, fun, and memorable focal point to the first week of life in a radically different school. Aside from the intellectual and vocational benefits, the project was beneficial to rapport building between students and provided a creative release to an intense first week of law school.

III. LAW AND LAWYERS IN CHINA: CONFUCIANISM AND LEGALISM

For much of its history, China’s rulers wavered between rule by law and rule by man. Rule of law has been distinctly absent. The first great jurisprudential scholar, Confucius (551-479 B.C.E.), distained written law as offering only a shallow set of norms, preferring the internalization of moral values. These values were to be inculcated and retained through mindful performance of rituals. Benevolence was to be preferred to punishment and wisdom to reliance on written law. Initially, his views found little favor.

The first great emperor and the founder of the Qin Dynasty, Shihuangdi (259-210 B.C), relied on a contrary jurisprudential approach known as “legalism.” Legalism, based on the view that man is naturally evil, undisciplined, and can only be motivated through threat and infliction of punishment, originated in the writings of Shang Yang, a Qin state administrator, who established a centralized military bureaucracy that was,

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22 See supra note 20, in which the authors argue that examples of the rule of law can be found throughout Chinese history. A meaningful discussion of “rule of law” is beyond the scope of this short article. Experts have exhausted themselves writing books seeking to define the term and to thrash opposing views. See e.g., RANDALL PERENBOOM, CHINA’S LONG MARCH TO THE RULE OF LAW (2002).

23 In the Analects, a collection of maxims attributed to Confucius by his disciples and later writers, he stated, “If the people are led by laws, and uniformity among them be sought by punishments, they will try to escape punishment and have no shame. If they are led by virtue and uniformity sought to be given them by the rules of propriety, they will have a sense of shame and moreover will become good.” 2.3 The early and continuing impact of Confucianism in the reticence to resort to law in China is appraised by: STANLEY LUBMAN, BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO passim (1999).

24 Attention to the details of ritual was paramount in Confucian teaching. “Look at nothing in defiance of ritual, listen to nothing in defiance of ritual, speak of nothing in defiance of ritual, never set hand or foot in defiance of ritual.” Confucius, Supra at note 18, 12.1 (See supra note 18).


a hundred years later, to unite seven warring states in central China,\textsuperscript{27} build the Great Wall\textsuperscript{28} and 5000 miles of interstate roadways, and standardize weights and measures, currency, and the pictographic script. These accomplishments were achieved at a high price. The legalistic approach to governance dictated comprehensive and detailed laws that mandated plentiful, cruel punishments for infractions of law.\textsuperscript{29} The harsh controls, although exercised impartially, existed to meet the potentially idiosyncratic wishes of the emperor.\textsuperscript{30}

Dissatisfaction with legalism and the eccentric behavior of Shihuangdi’s immediate successors abruptly ended the Qin dynasty; in the Han dynasty, modified Confucianism recognized the importance of the consent of the governed, while creating clearly defined punishments for specified crimes.\textsuperscript{31} A highly educated bureaucracy carried out the mandates of an emperor who, in turn, sought, at least theoretically, to reflect the will of Heaven. The expression of legal archetypes varied greatly over the next two millennia, but a consideration of inalienable

\textsuperscript{27} JOHN KING FAIRBANK & MERLE GOLDMAN, CHINA: A NEW HISTORY 56 (2006).

\textsuperscript{28} Although portions of the 2600 mile-long wall had been earlier built by local states, the first Qin emperor Shihuangdi consolidated, enlarged, and regularized their height and width so that five horses could run abreast of each other along its ramparts from one end to the other. For an exhaustive introduction to the Great Wall, see ARTHUR WALDRON, THE GREAT WALL OF CHINA: FROM HISTORY TO MYTH (Cambridge, 1990).


\textsuperscript{30} Large stone tablets erected at the eastern end of the Great Wall boldly proclaimed that laws were promulgated and followed for the emperor’s benefit: “Wherever the sun and moon shine, there is no one who doesn’t come in submission.” QIAN SIMA AND BURTON WATSON, RECORDS OF THE GRAND HISTORIAN: QIN DYNASTY 53 (1993).

The discovery of 7,000 larger-than-life terracotta soldiers protecting the first Qin emperor’s tomb illustrate the sovereign’s ability to envisage and realize grandiose schemes solely for his benefit. See PAUL MOONEY, CATHERINE MAUDSLEY, & GERALD HATHERLY XI’AN, SHAANXI AND THE TERRACOTTA ARMY (Odyssey, 2009).

\textsuperscript{31} The contrast between Legalism and Confucianism with regard to the nature of man can be compared to, but should be distinguished from, the debate between Hobbes and Locke over the innate goodness of man. Brantly Womack, Modernization and Democratic Reform in Chin, J. ASIAN STUD., Vol. 43, No. 3, 418, 417-439 (May, 1984).
human rights, as opposed to shifting views on the obligations of the governing and the governed, was absent from Chinese imperial policy.\footnote{Xin Ren, Tradition of the Law and Law of Tradition 6 (1997). Ren suggests that the atheistic origins of Chinese law promoted the concept of state-determined system of norms, subject to changing interpretation by its rulers, rather than a deity-centered culture in which morality, and hence legal norms, are derived from a higher, immutable power to whom both rulers and citizens are obliged to obey. Id. at 3. It is also argued that, whereas Greek and Roman law arose when these cultures were quite small and composed of relatively equal free men, Chinese law developed after complex imperial bureaucracies had already been formed. William Jones, “The Current Chinese Legal System” in Understanding China’s Legal System 9-13 (C. Stephen Hsu, ed., NYU Press) (2003). As a result, Roman law based itself on the individual and sought to resolve issues between individuals such as contract disputes and tort claims (See the writings of Gaius in Institutes of Justinian). All our law relates either to persons, or to things, or to actions (The writings of Gaius in Institutes of Justinian (1998), available at http://www.fordham.edu/halsall/basis/535institutes.html.) While this tradition continued in the West to the present and citizens view the law as a tool for resolving personal differences and protecting individual rights. See Jones at 12.}

In the Nineteenth century, European powers forced the Qing emperor to accept extraterritoriality: Europeans were subject, not to Chinese laws, but only to their nation’s laws as determined and enforced by relevant consular officials.\footnote{Wei Wang, Historical Evolution of National Treatment In China, 39 INT’L LAW. (2005). See generally, John King Fairbank, Trade and Diplomacy on the China Coast: The Opening of the Treaty Ports, 1842-1854 (1953).} Treaties thus created two legal systems: one for Chinese and one for foreign nationals.\footnote{Francis S.L. Wang, Rebuilding a Bridge a paper presented at the 2004 AALSConference on Educating Lawyers for Transnational Challenges, available at http://www.aals.org/international 2004/Papers/wang.pdf (2004).} This bifurcation was prevalent in many Treaty ports until 1949.

With the fall of the last dynasty and move to a republican government, under Sun Yat-sen, in 1911, China began adopting and adapting Japanese laws (which were themselves copies of German codes).\footnote{Id. at note 20.} The introduction of Marxist socialism, in 1949, brought with it profound changes in social and class structures, and the introduction of Soviet-inspired civil law.\footnote{“The purpose of Mao’s legal system was to resolve problems arising out of class struggle, not to settle individual disputes involving personal rights.” Id. at 33.} However, despite radically altered governmental policies and goals, law remained solely a governmental tool for social control.\footnote{Bin Liang, The Changing Chinese Legal System: 1978-Present (N2008).}

From 1966 to 1977, during the Cultural Revolution, the formal legal system ceased to function. Ad hoc judicial proceedings were carried
out by townspeople and peasants that had no professional oversight; their function being class struggle, rather than enforcement of legal norms.\textsuperscript{38}

While many Chinese traditional values, such kinship ties and feudal local governance, conflict with Marxist socialist ideology that directed Communist Chinese policies,\textsuperscript{39} others reinforce such principles, including a preference for moral indoctrination ahead of the use of laws to direct thoughts and actions.\textsuperscript{40} In addition, Confucian teaching stresses that the value of the individual was to be judged solely on his or her contribution to society, not on any innate human rights,\textsuperscript{41} and that family, government, and society works best when carefully defined ranks of status were observed.\textsuperscript{42}

Another dramatic change in China’s legal system occurred in 1978, with economic development and away from class struggle as the national government’s chief priority.\textsuperscript{43} The government also adopted an “open door” policy that included the creation, beginning in 1979, of Special Economic Zones (SEZs)\textsuperscript{44} SEZs were urban areas in which both domestic and foreign businesses would receive tax and duty benefits, and significant freedom from central government oversight and land use restrictions.\textsuperscript{45} Premier Deng Xiaoping went so far as to proclaim, “To get rich is glorious!”\textsuperscript{46}

A transformation in national policy altered the legal system. While the legal system had previously been restricted to enforcing criminal matters and was seen as “a tool for the proletarian dictatorship[,] and used to differentiate the people from the enemy and punish the latter,”\textsuperscript{47} it came

\textsuperscript{38} Id. at 19-20.

\textsuperscript{39} Id. at 20.

\textsuperscript{40} Id. at 20; Xin Ren, Tradition of the Law and Law of Tradition: Law, State, and Social Control in China (1997).

\textsuperscript{41} Id. at 20-21.


\textsuperscript{43} Id. at 21.

\textsuperscript{44} One of the first three SEZs was Shenzhen, the host city of Peking University School of Transnational Law that is the subject of this article. The designation of Shenzhen as an SEZ turned a somnolent fishing village of 4000 into a thriving business capital of over 11 million in less than 30 years. While there are now more than 400 SEZs, Shenzhen is most successful. Not only do its residents have the highest personal incomes of any city in China, it also is home to more Ph.Ds than any other city. Shenzhen Daily 13 June 2007 at 1. (SHENZHEN DAILY, Jan. 13, 2007, at 1.)

\textsuperscript{45} H.J. Gross, China’s Special Economic Zone, 4 China L. Rep. 23-40 (1988).


\textsuperscript{47} Bin, supra note 37,at 43.
increasingly to be viewed as a necessary tool for economic development through court enforcement of commercial and civil rights. For this reason and also to better control regional economic players, the National People’s Congress from 1978 to 2002 created a preliminary legal system with the intent to create a complete and comprehensive legal system.\footnote{11} In 1999, the Chinese Constitution was amended to include express provisions for “rule of law” in governance.\footnote{18} Despite the stated objective, many China-watchers doubt the sincerely in China’s “rule of law” project.\footnote{39}

Along with the development of laws came a growth in opportunities for legal training;\footnote{12} there are now more than 600 undergraduate law programs in China in which more than 200,000 students are enrolled.\footnote{13} A very competitive bar examination is given, with

\footnote{11} Id. at 43.

\footnote{18} “Article 13 A new paragraph is added to Article 5 of the Constitution as the first paragraph, which reads, ‘The People’s Republic of China governs the country according to law and makes it a socialist country under rule of law.’ ” Amendment to the Constitution of the People’s Republic of China http://www.npc.gov.cn/englishnpc/Constitution/node_2827.htm (Adopted at the Second Session of the Ninth National People’s Congress and promulgated for implementation by the Announcement of the National People’s Congress on March 15, 1999).

\footnote{39} For a discussion of the wide interpretations of “rule of law”, see Margaret Radin, \textit{Reconsidering the Rule of Law}, 69 B. U. L. REV. 781 (1989). For a detailed analysis of China’s evolving acceptance and conception of the rule of law, see RANDALL PEERENBOOM, \textit{CHINA’S LONG MARCH TO THE RULE OF LAW} (2002). Peerenboom argues that China is unlikely to ever embrace a \textit{thick “Liberal Democratic” rule of law, replete with multiparty democracy and a liberal interpretation of human rights. Instead, it will continue to adopt a \textit{thin “Statist, Socialist, Neoauthoritarian, and Communitarian version.” Id. at 558-588.}

\footnote{12} Bin, supra note 37, at 53-54.

\footnote{13} Id. at 55. In addition, there are at least fifty graduate programs in law. These programs, however, do not prepare students to practice as attorneys, but provide a far more academic education, centered on jurisprudence and legal philosophy. Other Asian countries that previously taught law as an undergraduate subject, rather than in a graduate school program have begun experimenting with their own J.D. programs. Japan’s ambitious project, creating 74 new law schools in the last five years, appears to be faltering.

