

**Constitutional Rights on Trial:
An Inquiry-Based Approach to Examining Rule of Law in China**
Catherine Richelieu Saunders

Context and Content: Establishing the Lesson

The Center for Advanced Research and Technology (CART), a charter school for juniors and seniors in high school, is located in California's Central Valley. CART provides students with a unique opportunity to spend three hours each day away from their regular comprehensive high schools. Students come to CART from every high school in two very different districts in the Valley: Clovis Unified and Fresno Unified. As a result, the school population is extremely diverse.

This environment makes the goals of CART all the more critical. CART students learn how to operate in a technology-based society through daily access to