An editorial in the Japan Times April 20, 2009 stated

\textit{THE JAPAN LAW FOUNDATION, THE NATIONAL INSTITUTION FOR ACADEMIC DEGREES AND UNIVERSITY EVALUATION AND THE JAPAN UNIVERSITY ACCREDITATION ASSOCIATION HAVE RECENTLY EVALUATED 68 OF THE LAW SCHOOLS AND DETERMINED THAT 22 OF THEM HAVE PROBLEMS WITH THEIR CURRICULA AND TEACHING METHODS.}

\textit{PROBLEMS IDENTIFIED INCLUDE A SHORTAGE OF BASIC SUBJECTS, A LACK OF BALANCE BETWEEN THEORETICAL STUDIES AND PRACTICAL APPLICATION, A LACK OF TRANSPARENCY IN THE EVALUATION OF STUDENTS’ PERFORMANCES IN TESTS AND UNDER-QUALIFIED}
passage rate of only 8 to 10 percent, to regulate the quality of practicing attorneys. 53

Despite the restricted bar admissions policy, more than 170,000 attorneys are now engaged in at least part-time practice.54 The unitary court system has grown as well, to more than 200,000 judges,55 although less than 20 percent of judges are university graduates.56

IV. A TRANSCATIONAL LAW SCHOOL IN CHINA

The term “transnational law” was coined by the renowned jurist, Judge Philip Jessup, for whom the Jessup International Law Moot Court Competitions are named. For Jessup, the term includes “all law which regulates actions or events that transcend national frontiers.”57 This includes public and private international law, foreign, and comparative law. Teaching law students about transnational law has become more popular in the last decade with courses, institutes, and even entire schools focused on this subject. A transnational law school, such as STL, seeks to offer greater depth than semester-long study abroad programs traditional law school courses.58 Transnational law schools are rumored to be planned in South Korea, Japan, and the Philippines. STL may stand out because its school’s directors to adhere as closely as possible to the American paradigm as detailed in the American Bar Association’s requirements for law school accreditation.59

ABA accreditation is a legitimate goal, but not a requirement for STL’s success; China, currently, has no accreditation requirements. Most members of STL’s first class sat for the summer 2009 Chinese bar exam, with a pass rate of 40 percent.

TEACHERS.”

Japan Times (APRIL 20, 2009), AVAILABLE AT HTTP://SEARCH.JAPANTIMES.CO.JP/CGI-BIN/ED20090420A2.HTML


55 Id. at 835.

56 Id.

57 PHILIP JESSUP, TRANSCATIONAL LAW 2 (Elliots Books, 1956).

58 For a description of the University of Michigan Law School’s required transnational law course, see Matthias Reimann, Taking Globalization Seriously MICH. BAR J. 52, 52-54 (July 2003). Washington & Lee Law School has initiated a mandatory 3 credit Transnational Law Course in the first year of its J.D. program. (see Washington and Lee University: School of Law website.)

59 See 2009-2010 Standards for Approval of Law Schools by the American Bar Association.
Can one rightfully declare that American law provides a superior vehicle for regulation of national and community life? Can it be truthfully claimed that instruction in the American legal system, using a Harvard Law School-customized version of Socratic dialogue and “sympathetic engagement with the counterargument” will better prepare Chinese law students for the Twenty-first century than traditional Asian instruction consisting of uninterrupted lectures that state unequivocally the substance of the law and demand that students memorize the words rather than the heart, of the law?

The answer is solidly affirmative for the following reasons. First, just as English has become the primary international language, due to its richness and usefulness, American law is unparalleled in its depth and breadth. The long history of litigation and statute drafting at both the state and federal level has resulted in a uniquely rich source of jurisprudence in every legal field. In addition, specialized website databases for legal research, such as Westlaw and Lexis-Nexis, provide unparalleled access to cases, treatises, periodicals, and court material, such as appellate briefs and recordings of oral arguments.

STL’s commitment to provide a common law education is an unusual undertaking but it is not the first effort in China. That honor belongs to the Soochow University Law School, which was active in Shanghai from 1915 to 1952; commonly known as the Comparative Law School of China, this school was founded by Americans and provided an American model of legal education. Its stated aim was “to give the students a thorough mastery of the fundamental principles of the world’s chief legal systems, an important object being to turn out students who can contribute to the making of new and better jurisprudence for China.” The founder, an American lawyer and missionary, set goals to nurture “a deep appreciation of what the profession of law has done for mankind in the past” and emphasize “the great need of China for lawyers.” Like STL, the Comparative Law School’s curriculum was taught in English and provided American law courses, including civil and criminal procedure, property, contracts, torts, criminal, corporate and commercial law.

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60 STL students were thrilled to hear attorney Seth Waxman, one of the modern-day masters of oral argument, addressing the Supreme Court and responding to questions from the Justices. Their comprehension was enhanced by displaying the transcript of the argument on computer screens as they listened.


62 Soochow University, Courses and Announcements, 1919-1920, United Board for Christian Higher Education in Asia Archives, Day Missions Library, Yale University, No. 269/4287, cited from Conner, supra note 61, at 253.

63 Conner, supra note 61, at 211.

64 Id. at 213.
Graduates of the Comparative Law School flourished in Shanghai where Anglo-American law was the primary source of commercial law. While the Japanese invasion of China in 1937 impacted the school, the education reorganization of 1952 closed the school because private education was outlawed.\(^{65}\)

What lessons does this law school provide for those concerned with the future of STL? First, the Shanghai school began as an Anglo-American law school and gradually developed a full curriculum in Chinese law, generating academic discussions and justifying its title, School of Comparative Law. Although stressing American law, students at STL are assigned a mandatory course in transnational law their first year. And Chinese law courses are planned for the students’ third or fourth year.\(^{66}\)

Shenzhen in 2008, like Shanghai in 1915, burdened law schools with few regulatory fetters,\(^{67}\) permitting STL, like the Comparative Law School, to freely experiment with its curriculum. Oversight policies in 1928 changed the Shanghai school, the Nationalist government instituted a minimum education requirement.\(^{68}\) The Comparative School complied by increasing the number of Chinese law courses taught and offered more electives.\(^{69}\) Similar directives from Shenzhen, or the national government may emerge as STL develops its reputation.

In contrast to the founder’s commercial motivation for establishing Soochow’s Comparative Law School, recent non-Chinese organizers of transnational law courses at other schools in China have privately and publicly enunciated “loftier” goals: educating future Chinese leaders with an appreciation for “human rights,” “democracy,” and the “rule of law.” The belief of the rule of law as a Western concept,\(^{70}\) which must be

\(^{65}\) *Id.* at 240-241.

\(^{66}\) See Peking University, *STL Brochure* 16-18 (2009).

\(^{67}\) Conner, *supra* note 61, at 215.

\(^{68}\) *Id.*

\(^{69}\) *Id.* at 215.

\(^{70}\) Newly analyzed evidence disputes the prevailing view of China’s legal structure as fluctuating between “rule by man” and “rule by law.” Authors of a recent analysis of original sources have concluded that China has a rich heritage by “rule of law.” Professors Fang and DesForges sifted through three millennia of Chinese legal materials and found numerous examples of policies and orders that disclosed a “rule of law” environment. Qiang Fang & Roger Des Forges, *Were Chinese Rulers Above the Law? Toward a Theory of the Rule of Law in China from Early Times to 1949 CE.*, 44 STAN. J. INT’L L. 101 (2008). The apogee of the rule of law was probably attained in the commonly recognized model reigns, including those of the Duke of Zhou, Han Wen and Jing, Tang Taizong, Ming Renzong, and Qing Kangxi. The nadir was probably approached in periods of disorder on the one hand and in eras of over-centralization on the other. Further work needs to be done on the precise identification and description of the various regimes of the rule of law associated with different polities and on the
introduced to China, whether correct or not, continues to inspire Western law professors, government officials,71 the Chinese themselves,72 and legal education and legal reform initiatives.

There is, of course, a real danger in approaching the transnational law school project with a twenty-first century equivalent of “the White Man’s Burden.” One writer refers to this as the “Ideal Western Legal Order” approach,73 whether one views the Chinese legal order as inferior to ideal systems such as America’s, or considers the Chinese system as imperfect and developing, Clarke complains that such observations tell more about the our own concerns, “that is, about our vision of what constitutes an ideal legal order—than it will tell us about China.”74 This condescending approach obscures the complexity of China’s current political climate and ignores the U.S.’s own moral challenges.

The Chinese are quick to take umbrage at American claims to the high ground in rule of law, in light of the civil rights debacle at Abu Grad, the fallacious linking of Sadam Hussein to the 9/11 terrorists, and the previous administration’s defense of waterboarding.

Chinese consensus also resents foreign condescension as evidence of continuing subjugation by world powers. A frequent word used by

dynamics and patterns of their appearance and reappearance over time. However, enough is known to indicate the importance of interactions among past models, current needs, and future aspirations as well as among historical China, its nearby peripheries, and the larger world in creating the conditions necessary for the implementation of the rule of law—as opposed to rule by men, rule by law, and rule without law.” Id. at 141.

71 The New York Times reported that Luo Gan, China’s top law and order official and a member of the governing nine-man Politburo Standing Committee, warned “ ‘Enemy forces’ are seeking to use China’s legal system to Westernize and divide the country, and the Communist Party must fend them off by maintaining its dominance over lawyers, judges and prosecutors.” In his published speech he stated that “judicial officials had the responsibility to ‘prevent infiltration that might threaten national security.’” According to the Times, Luo stated, “There is no question about where legal departments should stand. … The correct political stand is where the party stands.” Joseph Kahn, Chinese Official Warns Against Independence of Courts, N.Y. Times, Feb. 3, 2007, at A5.

72 Popular writers in China share this view as well. In a recent editorial in the China Daily, entitled, “Course of True Law,” the editor praised the reduction in a sentence for a pedicurist who used killed an official who sexually propositioned her. Course of True Law, China Daily, June 2, 2009, at 9. While he noted, “[A] comparatively desirable legal framework has taken shape for the rule of law. But it is one thing to have all the laws in place and another to deliver justice by using these laws in a fair and impartial manner.” Id. The editor then credits the development of rule of law in heightening “the general public’s sense of justice and awareness of their own role as watchdog for delivery of justice.”


74 Id. at 98.
many Chinese to describe the last 150 years in China is “humiliation.” Beginning with the Opium War, which China unsuccessfully fought to stop British sales of opium, continuing through the colonial land-grabs culminating with the Treaty of Versailles, and the Japanese occupation from 1919 to 1945; China is now eager for a return to its former place as a center of culture, power, and prestige.75

Unfortunately, many of the law education programs exported to China from the United States confirm China’s suspicions. Many rely on grants from the US Agency for International Development (USAID).76

Temple University, for example, using USAID funds, established a “Rule of Law” L.L.M. Program in China that portrays a condescending approach, as indicated in a recent statement by JoAnne Epps, Dean of the law school, “Through our rule of law program, Temple is proud to play a vital role in educating lawyers who may be called on to shape the country’s (China’s) legal system.”77

In contrast, the goals of STL, as a graduate school anchored within Peking University, reflect the desires of the Chinese academic community for enhancement of global legal education, not the proselytization of American political views on rule of law. This was confirmed by STL’s Dean, Jeff Lehman, who greeted the first year students during Orientation Week with the comment, “We are all beginning an adventure. We know that if we are successful, we will create an institution that can make a

75 Martin Dimitrov, Resilient Authoritarians, CURRENT HISTORY 24, 26 (January 2008). Mao Zedong, in the Opening speech to the first session of the Chinese People’s Consultative Conference, proclaimed, “Our nation will never again be an insulted nation, we have stood up.” Translated and quoted in Kuo-kang Shao, Chou En-lai’s Diplomatic Approach to Non-Aligned States in Asia: 1953-60, CHINA Q., NO. 78 328, 324-338 (Jun., 1979).

76 US-AID allotted $2 million to the Rule of Law in China Initiative. One of the grantees, the McGeorge School of Law describes their USAID project in this way: “China has embarked on an ambitious program to rebuild its legal system. It has adopted new laws addressing a wide range of modern issues. If the rule of law is to take hold in China, an essential next step is the development of more experiential learning to facilitate the practical application of such newly adopted legal provisions.

This U.S. Agency for International Development (USAID) project is assisting China in the creation of skills-based legal education programs that focus on the application of law in practice. A partnership of American and Chinese law schools is working to enhance the capacity of Chinese law schools to provide training in experiential legal education.” University of the Pacific, McGeorge School of Law: Experimental Education in China, http://www.mcgeorge.edu/x1900.xml (last accessed Jan. 17, 2010).

valuable contribution to the evolution of legal education in China, and around the world.”

While the founders of STL had clear conceptions about the school and its educational mission and structure, I brought some mistaken preconceptions to teaching American law in China. The first was my view of the PRC as a grimly totalitarian nation. When I was a law student in New York I walked by the Permanent Mission of the People’s Republic of China to the United Nations each day on my way to school. This was at the tail-end of the decade-long Cultural Revolution. Protestors often carrying placards, paced in front of the Embassy while the Embassy guards, unsmiling, dressed in lumpy pea-soup green, double-breasted, quilted long coats, and stared out at Manhattan. I remember the air of mystery and slight menace that wafted from that building. The New York Times routinely published stories on the harshness and madness of life in China at this time. Despite the passage of more than thirty years, a lengthy visit to China in 1985, and many hours of Chinese language training, I still expected China to be a country of spies and overt repression. I worried about bringing with me academic articles critical of China, lest they be discovered at the border and I be denied admission to the country. Although I anticipated that Antigone would be difficult for the students to digest and internalize, I, and others, feared that sending the students this incendiary text before classes began might result in the closure of the school before it even opened.

I had wondered whether customs inspections of the border between Hong Kong and Shenzhen would go through my suitcase, looking for counter-revolutionary writings, confiscate such articles as “Tiananmen’s Wake,” and perhaps forbid me to enter China. Would they sift through the contents of my USB drive looking for scholarly articles critical of China’s national government? In fact, no one searched my luggage, my USB drive, or any of my three CDs on which numerous articles were burned.

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78 STL Media Kit 58 (Liya Rong, ed., 2009).

79 This exaggerated fear of China and of the Chinese by many older Americans stems, in part, from the Cold War and recollections of The Vietnam and the Korean Wars and in part from racism which sees all Chinese as bound by their race to oppose the U.S. The U.S government exhibited such racism in their brutal investigation of Los Alamos scientist Wen Ho Lee. See FRANK WU, YELLOW 173-214 (2003).

80 After the Tangshan earthquake July 28, 1976, it was reported that a man chose to save the Communist mayor when given the choice between digging his two children out of the rubble and saving the mayor. His children perished. The People’s Daily praised his action. N.Y. TIMES, August 30, 1976, at 26.

81 My paranoia about border crossings is founded on experience as an immigration attorney. Immigration Officers, not of China, but of the United States have developed the practice of requiring applicants for admission to turn in laptop computers in their possession, type in any passwords and allow CBP officers to peruse their email to look for evidence of immigrant intent, improper employment plans, or similar illegal activity. See U.S. Customs and Border Protection Directive No. 3340-049, August 20,
My second preconception was that Chinese students would not speak in class. It is commonly held that Asian students are accustomed to receiving uninterruptible lectures from professors and would fear “losing face” or challenging the recognized authority of their teacher if they were to vocalize a contrary idea. Apparently, neither of these concerns applied to the students of STL. They were argumentative; in their staged reading and moot court presentations, personified human/realistic emotions.

My third misconception was imagining that the students would all be naïve, cookie-cutter Communists. While a third of the students are members of the Communist Party, they proved to be far more varied than I anticipated. The inaugural class of STL are indeed a diverse group, in their prior education, their economic means, geographical, and ethnic connections. Few were law majors, although one had an undergraduate degree in law and was a practicing attorney. The others held degrees in forestry, chemistry, philosophy, engineering, and other disciplines. Those with degrees in English did not necessarily have greater language skills. Some were the children of successful entrepreneurs and drove BMW’s, others came from rural communities and rode water buffalos. Many were only children and had stories of lonely childhoods ensconced in urban apartments, waiting for their parents to return from work, others grew up with siblings and numerous aunts, uncles, cousins, and grand-parents. While most were Han, the majority ethnicity, several came from minority ethnic groups.

Many of my preconceptions proved strikingly inaccurate. My interactions with the students, faculty, and Chinese attorneys gave me a humbling understanding of the environment in which STL operates.

Like me, the students came to STL with strong and sometimes inaccurate preconceptions about the school and about the training they

2009, available at www.aila.org, AILA Doc. 09082761). In contrast to my expectations, magazines and books critical of China and its policies were easily found. At the Shenzhen Airport, a domestic terminal, for example, a book seller offered the searing expose Mao: A Biography by Ross Terrill (1999) and other works of fiction and non-fiction that presented China in unflattering ways. In addition to these were a wide variety of glossy Chinese language magazines, some specializing in expensive hobbies, such as chronometer collecting, and others depicting the opulent lifestyle, culinary tastes and extravagant domestic architecture of the seriously wealthy residents of the Middle Kingdom. I had not expected such a vibrant bourgeois economy.

82 It is important to note that Shenzhen is one of the most open, dynamic, and unregulated zones in the P.R.C.; other areas, particularly the countryside and small cities, are more conservative. This makes Shenzhen a fitting choice for the home of STL, rather than Beijing. There are, however, some limits to the freedom Shenzhen enjoys. For example, the Mayor of the city was removed last June and placed in prison by the national government for committing “political offenses”. Jane Chen, Shenzhen Mayor Removed over Disciplinary Offences, SHANGHAI DAILY ONLINE ED., June 6, 2011, at http://www.shanghaidaily.com/sp/article/2009/200906/20090611/article_403809.htm.
would receive there. One student wrote, “I am excited to be a transnational lawyer, but I do not know what such a person does.” Another informed me that after STL, she planned to attend Harvard Law School, just like the star in the movie *Legally Blonde*; this movie was a primary motivator for many of the students in deciding to attend an American-style law school.

Regardless of their backgrounds, none of the students were prepared for a five-day immersion in the study of *Antigone*. A reader of this article, after perusing the above sketch of China’s legal history and Peking University’s mission for China’s legal future, may wonder herself, “Why was *Antigone* chosen as the core of orientation week?”

The following section of this article includes a summary of the play, an explanation of play-related activities during orientation, and a presentation of important jurisprudential themes from feminism to positivism that can be portrayed by the play. Finally, I will share with you the results of this project.

V. SUMMARY OF THE PLAY

Written by Sophocles in 441 B.C., and first performed in Athens, this play is the third in a series of tragedies focused on the plight of Oedipus and his children. Although the plays *Oedipus Rex* and *Oedipus at Colonus* precede the action in *Antigone*, they were written much later.  

The story of the Oedipus Trilogy: Oedipus’ father, Laius, discovers from a soothsayer that Oedipus is destined to kill him and marry his wife. To avoid this fate, Laius orders his baby son killed. Instead, Oedipus is smuggled away and raised by another couple as their own son. When grown, Oedipus learns that he is fated to kill his father and, thinking this means his step-father, flees his homeland. At an intersection he encounters Laius, they quarrel, and Oedipus kills his biological father. On the way to Thebes, he meets with the marauding Sphinx, who says he must answer a riddle if he wants to pass without being eaten; he succeeds and destroys the creature. The citizens of Thebes are so grateful that they make Oedipus their king, he marries Laius’ widow, his own mother, and she bears four children: two boys, Eteocles and Polyneices, and two girls, Ismene and Antigone.

Famine and other problems begin to plague Thebes; Oedipus learns that the murder of his father and marriage to his mother are the cause of this pestilence. In despair, he leaves Thebes and pokes out his

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83 *Oedipus Rex* (409 B.C.?) and *Oedipus at Colonus* (first produced after his death in 401 B.C.).

84 This conundrum, the most celebrated in classical literature, asks, “What walks on four legs in the morning, two at midday and on three at sunset?” The answer, “a man.” The emphasis on feet is particularly personal for Oedipus since his name means “pierced foot.”
eyes. Creon, his brother-in-law, assumes kingship of Thebes temporarily. Upon Oedipus’ death, it is agreed that the two sons of Oedipus will take turns ruling Thebes, each for a year. Eteocles serves as the first king, but he refuses to relinquish the throne at the end of his term Polyneices raises an army and attacks Thebes. Both Eteocles and Polyneices are killed in the battle; the city remains undefeated.

The play Antigone opens just after this battle. Creon has taken the throne, claiming that he is the next of kin; therefore the rightful ruler. Antigone comes to her sister with the news that, while Eteocles will receive a burial with great ceremony, the body of Polyneices cannot be mourned or buried on pain of death by stoning. Antigone proudly tells Ismene that she is going to bury him in accordance with the unwritten laws of the gods and invites Ismene to help her. Ismene pleads with Antigone to reconsider, arguing that they are but weak women and the law is too strong for them. In disgust, Antigone says she will go forward without her sister’s assistance and she leaves to do so.

In the next scene, Creon enters and tells the Chorus of city elders about the law he has passed forbidding Polyneices’ burial and proclaims that he will enforce this law and all of the city’s laws against anyone who disobeys them, regardless of family ties or friendship. A guard rushes in and reveals that someone sprinkled dust on Polyneice’s body, which is an act of mourning. Creon commands him to find out who did this. The guard leaves and shortly returns with Antigone in tow. She fearlessly states that she knew her actions were illegal, but justifies them on the basis of divine law and duties of familial obligation. Creon’s son, Haemon, likewise implores his father to alter the law, but Creon insists that, if not stoned, Antigone should be immured in a cave and left to starve to death. Haemon leaves in anger, promising that his father will never see him again.

The blind seer, Teiresias, enters and warns that Creon’s refusal to bury Polyneices has angered the gods, thus will result in turmoil for Thebes and destruction for Creon. Realizing that his edict must be annulled, Creon runs out to bury Polyneices with full honors. After this, he goes to free Antigone from her prison cave, but finds that she has

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85 In fact, both Ismene and Antigone are far closer, as the daughters of Oedipus and sisters of Eteocles, while Creon has no blood relationship, being the brother of Jocasta, who was Oedipus’ mother and later Oedipus’ wife. If Creon finds it proper to base his kingship on his relationship the wife of a king, he should recognize the right of Antigone to rule.

86 Ant. 24-36.

87 Ant. 43.

88 Ant. 62-64.

89 Ant. 170-192.

90 Ant. 775.
hanged herself; Haemon is in the cave. After trying, unsuccessfully, to slay his father, he turns his sword and kills himself. Creon’s wife, Eurydice, kills herself upon hearing of Haemon’s death; Creon returns to his palace, fully aware of his misfortune and tragic error. He concludes the play by stating that good judgment and wisdom are central to happiness; man must respect the works of the gods.\footnote{\textit{Ant.} 1344-46.}

VI. \textbf{IN-CLASS USE OF \textit{ANTIGONE}}

\textit{Antigone} is well suited to classroom discussion. Professors at the University of Oklahoma used \textit{Antigone} as the subject for moot court trials in a seminar for undergraduates entitled, “Law and Literature.”\footnote{This activity is discussed at length in: Alan Leslie & Cassie Davis, \textit{Introducing Trials into Law and Literature Classes}, 26 OKLA. CITY U.L. REV. 447, 452-57 (2001).} Rather than search for applicable law in the play, the professors chose to select statutes from the United States Code governing treason.\footnote{\textit{Id.}, at 453.} The defense also argued that the charge of treason was unfounded because Polynices had not been a traitor.\footnote{\textit{Id.}, at 455.} Rather, there was “a breach of contract” between the two brothers that justified Polynice’s attack on Thebes.\footnote{\textit{Id}.}

At STL, the play dominated nearly every class. This is more experimental than many law schools may be comfortable with. Some students, and even I, initially questioned the relevance of \textit{Antigone} to the study of American law.

The \textit{Melfi} case silenced any doubts. This recent New York state appellate case served as the modern counterpart of the controversy in \textit{Antigone}. Frank Melfi, a modestly successful playwright known posthumously for contributing a comedy sketch to the bawdy Broadway play, \textit{Oh Calcutta}, suffered a heart attack in his room at a “welfare hotel” and was taken to Mt. Sinai Hospital, where he was pronounced dead.\footnote{These and the additional facts of the Melfi case are found in the appellate opinion: \textit{Melfi v Mt. Sinai Hospital.}, 64 A.D.3d 26, 877 N.Y.S.2d 300 (2009); 64 A.D.3d 26; 877 N.Y.S.2d 300 (2009).} Records suggest that the hospital made little effort to notify any family members of Melfi’s death. Instead, the hospital turned the body over to a local mortuary school for students to practice embalming. After a month of being subjected to mortuarial activities, the body was buried with 150 other unidentified corpses in a city grave.

When relatives discovered Frank’s fate,\footnote{Only after Joe Melfi persuaded the \textit{New York Times} to noisily investigate the} they exhumed, and reburied his body with proper respect. His brother, Joe Melfi, then filed a
civil law suit against the hospital demanding monetary restitution for the distress he suffered because of the hospital’s failure to notify him of Frank’s death and the subsequent mutilation of the body by the mortuary students. He also claimed negligent infliction of emotional distress caused by his viewing his brother’s punctured and incised body when he identified it as next of kin.

The hospital requested summary judgment; they argued that even if all the facts alleged were true, the hospital owed no legal duty to Joe Melfi to timely notify him of his brother’s death and Joe had no legal property interest in his brother’s body that could be infringed by the hospital’s actions.

The motion for summary judgment was denied; the hospital appealed. New York Appellate Judge James Catterson sustained the lower court’s decision and provided a three page summary of the long tradition of the natural law right of families to bury their dead by tracing the record from pre-literate cavemen through Phaeronic Egypt and on to Greece, Rome and English common law.98 Crucially for STL’s orientation week instruction, special reverence was paid by Judge Catterson to the words of Teiresias.99

Throughout the week, the facts and legal analysis involved in the Melfi opinion were compared to those in the Greek play. Both Antigone and John Melfi were denied the right to mourn their dead brother. Both viewed their brother’s naked corpse. Mount Sinai Hospital, like Creon, denied that a family member had a property right over the body of a brother.

In the first class, I introduced the American legal system and the legal practice program, which includes Orientation Week and three modules of instruction during the students’ first and second year of school. I then moderated an in-class discussion addressing the definition of “law” and then approached the question: “Where do laws come from?” In the first Antigone class, the play was introduced,100 and then the students were asked to identify the sources of law in the play.

In the second class, students were encouraged to explain role of lawyers. Many of the answers were naïve or simplistically idealistic;

disappearance of his brother did the hospital reveal what had been done. Dan Barry & Mel Gussow, A Noted Playwright Is Dead; His Body Cannot Be Traced, N.Y. TIMES, March 6, 2002, at B3.

98 See Melfi., 64 A.D.3d 26, at 32-35.

99 Id. at 33.

100 The topics of the first class were: Explaining the Project, Why Antigone?, Introduction to Ancient Greece and Greek Tragedy, Greek Gods and Goddesses, Pronouncing Greek names, Summary of the Play, Reading Literature, and Looking at Life as a Lawyer.
however, with assistance, they identified core activities of legal work. This introduced the first legal skill: fact identification. They were then separated into small groups and given twenty-five jumbled cards, each containing a fact from the *Melfi* case. Some were significant, but some were not. It was each group’s task to select and organize the significant facts based on chronology and thematic importance.

In class three, students addressed the question: What is a legal issue? They were asked to enunciate and draft the main issue of *Melfi* in pairs. Then, they sought to find the primary issues in *Antigone* through individual in-class writing followed by class discussion.

The next day, students learned to identify legal rules and worked to identify the conflicting rules espoused by the parties in *Melfi* and those relied on by Creon, Antigone, and the blind seer, Teiresias.

In the fifth and sixth classes, students were instructed on reading and briefing a case; the students identified parts of *Melfi* case in small groups, and then briefed the *Melfi* case in class. In the *Antigone* classes, students received an introduction to trial court procedures and began preparing their roles for the moot court activity.

On the last day, I spent considerable time introducing case synthesis and explaining how to organize legal arguments using IRAC (Issue-Rule-Application-Conclusion). After presenting a simple in-class exercise, the students were led through the organization of the legal argument in *Antigone*, using *Melfi* and Creon’s law as the rules to be synthesized and applied; thus linking the past and present.

A. *The Staged Reading*

On the third evening of Orientation, half of the students, under the direction of four Teaching Fellows, presented a staged reading of the play. The reading had two purposes: to promote more careful reading of *Antigone* and to encourage students to speak English in a vigorous manner. Standing on a stage and speaking to an audience challenges a person to project their voice; this may reduce the fear of speaking in law class less. That, at least, was our hope.

I took liberties with the script; I increased the number of speaking roles and omitted those who did not speak.

I chose the location for the staged reading while jogging across a neglected Greek style amphitheater, a semi-circle of tiered rows of stone benches with a raised stage in the center. The grass grew in the spaces

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101 Four recent graduates of American universities whom are native speakers of English were hired as Teaching Fellows the first year and six recent law school graduates the second.

102 The audience half of the class followed along with their scripts, thereby losing nothing if the reader mispronounced or whispered his or her lines. This afforded the audience a relationship with the play surpassing a mere silent reading of the script.
between the stones, contributing a false impression of their antiquity. In balancing the value of costumes, I selected simple symbolic accessories; Creon, Antigone, and Ismene each wore differently colored bright sashes to denote their nobility, the choir of elders wore black eye masks, and Teiresias carried a staff. The only prop was a rope used to bind Antigone’s hands after she was arrested.

As the sunset, the play began. Some of the students buried their faces in the scripts, and others spoke with force and emotion; a few even memorized their lines. The humorous banter between King Creon and the palace guard came to life in 21st century Shenzhen, as did the tragic presentation of the dead body of Creon’s wife.\(^\text{103}\)

B. The Trial

The final, and most exciting, event during Orientation Week was “The City of Thebes v. Antigone,” a moot court hearing based on the play. Such an activity and the intense preparation for it provided students with the imperative for a juridical analysis of the play, as opposed to a theatrical one. As noted by Douzinas, in his exploration of Lacan and Heidegger’s interpretations of the play, the conflict between two people as opposed to that between two contrasting principles or steps in a dialectic:\(^\text{104}\)

\[\text{[...]}\text{will always sharpen the issues, abstract the action, and present conflicts as right against right, or right against wrong, or even wrong against wrong. But in all cases, it is discourse against discourse, law against law, and antagonistic partialities that will circle each other and eventually will be sublated as the law becomes, in Hegel’s felicitous phrase, the embodiment and accommodation of reasons and need.}\(^\text{105}\)

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\(^\text{103}\) For the following year’s orientation, I scaled the reading down to six key scenes; therefore, making it possible for all students to participate in the end-of-week trial. While the initial reading had imparted the pathos, the deaths of Creon’s wife and son, the 2009 performance had some levity. Creon walked on stage cradling a backpack representing his son, then he delicately placed it on the floor and resumed his monologue, only to be told by the Herald that his wife had also killed herself. Creon left the stage and returned with another book bag in his arms; Dean Lehman quipped to me in a whisper, “You certainly can see the family resemblance between mother and son.”

\(^\text{104}\) Hegel famously suggested that a thesis and its antithesis could be reconciled through a higher-level synthesis. He saw Antigone as a playground for discussion of the dialectic. Creon and Antigone, poles apart, were wrong because they were one-sided, but at the time, each was right. G.W.F. HEGEL, 2 THE AESTHETICS, 215 (T.M. Knox trans., Yale Univ. Press 1975).

In a large lecture hall, I placed two tables end-to-end on a raised platform, and then covered them with purple velvet cloth to create the judges’ bench. Three fancy hand-carved wooden high-backed chairs sat behind the bench awaiting the presence of the three student judges. To the left were two chairs: one for a witness, and the other for a bailiff. Below the raised platform, I placed tables for the three prosecutors and three members of the defense between the defense and prosecutors’ tables stood a lectern. The half of the class who had performed the staged reading two nights before served as the jury.

When all were ready, the bailiff stood and pounded a large bamboo staff on the polished floor. Three judges, wearing blue and red graduation robes, somberly mounted the dais and marched to their seats. After sitting, they instructed the jury and witnesses to sit, and then introduced the jury to trial procedure.

The lead prosecutor opened their case with a carefully drafted summary of the facts, pointing out what their witnesses would testify to. Then the first witness, the Guard, was called. As he walked up to the witness chair, I whispered to myself: “So that is what the Guard looks like.” Maybe it was jet lag, maybe it was overwork, but I really believed that I was seeing the actual trial of Antigone. Upon being yanked back to reality, I was proud that the students achieved such a command of the facts and roles.

The Bailiff asked the Guard to raise his right hand and asked: “Do you swear and affirm that you will tell the truth, the whole truth, and nothing but the truth, so help you Zeus and all the Gods of Olympus?”

The Guard testified that he had seen the body of Polyneices covered with dust, cleaned off the dirt, and then saw Antigone approach, cry out, sprinkle on more dust and pour out libations over the body. Creon was then called to affirm that he had made a law forbidding the burial of a traitor; students prompted their disgust for Creon by shouting epithets as

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106 The school staff could not locate a gavel, so I resorted to using a bamboo pole found in the school garden.

107 The opening instructions included the following remarks:

Members of the Jury, before we begin the trial, I would like to tell you about what will be happening. This criminal case has been brought by the Theban government. The defendant has been charged by the government with violation of a city law; she is charged with intentionally mourning and burying a traitor. The defendant has pleaded not guilty to the charge and denies committing the offense. She is presumed innocent and may not be found guilty by you, unless all of you unanimously find that the government has proved her guilt beyond a reasonable doubt.

108 Various Chinese government units have begun experimenting with the idea of oaths for witnesses. In a court in Siming for example, the witness was required to put his hand on the PRC’s Constitution and state, “guaranteed by my consciousness, I will faithfully testify according to law, and I thereby guarantee to testify to the truth without hiding.” See LIANG supra note 37, at 64, 206.
he walked to the witness chair, prompting the Bailiff to pound the floor, and call for order in the court. This theatricality was intended to make a largely cerebral activity livelier. (Little did anyone know of the real courtroom drama that would occur later when the Defense called Creon.) Antigone was called next; she admitted that she had honored her brother with full knowledge that she violated Creon’s law.

The Prosecution rested their case and the Defense presented their opening statement. They had two contentions: first that Creon’s law was invalid because it conflicted with the superiori of laws of the gods; and second, that Antigone had been entrapped by Creon and his guards into committing the crime and therefore was not guilty. They called Teiresias, as an expert witness to present his views on the necessity of burial and the supremacy of divine law. The Guard was called and admitted that he had purposefully washed off all the dust from Polyneice’s body and waited in hiding, expecting that this outrage would bring forth a mourner.

Then Creon was called. He swaggered onto the platform, sat down in the witness chair, leaned back in the seat, and scanned the jury and the Defense with an arrogant stare. When the Bailiff attempted to swear him in, the king erupted in hostility and condescension: “I am your king. You have no right to ask me anything. I make all the laws and you and the judges, everyone here in this court room exists solely to serve me. I am your king.” The Head Judge told Creon he had to take the oath and he did reluctantly. When the Defense counsel questioned Creon’s right to make a law concerning the dead, Creon glowered at the attorney and told him that treason must always be punished.

After the Defense presented closing arguments, one of the judges gave the jury (all the students in the audience) instructions. The foreman, chosen from volunteers, stood, addressed the jury, and encouraged discussion. While most believed Antigone to be innocent, some held out for a guilty ruling. The foreman asked those who favoring punishment to explain their reasons; they agreed that although Creon was unlikable and his law unpopular, the law was still the law, Antigone had intentionally broken it, and must pay the penalty. Those in favor of a not-guilty verdict stated either that divine law invalidated Creon’s rule or that Antigone had been tricked to reveal herself and bury her brother a second time. Underlying either view, however, was a strong distaste for Creon and a resolve not to reward him for his bad behavior.

Interesting issues had emerged in the trial and during the discussion that were the result of legal analysis into the facts of the play, which might not have emerged from a literary analysis of the work. Each of these issues arises out of the question: Was Antigone guilty of treason?

The first issue addresses the legitimacy of Creon as king; he claimed kingship on the basis of his close relationship to Oedipus. Yet he was not a blood relative; he was merely the brother of Oedipus’ wife. In contrast, Ismene and Antigone were the direct descendants of Oedipus,
parallel in position to Polyneices and Eteocles. If Creon is not the legitimate ruler, are his rules enforceable? Given Western concern of the legitimacy of unelected governments, such as China’s, I expected this issue to have some piquancy, but the students indicated that they saw no resemblance with the Chinese government.

A second issue was whether Antigone had undertaken either or both burials. Of the first, there was no witness. Did Antigone commit this act? One possibility is that Ismene buried her brother. No less than W.H.D. Rouse, one of the greatest English translators of Ancient Greek texts including the Odyssey, was convinced that Ismene was the culprit.109

Other scholars have been equally convinced that the gods themselves buried Polyneices using a divinely controlled wind. The guards came upon the body covered with dust, and according to the first-day guard, there was no sign of footprint or tools disturbing the surrounding soil.110 The guard and Creon himself appear to support this view.111 A third scholar disputes this, claiming that the gods could not have conducted the burial. He bases this on the Guard’s testimony that Polyneices was covered with dust “as by one seeking to avoid a curse,”112 because gods would have no need to avoid a curse, they must not have been the ones that engaged in the dust covering.113

Looking at the guard’s statement from a lawyer’s viewpoint as witness testimony, one might ask whether the statements were biased. The guard risked punishment for allowing a person to interfere with Polyneice’s body; by stating that the dust was laid as though by one trying to avoid a curse, he is making an admission against interest since this confirms that a person, not a god, interfered with the body.

While both the Staged Reading and the Trial were successful, a number of students objected to the length of time spent. Also, the performers complained that they would have gained more from participating in the trial.

In response, the time after orientation week was spent revising the syllabus for both introduction to legal practice and the presentation of Antigone. Each class was revised to more clearly introduce a different skill that law students needed. As for the play, sections that provided limited


110 Ant. at 249-251.


112 Ant. at 256.

insight into the legal issues of interest were deleted; for the staged reading, six key sections of the play were identified, each to be assigned to one of the six student sections for volunteer performance. More significantly all the students participated in moot court simulations within their own sections, each playing a significant role in the court exercise.  

VII. THE GOALS OF THE ANTIGONE-IN-CHINA PROJECT

The concentration on Antigone was a good choice; it served as a skeleton to which a variety of skills, practices, and ideas could be attached, fleshing out the idea of law and its study. While some might argue that a celebrated American law case might have served better, these cases lack the numerous universal themes found in Antigone.

The initial reason for relying on Antigone was that it serves as an introduction to the classical foundation of Western law and culture. While Chinese students may rightly view Western nations, especially the United States, as a modern, post-historical society, our culture, particularly our legal culture, is potently influenced by ancient traditions and beliefs of the Greeks, the Romans, and other civilizations that are no longer existent. The influence of Roman, Germanic, Saxon, and Norman legal systems on the common law has been acknowledged by both scholars and jurists.

The influence of Greek literature on Western culture is evident. Homer’s Iliad and Odyssey continue to live today in the classrooms of the West; many of the thematic and stylistic inventions of Greece persist in contemporary high and popular culture. In addition, many of the most

\[114\] This year students will be divided into groups of ten or less, each with a teaching fellow assigned; the teaching fellows are all recent graduates of American law schools.

\[115\] See generally, J.M. KELLY, A SHORT HISTORY OF WESTERN LEGAL THEORY 1 (Clarendon, 1992). The author states, “(T)he Greeks were the first people—at any rate, the first of whom Europe retains any consciousness—among whom reflective thought and argument became a habit of educated men; a training for some, and a profession or vocation for others, not confined to observation of the physical world and the universe—in which the Egyptians and the Babylonians had long preceded them—but extending to man himself, his nature, and his place in the order of things, the character of human society, and the best way of governing it.”

\[116\] Id. at 39-78.

\[117\] Id. at 79-159.


\[119\] For centuries, Greek tragedy has been the meeting point of philosophy, literature, and ethics, of reason, form, and the law.” Costas Douzinas, Law’s Birth and Antigone’s Death: On Ontological and Psychoanalytical Ethics, in CARDOZO L. REV. 1325, 1336 (January 1995).
important themes in *Antigone* can be identified in Roman law and in later Western jurisprudential discussion. The Roman emperor Justinian, for example, began Book One of his famous Institutes with the sentence: “Jurisprudence is the knowledge of things divine and human; the science of the just and the unjust.” Although there is no evidence of derivation of Chinese values from Greece, elements of classical Greek values can also be found in traditional Chinese culture including the local power of kinship (*Zu*), the authority of men and the elderly, the influence of divine law, the power of divination, and the legitimacy in legal and political settings of supernatural explanations.

Studying classical Greek works provides students with the canon of culture on which our society rests, thus counterbalancing the impression left by Hollywood that the United States lacks cultural mooring. The study of a play may also be preferable to the reading of case law because the advocacy in a drama is meant to be spoken, not silently read. Students, who are not native speakers of English, are thus afforded a greater opportunity to read, hear, and speak in English than they might otherwise have.

But even if one is planning to introduce the study of American law to Chinese students through literature, why teach *Antigone*? First, many of the West’s greatest thinkers of the eighteenth and nineteenth centuries revered and championed the ideas of Classical Athens, while earlier generations of European intellectual elite had favored the Homeric epics, the nineteenth century extolled the Athenian tragedy. The chief of these works was *Antigone*; *Antigone* possesses qualities in the richness and varieties of the conflicts that is unmatched in any other Greek drama. The philosopher Hegel translated the play into German; he proclaimed that the

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120 Justinian Institutiones, Book 1, Chapter 1, Section 1.(O. J. Thatcher trans.) http://www.fordham.edu/halsall/basis/535institutes.html.


122 Id. at 54.


125 Id. at 2. Steiner presents in this work a detailed exposition of the apical place given to Athenian tragedy by Nietzsche, Kant, Heidegger and other giants of the period and Sophocles was the leading figure, a poet “of whom it is almost impossible to speak except through adoration.” Id. at 3 (quoting A.W. Shlegel, Lectures on Classical Literature).

126 Id. at 3.
play was the most satisfying and magnificent work of its kind, and that the heroine is "celestial, the most resplendent figure ever to have appeared on earth." Psychoanalyst, Jacques Lacan posited that Antigone continues to serve as a central archetypal figure in Western culture and that even if we are unaware of her story, "the latent, fundamental image of Antigone forms part of [our] morality."

More important than its literary value, Antigone serves as a dramatic repository for one of the central issues in jurisprudence: Whether a law to be valid “need conform only to formal criteria or whether its validity depends also on its not infringing some permanent, higher ‘natural’ standard.”

The play, however, possesses value beyond this. As George Steiner writes in his exhaustive analysis of the play’s continuing influence:

"It has, I believe, been given to only one literary text to express all the principal constraints of conflict in the condition of man. These constants are fivefold: the confrontation of men and of women; of age and of youth; of society and of the individual; of the living and the dead; of men and of god(s)."

To identify these conflicts and discuss whether law can be used to successfully resolve them, the play offers a fertile ground for inquiry.

VIII. PRODUCTIVE APPLICATIONS OF LEGAL THEORIES TO ANTIGONE

In addition to the more obvious lessons to be taught during Orientation, a number of deeper, more complex applications of legal theory to the play can be presented in class, depending on the direction of student discussion and interest.

A. Natural Law and Positivism

Antigone presents opportunity to discuss the nature of law. The distinction between natural law and man-made law has ancient roots in both China and the West. Aristotle posited the existence of two kinds of law:

“Particular law is that which each community lays down

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128 Supra note 125, at 40.
131 Supra note 124, at 231.
and applies to its own members: this is partly written and partly unwritten. Universal law is the law of nature. For there really is, as everyone to some extent divines, a natural justice and injustice that is common to all, even to those who have no association or covenant with each other. It is this that Sophocles’ Antigone clearly means when she says that the burial of Polyneices was a just act in spite of the prohibition: she means that it was just by nature.”

Is there a normative legal basis for rules or are laws an arbitrary reflection of one culture’s values? In Antigone, Creon fails to respect the laws of the gods; therefore, suffers from the deaths of his son, wife, and risks the destruction of the city of Thebes. Are there intrinsic rules that cannot be transgressed? This topic generated heated debate among the students. We discussed how these laws, if they exist, are to be found: I told them that some look into religious texts, while others examine common law precedent or legislative records to ascertain the underlying principles for rules.

B. Legality, Risk and Justice

First year law students, and the general public, sometimes accord the law too much power, believing that one can always consult a legal rule to sort out competing goals and make the optimal decision; some problems can be resolved with a simple cost-benefit analysis. What are the advantages and drawbacks of each choice? Other questions present dilemmas in which either choice is a bad choice resulting in moral wrongdoing. Should we park in a no-parking zone and risk a ticket? Should breach a contract and face litigation? Is a mother guilty of theft for stealing food for her starving child?

Martha Nussbaum, Professor of Law and Ethics at the University of Chicago, has written at length about what she calls the “tragic question;” she makes special reference to Greek tragedy, including

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133 Saul, the first king of Israel faced a similar challenge when his laws were deliberately disobeyed because they conflicted with divine law. (II Samuel 22:17). For a further discussion of the conflicts between divine law, normative law and human rights, see Elaine Pagels, Human Rights: Legitimizing a Recent Concept, 442 ANNALS AAPSS 57, 57-62 (Mar. 1979).

Antigone. Creon, she writes, thinks only of Thebes, ignoring the traditional rules of family obligation, while Antigone ignores the danger to the city, thinking only of her duty to her family member. Creon fails to recognize that the city is made up of families and Antigone fails to understand that for families to be protected, the city must be strong and its rules obeyed. Given the pre-established positions of Creon and Antigone, there is no way to avoid tragedy.

Hegel, writing about this problem, concludes that tragedy has political significance by reminding the viewer of the tragedy that can result when profound human values are in conflict. Plays, such as Antigone, therefore encourage lawmakers, and law students, to consider the possible irreconcilable conflicts that can arise when a clash of moral duties arises and how to avoid them through careful drafting of statutes, contracts, and other agreements.

Antigone also reminds lawyers that the conflict between values might be impossible to resolve. How can Antigone’s desire to honor her brother be compared to Creon’s need to impartially enforce a treason law? A cost-benefit analysis cannot be applied to such “incommensurable” values. Justice Antonin Scalia likened such a course as trying to determine “whether a particular line is longer than a particular rock is heavy.”

Current Chinese President Hu Jintao has publicly stressed the goal of "building a harmonious society". Students at STL told me that, unlike aggressive, individualistic people in the West, the Chinese prefer peaceful resolution of differences without recourse to litigation. It was

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135 Id. 29 J LEGAL STUD. at 1012; Id. THE FRAGILITY OF GOODNESS, 51-83.
136 Id. 29 J LEGAL STUD. at 1012.
137 Id. at 1013. Hegel wrote, “The true course of dramatic development consists in the annulment of contradistinctions viewed as such, in the reconciliation of the forces of human action, which alternately strive to negate each other in their conflict.” 4 AESTHETICS (T.M. Knox trans., Yale Univ. Press 1975).
138 Nussbaum, 29 J LEGAL STUD. at 1013.
142 Confucius objected to written codes of law, concerned that they would destroy the hierarchical social structure, which he espoused, “by giving the general populace written texts to which they could appeal.” Jack L. Dull, Epilogue: the Deep Roots of Resistance to Law Codes and Lawyers in China, The Limits of the Rule of Law in China 327-328 (Karen Turner, James Feinerman, and Kent Guy eds., (U. of Wash. Press, 2000 ). at. In addition, Confucius feared that dependence on written laws by rulers would lessen their reliance on the unwritten natural law principles that provided a moral
agreed that careful planning with attention to “unwritten laws” might avert the clashes that inevitably arise when basic values are thwarted.

Another perspective on cost-benefit analysis looks at the costs of the rule of law compared with to benefits. What costs? The Melfi case makes clear that rule by law does not easily result in justice. The controversy arose in 2002, when John Melfi brought suit against a hospital that had wrongfully donated his brother’s body to a mortuary school for embalming. Seven years later, the New York Appellate Court, in a well-reasoned 6,000-word opinion, affirmed the Supreme Court’s denial of dismissal of the action against the hospital, except for the dismissal of the brother’s claim for punitive damages, but the case had yet to be fully litigated. Creon’s lightning fast decision-making authority had the benefit of quick justice, but tragically lacked the advantages of reflection. However, the cost of rule of law for John Melfi was more than seven years of delayed justice.

Finally, in discussing justice, one must talk about civil disobedience as a leading theme in Antigone. Antigone’s actions are “public, nonviolent, conscientious, yet political[,]” and intended to persuade Creon to change the law. She freely accepts punishment. Her disobedience does, in fact, cause a change in the law. Although tragically too late, Creon issues new orders, runs off to bury Polyneices, and frees Antigone. Despite apparent constraints on discussing social justice issues and civil disobedience in China, this topic was one that STL students felt free to discuss, perhaps because the setting for the acts of defiance was in ancient Europe, rather than in modern China.

C. Feminist Legal Theory

Antigone offers law students access to another mode of inquiry: feminist legal theory. While other scholars have concentrated on the conflict between levels of law, some feminist scholars have examined the

compass. Id. at 328. Note similar view of US Supreme Court Justice Oliver Wendell Holmes, Jr. “The decision will depend on a judgment or intuition more subtle than any articulate major premise.” Lochner v. New York, 198 U.S. 45 (1905).

143 Melfi, 877 N.Y.S.2d 300 at 312.

144 It is to be assumed that the case settled out of court after remand, because no further case history can be found.


146 Rawls’ definition of civil disobedience, found in JOHN RAWLS, A THEORY OF JUSTICE 365 (Belknap Press, 1971). She admits knowingly breaking Creon’s law and is willing to accept punishment for her act.
blatant power differences between Creon and Antigone by using the tools of feminist theory.\footnote{147}

A reader cannot help but notice the significance of gender in Antigone. Creon complains that he is especially vexed that the lawbreaker is a woman:

“This woman knew the arrogance of her deed and laughed at her achievement. Were she to gain the upper hand in this and keep it with impunity, she would be seen as the leader and not I! Is she a man?”\footnote{148}

The king is convinced that his own masculinity depends on subjugating Antigone. Sophocles himself no doubt expected that the play would stimulate discussion about gender power differences.

Of particular interest is the focus on the less apparent gender differences between the two characters’ moral schemes. Based on the seminal work of Carol Gilligan,\footnote{149} some scholars have sought to explain the conflict in terms of the relative differences in moral structures between men and women.\footnote{150} According to Gilligan’s theory, men judge their actions with respect to abstract rules and principles, while women reason contextually, looking to meet the needs of all concerned.\footnote{151} Thus, Jack and Jack argue that Creon exhibits the standard masculine approach, relying exclusively on strict adherence to the law, with no concern for the effect of this brittle stance on his community or his family, while Antigone finds moral justification for breaking the law in order to care for her dead brother.\footnote{152}

While this approach is initially appealing, Judith Miller, in a scathing book review, deftly reveals “the pitfalls of a classificatory scheme that is binary in its conception and superficial in its application.”\footnote{153} As she points out, Creon passes the law forbidding the burial of traitors because he is concerned for the welfare of his community. Antigone, conversely, causes great pain to her sister, the only family member she has,

\footnote{147 Phyllis Goldfarb, A Theory-Practice Spiral: the Ethics of Feminism and Clinical Education, 75 MINN. L. REV. 1599 (1991)}

\footnote{148 Ant. 481-82.}

\footnote{149 CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (Harv. U Press 6th ed, 1982).}

\footnote{150 See e.g., RAND JACK AND Dana Jack, Moral Vision and Professional Decisions: The Changing Values of Women and Men Lawyers, 26,22 (Cambridge U Press 1989).}

\footnote{151 See generally Gilligan, supra note 149.}

\footnote{152 See Jack and Jack, supra note 150 at 62, 169.}

\footnote{153 Judith Leonie Miller, Making Change: Women and Ethics in the Practice of Law, 2YALE J.L. & FEMINISM 453, 465 (1990).}
and through her suicide prompts Haemon, her fiancé, to kill himself. And she does this because of her insistence that her moral code requires that divine law must be followed; as Miller points out, applying Gilligan’s gender-based moral theory requires subtlety. Just because Creon is a man and Antigone a woman does not mean that the theory can be simply mechanically applied to the situation. Instead, Miller concludes that Jack and Jack improperly see adherence to individual rights as a feminine and needs-based moral stance, while considering a desire for community wellbeing to be masculine morality.\(^{154}\)

The value of applying Feminist theory to Antigone is two-fold. First, it introduces students to the gender power issues and invites a discussion of moral stance as to whether it is in truth gendered. Second, it shows students the hazards in carelessly applying analytical legal theories to stories and reminds them of the maturity and diligence required where an obvious solution is not necessarily the correct one.\(^{155}\)

D. Law and Literature\(^ {156} \)

Requiring students to simultaneously consider a fictional Greek story and a factual New York law case encourages them to see the values, greatness, and weaknesses of each. Nonetheless, some may well argue that studying literature to understand the law is a not a scientific approach to legal education, that it would be far more useful to determine the precise needs of the students and teach those. Judge Richard Posner, for example, in his book, Law and Literature, complains that the classics are of limited utility as models for lawyers because they “are full of moral atrocities.”\(^ {157} \) As such, how can these stories guide lawyers to improve laws? Does Antigone edify? Will STL students become better lawyers from their intense exposure to this classic? Judge Posner would likely argue not, and his contentions would be persuasive. Creon is vain and close-minded. Antigone is selfish, rash, and scornful. The guard is cowardly and the Chorus, indecisive.

However, literature can serve a great purpose in the study of law, that is superior in many ways to a more scientific approach. As James Boyd White wrote, in a spirited attack on Posner’s book, “a particular image of science has established the criteria of rationality and meaning to

\(^{154}\) Id. note 57, at 464.

\(^{155}\) I introduced this topic briefly at STL. One student surprisingly acknowledged the challenge and noted, as an example, that it was difficult to accept that a law against domestic violence could apply against women as well as against men.

\(^{156}\) This section does not cover the engrossing topic of law as literature. See BENJAMIN N. CARDOZO, LAW AND LITERATURE 3-40 (1931).

\(^{157}\) RICHARD POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION 310 (1988).
which we instinctively turn.” As White argues, a scientific approach which mandates that the meaning of a text is only to be determined through rational analysis in which any valid propositions are both coherent and linear and can be subjected to empirical testing, ignores propositions of value that are both untestable and personal.

Ironically, this issue is at the heart of Antigone: the conflict between the positivists, scientific approach to law and the passionate advocacy for a heartfelt belief in divine law. Creon, king of Thebes, with his rational, purely logical approach to the law, is a tragic figure. Even without Antigone’s open defiance, Creon was bound to bring ruin to his city, his family, and himself with enforcement of an edict that both interfered with jurisdiction of divine power and, equally important, was criticized by the town’s inhabitants.

Antigone is also a valuable vehicle for exploring the differences between law and literature. It serves to assist law students in understanding how to read a story as a lawyer rather than an academic scholar. Both pore over factual details and attempt to interpret them. However, a lawyer generally confines himself to the sensory recollections of witnesses, but not their opinions or conclusions about those facts.

Lawyers generally represent the interest of a particular client and have a motivation to select and highlight certain facts rather than others to advance their interpretation of events. Literary scholars may have the same interests, but they have very different constraints than those found in the legal process. Lawyers need not prove anything absolutely. They only need to meet their burden of proof, which fluctuates depending on the issue and the position of the party. Reference to a representative academic dispute concerning the burial of Polyneices provides a good example of this distinction. Did Antigone commit two acts of treason by burying Polyneices twice, or did Ismene perform the first burial? Or, as a third possibility, did the gods perform the first burial by causing a wind to rise up that covered the body with a layer of dust, but without any sign of disturbance of the ground around the corpse? At least one scholar, W.H.D. Rouse asserted that Ismene established her culpability through her

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159 Id. at 2016-17.
160 Id. at 2017.
162 The guard reports to Creon, “No pickaxe was seen there, no earth thrown up by mattock; the ground was hard and unbroken, without track of wheels; the doer was one who left no trace.” Ant. at 253-256.
confessions to Creon. S.M. Adams argued in favor of divine intervention because he believed neither Ismene nor Antigone had enough time to reach and bury the corpse from the time they spoke together at the beginning of the play.

In contrast, J.S. Margon questioned the bias of the guard, positing that he denied the existence of digging in order to protect himself from an accusation of being inattentive while on watch. R.M. Rothaus, in attacking the arguments of Rouse, Adams, and Margon writes, "The answer is obvious. . . . Antigone buries Polyneices in accordance with the laws of the gods and thus with the aid of the gods.”

While academics can use a narrative to highlight a method of analysis or unveil a cultural prejudice, the fates of their fictional characters do not depend on the eloquence of the scholar. Such literary disputes may have no definitive outcome. Each side strenuously argues its position, with the reigning conceptual tool providing a fresh perspective for analysis be it deconstructionism, post-colonial criticism, or some other approach. In contrast a legal proceeding affords and demands a stark resolution to the specific players in the courtroom drama. Only one theory of the case will be judged to be correct and on that basis, a ruling will be made, which may have devastating consequences or rich rewards for one side or the other. Thus, comparing literature and law offers insights into the similar and differing methods and results of academic and legal analysis.

E. Logic, Rhetoric, and Intuition

I would add the conflict between logic and intuition to Steiner’s list of conflicts presented in the play. Creon shows great logical power in his syllogistic defense for his policies. In his first speech, Creon explains to the elders of Thebes the reasons for his edict that the body of his nephew, Polyneices is not to be honored with a burial because of his traitorous attack on the city.

To be a fit king, Creon asserts that he must speak out against injuries to the city, despite claims of friendship or out of fear over the result of his act. In fact, the city’s safety rests on all citizens, but Creon believes that only he can prevent anarchy and keep the city at peace through ruthless enforcement of all laws.

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163 W.H.D. Rouse, The Two Burials in the Antigone, C.R. 40-42 (1911), citing Ismene’s statement to her sister, “But amidst these trials of yours, I am not ashamed to make myself a shipmate in your sufferings.” Ant. at 540-541.


166 Rothaus, supra note 113 at 213.

167 Ant. at 183-211.

168 Ant. at 184 -189.
Several of the STL students noted Creon’s simple-mindedness, which they thought led to his misuse of power and resulting tragedy. His interactions with the guard, Antigone, Ismene, Haemon, and Teiresias each show a simplistic approach to complex challenges of ruling a city-state in early Greece. Creon, himself recognizes this fault at the play’s end.\(^{169}\)

Why was Creon so unfeeling and so foolish? In her masterpiece, *Responsibility and Judgment*, Hannah Arendt analyzes the motivations of Adolphe Eichmann and others who have committed wicked acts. Her conclusion was not that these people had a powerful desire to do hurtful acts, but that they had no depth of feeling. She discovered that many of the holocaust’s “evil deeds... (were committed by actors) whose only personal distinction was perhaps an extraordinary shallowness.”\(^{170}\)

After one class, a student suggested a similarity between these poles in jurisprudence and the current stance of the Chinese leadership. He remarked that Chinese leaders recognize that their policies for economic development may clash with traditional values and customs. It is for this reason, the student suggested, that President Hu Jintao spoke about his dedication to “a harmonious society.”\(^{171}\) Others may see a darker interpretation, in which the government seeks to forcibly stifle dissent to assure harmony. Thus, *Antigone* provides beginning law students with an initial exposure to the analysis of rhetoric and argument from a lawyer’s viewpoint.

The above are suggestions for modes of analysis and theories of jurisprudence that can be fruitfully applied to *Antigone*. Other literary works may provide similar attraction for use in law school curriculum.

**IX. RESULTS**

On the final day of Orientation Week, students responded in writing to an open-ended question about the value of the *Antigone* project.\(^{172}\) Only one student held that this project did not advance her understanding of the legal process. Several found the play difficult to understand and thought that this detracted from its usefulness. One commented that learning law from literature might be of less value because fiction is not reality. Another found that an ancient Western story was especially difficult for a person from China to understand and a shorter, Asian play might be preferable.

\(^{169}\) *Ant.* at 1344.


\(^{172}\) Written comments are in the author’s possession.
In contrast, some found that the play served as a useful vehicle for exploring the nature of truth, identification of legally significant facts, and witness credibility. Several noted the benefits of close reading that is demanded from a legal, as opposed to a literary, analysis.\footnote{173} For most, the play gave life to the introductory presentation of legal terms and process. “The study of law changed into a picture in front of me, which is vivid and colored.”\footnote{174}

Orientation Week had begun with an exercise requiring students to define the meaning of law. While the students gave many poetic definitions, the play taught them a new, more realistic way to look at law, one less romantic, but more useful.\footnote{175} It also introduced the idea that one can thoughtfully choose to disobey a law.\footnote{176} This sentiment was echoed by another student who commented that, although Creon was forced by Antigone, Teiresias, and the Chorus to change the law, in traditional Chinese law the king himself was the law and no one could challenge his authority.\footnote{177}

The staged reading gave students a better opportunity to understand the play by portraying a character, rather than silently reading the play as whole and trying to comprehend it as a story. A student who acted the role of Creon wrote:

“By acting out the play, we couldn’t help conducting ourselves like the victim, thinking from the perspective of the plaintiff or defendant… I tried hard to act like true Creon. My thoughts and behavior got closer and closer to Creon. Then I found that I knew what Creon is thinking. That does work!”\footnote{178}

\footnote{173} “When you read a story and try to use the facts to represent a character, like Antigone, who is charged with a death penalty, you look at every word [sic.] for meaning and support for your position. We ask questions like, ‘Does sprinkling water on dust mean the same thing as burying?’ ” Another student wrote, “This is the first time I asked so many questions to myself about a rule which [sic] seems simple.(From student response, written August 28, 2008, in possession of author.)

\footnote{174} Id. The same student concluded, “I hope we can learn the law by this interesting way in the future. It has much fun and makes a big sense.”

\footnote{175} One student wrote, “Law is a rule, not a thought or idea. Law is a rule of behavior, not a rule of philosophy. Law is law, not morality. Law is led by social behavior, not by a family or a party.” Nonetheless, he reverts to his earlier views in saying, “A law that cannot be realized will become a dead law, a mummy, a sculpture.”

\footnote{176} Id., One student expressed this as follows: “To Antigone, burying her brother is more important than her own life, so, even though she would be sentenced to death, she chose to bury him.”

\footnote{177} Id. This student concluded, “I think that’s the reason we Chinese nowadays still have a long way to go to improve our law.”

\footnote{178} Id.
The value of the project was even greater for those who participated in the court room simulation, as it forced them to examine their character’s testimony from both Creon’s and Antigone’s perspective. A student assigned the role of Ismene struggled with her position because she wanted to save her sister, but recognized that her testimony harmed Antigone. “I saw that testimony can be used very differently from different standpoints.” 179 The student who portrayed the blind seer Teiresias worked with her student attorney to carefully review all of the seer’s statements from the perspective of both the prosecution and the defense. According to her, this promoted a careful and critical analysis of the facts and application of the rules. 180 As a result of analyzing the play from a legal perspective, the students learned that conflicting rules and values can both be valid. This may have been one the hardest lessons.

Other than Dean Lehman, who daily explained and inspired the students about their path through law school, I was the only professor who directly interacted with students during the orientation week. During that time, I flew through the activities, sleep-deprived, jet-lagged, but jetting along on adrenalin and enthusiasm for the challenging project and charged up by the student’s surprising analytical prowess and outspoken involvement.

The novelty of the Antigone project may have jump-started the law school experience. Unlike other schools’ orientation weeks which may include a large dose of necessary technical information about locker numbers, library cards, and an introduction to law school, and legal practice involvement, STL’s Antigone Project immersed them in a 21-class-hour maelstrom of challenging intellectual and skills-related activity. On the first few days, most indicated that they were lost and confused. The struggle and insecurity increased through the third day, but by the fifth and final day, most came to appreciate the value of including this classic in the syllabus.

A. Three months later

Students still had difficulty with the inherent lack of certainty in Western law: that lawyers and their clients routinely rely on an impartial, or at least unbribeable, judge to choose between two competing, and apparently valid interpretations of the law. 181 A number of students stated that they would have preferred reading modern cases entirely, finding the distance between the play and modern legal practice to be too great. Quite

179 Id.
180 Id.
181 One student noted on the last day of orientation, “We can agree with Creon’s goal of building order in his city, but we can also accusing of being against God’s law in doing so. There’s no ‘correct’ opinion, just opinions of different values and tendencies. It’s difficult training for my brain to take different values into consideration.” Id.
a few expressed the desire to have received a general introduction to the aspects of common law, and more importantly, an introduction to American law schools. One wrote (and I suspect that others thought) that she was very anxious about her decision to attend STL rather than a law school in the United States. The large dedication of time and effort to an activity that seemed to have no relation to a regular law school curriculum and which was never explained as being typical of orientation week at other schools frightened her. Also, she feared that she had made a serious mistake and was wasting her parents’ money.

In contrast, another student held that students need a gradual period of introduction to law school. Modern legal cases and the study of law are so novel and abstruse (my words) that it is best to first teach a non-legal subject such as a theatrical drama, and then show students how to analyze it from a legal point of view. After that, legal writings can be introduced, and students can learn to read legal documents and appreciate their legal aspects.

Another student, who initially complained that Orientation Week was too full and made students nervous, concluded that Orientation week was much less demanding than the first three months of actual classes. However, in comparison, the first week was more exciting, and he missed the drama and energy.

Neither the students nor the doctrinal professors indicated that Antigone had provided specific assistance to case analysis in their first four classes: Property 1, Transnational Law, and Contracts 1 and 2. However, Dean Jeffery Lehman did believe that the project provided two benefits. First, throughout the first week, the play provided daily contact with a concrete and gripping story that helped illuminate the abstract ideas of legal analysis as they were being introduced. The principles of American legal practice are challenging for U.S. university graduates to initially comprehend. It is even more opaque to Chinese students whose educational and personal backgrounds have little experience in considering an issue from two conflicting viewpoints. They also exhibit a preference for poetic analysis over pragmatic pointedness. Since each of the main points discussed earlier in the week was attached to the final day’s analysis of Antigone, the play project gave students “a touchstone” that they could go to order the complex materials presented in their first doctrinal classes. Dean Lehman also believed that the project gave students a sense that they were part of something truly important. This

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183 Interview with Dean Jeff Lehman of Peking University School of Transnational Law, Dec. 9, 2008 (notes on file with author).

184 Students were taught intensive six-week classes in Property Law and Transnational Law.
sustained them during the first weeks of class, keeping them from giving up until they became adjusted or inured to the demands of law school.\(^{185}\)

X. **Reflections and Recommendations**

My biggest surprise was the extent of my own naïveté and prejudices before beginning the project. In particular, I feared more stringent and clumsier efforts at censorship. This preconception led to the decision to withhold the play from the students until the beginning of Orientation week for fear that some zealous official might regard the play as seditious.

Furthermore, the complexity and richness of Chinese legal history which came to my attention only after Orientation week, revealed that Chinese legal traditions possessed many commonalities with classical Greek practices. Just as Greek playwrights dramatized the punishment of several generations for the crime of a forbear, so in traditional Chinese law, the death penalty for a serious crime was inflicted not only on the wrongdoer, but on his entire extended family as well.\(^{186}\)

Like Creon, traditional Chinese rulers used harsh measures to enforce their values and restrict both objectionable actions and heterodox thought.\(^{187}\) This met the goals of both preventing rebellious actions and instilling socially desirable thoughts and values in the citizenry. Creon’s goals mirror this—he was seeking to prevent blatant treason, but he was also seeking to force the citizens to willingly follow his commands.\(^{188}\) Creon also shared the core Confucian ideal of familism where a ruler is the symbolic authoritarian father of his family by saying, “The man who’s good at managing the affairs of his household will be worthy also of being the ruler of his nation.”\(^{189}\) Such patriarchs also offered mercy, especially to those who confessed their crimes and expressed repentance.\(^{190}\) Antigone openly admits her crime, but expresses no remorse.\(^{191}\) As a result, she deserves her penalty by Chinese standards.

\(^{185}\) When asked for an explanation of why the students are so much more relaxed and carefree after three months of class, one student quoted a classical Chinese aphorism, “死猪不怕开水烫 (A dead pig does not fear boiling water).”

\(^{186}\) **Xin Ren**, *supra* note 40, at 41. Ren notes that the concept of “collective culpability” was revived under Mao Zedong, entire families and work units subject to punishment for one member’s crime. *Id.*

\(^{187}\) *Id.* at 42.

\(^{188}\) Creon: "For a while now there have been some people around her who tolerate my decree only with mutterings and by shaking their treacherous heads! No they did not bend their heads and place them in my yoke, as justice demands, and obey me!" *Ant.* 292-93.

\(^{189}\) *Ant.* 663.

\(^{190}\) *Id.*

\(^{191}\) *Ant.* 449-515.
A systemic flaw in *Antigone*, from a Western rule-of-law perspective, is the commingling of authority in the person of Creon. The king is the lawmaker, the head administrator, and the chief judge of Thebes. Since the city lacks the separation of powers between the branches of government, it cannot restrain Creon from punishing Antigone with an excessive sentence. Thus, the rule of law is limited by the king.

An analogy to current Chinese struggles over the place of “rule of law” in the governing structure might be made. As discussed above, the national government has promoted legal dispute mechanisms. However, most analysts consider these mechanisms to be seriously flawed by corruption and by badgering from Communist Party officials.

The launching of STL and the introduction of *Antigone* into orientation week was done with less preparation than felt comfortable. In keeping with the regional personality of “Shenzhen Time,” discussed earlier, speed was a top priority of the university administration. Therefore, although a detailed syllabus and lesson plan was created, it was based on less research and preparation than might have been possible in a more staid environment.

Although everything in Shenzhen is new, research and conversations with students indicate that the Chinese still have a deep appreciation and feeling of connection to long gone dynasties. While most American students might be dismayed by the antiquity of *Antigone* and might feel that classical Greece has little to offer today, this is not a view that most Chinese have about the Zhou Dynasty during which Confucius lived. Similarly, today’s enthusiasm for success in endeavors in Shenzhen may not be that different in quality from the urbanization and commercialization of cities that were found during the Song Dynasty.

The second surprise that both affirmed the relevance of *Antigone*, but squashed my confidence that the play would bring something radically foreign to China, was the discovery that the elaborate and robust codes of dynastic law or *li* (禮), originated as rituals relating to burial and to

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192 This commentator went so far as to conclude that “the only positive result from the rights advocacy movement, if any, is that it has tested the sincerity of the authorities with respect to the rule of law, revealing substantial evidence that Chinese leaders are unwilling to establish a rule of law. They merely use the law as an instrument to govern the people, and to crack down whenever and wherever they wish. They do not allow the law to restrain their power.”


194 One Shenzhen resident said, “Buildings go up amazingly fast here, but they tend to fall down quickly, too.” Personal communication to author by an unknown taxi driver in Shenzhen, China (Aug. 23, 2009).

“honoring the dead to receive the blessing of ancestors.”196 Confucius broadened ́li to include proper behavior generally, seeing law as guiding principles, relying on the underlying goodness of the individual and the centrality of status and rituals to regulate people’s actions, rather than litigation or the threat of punishment. Alternatively, the rulers of the succeeding Qin Dynasty emphasized positive law, ́fa (法), as enunciated by an official, such as the emperor.197 Future dynasties saw the recurring jurisprudential struggle between rule by propriety and rule by punishment. Over time, these opposing legal theories were synthesized into Neo-Confucianism which recommended both hierarchical social structures and a ritualistic sense of duties or obligations combined with ruthless punishments for minor infractions.198

Antigone showcases the same battle in the conflict between Antigone’s concern for ritual and Creon’s emphasis on obedience to manmade law. As I learned more about Chinese legal history, I discovered that Antigone was as much a Chinese play as was a Western one. There is a clash between Antigone’s suit for natural law’s promotion of relationships based on the authority of divinities and Creon’s advocacy for positivist, man-made law with harsh punishments for minor infractions, such as pouring dust and crying over a body.199 This mirrors the vacillating conflict between Confucianism and Legalism that has shaped Chinese legal structures and progress for the last 2500 years.200

As described above,201 Confucian teaching encourages obedience to rituals, rather than to laws. One can easily conclude that Confucius would have approved of Antigone’s insistence on performing burial rituals

196 Id. at 9.
197 RANDALL PEERENBOOM, CHINA’S LONG MARCH TOWARD RULE OF LAW 28 (2002). The scope of this article and the restrained hubris of the author do not permit an adequate discussion of the richly complex variations in classical Chinese jurisprudence. For example, a third perspective, that might be compared to the Western promotion of “natural law” developed in the Han Dynasty. Based on dao (道) the Way, as developed by the sage LaoTzu, this school of thought sought to curtail government power by making all members of society subject to “a law-based rule by grounding the sociopolitical order in a normatively predetermined natural order.” Id. 34-36. In addition to Peerenboom’s work, see also, Yuanyuan Shen, CONCEPTIONS AND RECEPITIONS OF LEGALITY IN THE LIMITS OF THE RULE OF LAW IN CHINA 20-44 (Karen Turner et al., eds., U. of Wash. Press, 2000).
198 HEAD, supra note 195 at 11.
199 Similar to the conflict between ́Li and ́Fa in Classical China, is the Classical Greek distinction between ́Qrmiv (Themis), the rules of the gods, and ́Dikh (Dikê), the laws set down by man. Werner Jaeger, PAIDEIA: THE IDEALS OF GREEK CULTURE, trans. Gilbert Highet 59-71 (Oxford, 1962).
201 See notes 19 and 20.
for her brother. He would also have expected Creon to finally realize the folly of man-made law, as the king stood over the bodies of his son and wife.

Another piquant similarity between the theme of *Antigone* and Chinese classical jurisprudence is the contention that human actions must conform to the dictates of heaven for peace to prevail. “When they [the decisions of a Chinese ruler] are contrary to Heaven, great upheavals occur.”202 Similarly, Creon refused to honor the burial rituals for the dead Polynices AND he ordered the burial of the living Antigone. Furthermore, Teiresias warned Creon, “[T]he avenging destroyers lie in wait for you, the Furies of Hades and the gods, that you may be taken by these same misfortunes.”203 Both of these acts angered the gods, causing them to reject the prayers and sacrifices made by the citizens of Thebes.204

The issue of the right to publicly mourn the dead is still in dispute in China and, to a lesser extent, in the United States. Encouraged by Confucian guidance, funeral rituals became an established and expensive part of the average family’s social life.205 This changed dramatically under Communist Party rule, whose leaders considered traditional burial ceremonies to be overly expensive and an aspect of “feudal superstition.”206

Nonetheless, the current government appears to retain the right to limit public displays of mourning as it did in June 2008 in the aftermath of the Chengdu earthquake by arresting more than 100 parents who were publicly mourning their children’s deaths and protesting shoddy school

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202 Smith and Weng, *supra* note 25 at 79.
203 *Ant.* at 1075-76.
204 *Ant.* at 1021.
205 Pioneer sociologist Sidney Gamble gave this account of a typical, elaborate Chinese funeral:

Preceding the catafalque is a long double line of men and boys carrying wreathes of artificial flowers, paper and cloth scrolls, embroidered silk umbrellas, flags religious symbols, paper figures of servants: lions, deer, storks, summer-houses made of evergreen branches, a portrait of the deceased. Usually the procession includes a sedan chair and an old-style Peiping cart, sometimes a paper rickshaw, paper horse and carriage, paper automobile. Musicians are part of the procession, and it is not unusual for families to have both the old-style horn and drum, and the modern band. Taoist, Buddhist, and Lama priests often walk in the large processions.

**SIDNEY D. GAMBLE, HOW CHINESE FAMILIES LIVE IN PEIPING** 213 (Funk & Wagnalls 1933).

206 A.P. Cheater, *Death Ritual as Political Trickster in the People’s Republic of China*, 26 Australian J. of Chinese Affairs 67, at 68 (1991). These strictures have proved effective over time in curbing the inherited enthusiasm for complex and costly funerals. This was especially true in the funeral and mausoleum for Mao Zedong. *Id.* at 81-97.
construction. “One photo taken of the protest shows two police officers picking up a crying mother as she clutches against her chest a portrait of her dead son.”\textsuperscript{207} The conflict between the duty to one’s family and duty to society remains remains an important issue in China.

Perhaps the most vital revelation for me was the reevaluation of my role as a “rule of law” missionary. As discussed above, many scholars, political scientists, and U.S. government officials see the export of American legal education as a crucial ingredient for the development of democracy in other countries.\textsuperscript{208} Implicit in this goal is the self-assurance that the United States’ way of law, government, and life is the best possible outcome for any nation.\textsuperscript{209}

The central aspects of U.S. law which include the reliance on case precedent coupled with legislative and regulatory rule making, the existence of a professional judiciary and bar, protection of individual rights, and the supreme status of a constitution are all seen as central to democracy. Some believe that other governmental systems are flawed or immature.\textsuperscript{210} However, even with the proper training in the U.S. legal

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\textsuperscript{209} At its most extreme, it seeks to metamorphose all foreign countries and their people into America and Americans. Even when not as excessive as Nebraska Senator Kenneth Wherry’s prayer, “[w]ith God’s help, we will lift Shanghai up and ever up until it is just like Kansas City,”(quoted in “Dealing with China: The Barbarians at the Gate,” Economist, Nov. 27, 1993, at 21), the benign condescension of many policymakers has resulted in the funding of numerous ill-considered and unsuccessful projects that have sought to transplant American law to foreign nations. My research regarding lawyers in the PRC (whose ranks have swelled from 3,000 in 1979 to approximately 175,000 in 2000) suggests that the national lawyers’ association, if not the bar more generally, is appreciably less autonomous than most observers would indicate. American and other foreign actors seem all too ready to embrace putative counterparts in China, little recognizing how closely tied some such entities remain in a corporatist fashion to state and Communist Party authorities.

\textsuperscript{210} Of the major bi-national initiative that stimulated the exchange of law school deans that ultimately led to the creation of Peking University’s STL, Yale University Professor Paul Gerwitz, the mastermind of the U.S.-China Rule of Law Initiative that was highlighted by President Clinton’s meeting with Chinese leaders, wrote glowingly of the one-sided benefits of the initiative. At a press conference in Beijing, he called it “a broad new channel [of cooperation] with the Chinese which we think is very significant and holds promise- at least promise - for producing some long-term benefits in improving legal institutions in China in a way that affects many aspects of life.” Press Release, Office of Communications, The White House, Fact Sheet: Achievements of U.S.-China Summit (June 27, 1998), 1998 WL 354254; Press Release, Office of the Press Secretary, The White House, Press Briefing by Paul Gerwirtz [sic], State Department, and Mark
practice, these other nations will not necessarily develop their legal systems into ones that closely resemble that of the U.S. They neglect to consider that the current legal system in the U.S. resulted from many intense, forceful, and even violent conflicts such as the American Revolution, the Civil War, and the Civil Rights Movement. However, U.S. experts, including the directors of the American Bar Association’s law reform efforts in China often expect that short seminars that provide a brief introduction to American law and procedure will transform China’s legal structure.

The failures of attempts to transplant U.S. laws to former Soviet states and “reforming” socialist countries such as China are sobering evidence of the dangers of hubris and cultural insensitivity. Seeing Chinese legal structures as flawed or developing examples of western paradigms obscures the reality of these structures. Even naming them with western labels limits the legitimacy of one’s analysis. For example, calling Chinese administrative tribunals—courts, and referring to the Chinese constitution as a constitution leads to unrealistic expectations. As one writer noted, it might be just as valid to call a Chinese judge a baseball coach as it is to call him or her a judge. The western conception of judge bears little resemblance to the duties and authority of current judges.


The long history of failed attempts to bring, first, Christianity and then democracy, to China has been well documented. See e.g., PAUL A. COHEN, CHINA AND CHRISTIANITY: THE MISSIONARY MOVEMENT AND THE GROWTH OF CHINESE ANTIFOREIGNISM, 1860-1870(Harvard University Press, 1963); JONATHAN D. SPENCE, TO CHANGE CHINA: WESTERN ADVISERS IN CHINA, 1620-1960 (Penguin, 1980).

As with all statements concerning a culture which has had a rich experience with rules and enforcement, many exceptions demand to be considered. For example, judges in the Qing dynasty often interpreted statutes and current cases by referring to and relying on precedent from prior cases. R. Randle Edwards, The Role of Case Precedent in
XI. CONCLUSIONS

For Creon, wisdom came too late. Similarly, it was only after the first week was over that I understood how best to present Antigone in China. Providing the play to the students in advance of orientation would have made the project more successful. While the students enjoyed the work, its complexity and unfamiliar language, setting, and story made it difficult for students to explore without prior reading. Therefore, if the STL administrators choose to use Antigone or another play as the theme of Orientation week, I suggest that students receive a copy of the script well in advance of the start of school.

While I would make no changes to the staged reading, in which all 27 members of Section A had speaking roles, I realized too late that many of the students in the moot court presentation had too little to do while others, notably the three prosecutors and the three defense attorneys had roles that were overwhelming in their scope. Therefore, I would parcel out prosecutorial and defense duties of witness examination by assigning a different prosecutor and defense counsel for each witness while keeping three supervising attorneys for the opening and closing arguments and for organizing each side’s case.

The reliance on English language instruction and common law, particularly American law, in legal education in China has advantages over other languages and systems. First, the English language and American law possess a vibrancy and depth, based on diversity, that no other language or legal scheme can match. English possesses an unparalleled capacity for clarity of expression due to the variety of sources of words and grammar. Consider the synonyms for ‘legal’ -- juridical, juristic, lawful, legitimate, licit, sanctioned – each have slightly different coloring and significance. Unlike many other languages, English also gives us the ability to choose active or passive tense in order to allocate responsibility: “George left the door open” v. “The door was left open.” In addition, the freedom to choose between multisyllabic Greek and Latin-derived words and pithy, short Anglo-Saxon synonyms permits stating the same idea but in tones so distinct that a different message is communicated.217

The world’s (and China’s) opinion of the United States has changed markedly since students performed Antigone at STL in August 2008. The global credit, mortgage, and banking failures are seen by many in China and elsewhere 218 as proof that market-regulated economic

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217 For a thorough and lively discussion of the primacy of English as the world’s most expressive language, see BILL Bryson, THE MOTHER TONGUE (William Morrow, 1990).

218 See, e.g., IAN BREMMER, THE END OF THE FREE MARKET: WHO WINS THE
systems are too unstable and violent to be suitable for the modern global economy where one country’s mistakes can quickly bring the rest of the economies to their knees. China’s continued growth is persuading other leaders that a planned economy is safer than the U.S.’s laissez-faire capitalist model.

China, with its great population, its rapidly developing infrastructure, its emergent professional military, and its rising standard of living seeks a leading role in global affairs. The United States is unlikely to be able to contain China’s ambitions to be an international power. As American hegemony in Asia continues to decline, the United States has two choices: either vainly to strive to be the mono-polar global leader or admit the viability and superiority of cooperation and clearly articulated protection of national interests.\(^{219}\)

Programs, such as that at Peking University’s STL, which offer intense exposure to American juridical mechanisms and to the value of “sympathetic engagement with counterargument” may profoundly influence China’s future leaders. The capacity of the American legal system with its checks and balances, its statutory and common law rule making abilities, and its sophistication of expression, can serve as a model for Chinese rule makers as their national and local governments mature.

However, one should neither act out of American jingoism or hubris, nor believe that the lessons learned by Chinese students will be the lessons sought to be taught. It is quite likely that China’s future leaders will gain their own insights into the common law and the American-style of dispute resolution and choose to incorporate these skills into their own culture’s legal system and business practices. It is however, unlikely that STL will turn Shenzhen into Kansas City. While Shenzhen officials had announced a plan to increase the autonomy of local courts and legislatures and to set up some local elections, provincial authorities limited the plans, apparently to promote social stability.\(^{220}\) Like Creon, Chinese government leaders have steadfastly limited vocal dissension.\(^{221}\)

Perhaps just as questionable is long-term value of teaching about, acting out, and litigating *Antigone* during the first week of the new school’s orientation. It appears definite that the play anchored the student’s understanding of the various skills taught and rapidly cemented


\(^{221}\)A large sign greeting visitors to Shenzhen warns, “Empty Talk Endangers the nation, practical work brings prosperity.” Photo posted at http://www.flickr.com/photos/58285552@N00/126779653/ (site last visited December 20, 2009.).
the students into tight-knit community. Less certain is whether the play provided lasting insight into the critical balance between heart and head, between the science and the art of law, and between rationalism and morality.

In the final line of the last scene of Antigone, Creon laments, “The arrogant pay for their big proud words with great downfalls and it is only in their old age that they gain wisdom!” This summarizes my most profound learning from presenting Antigone in China. The novel venture of a school of transnational law and this experiment in bringing an ancient Greek tragedy to 21st century Chinese law students can only succeed if approached with humility and a recognition that American law professors have as much to gain from understanding Chinese legal traditions and practice as Chinese law students do from learning about American law.

\[222\text{ Ant. at 1345.}\]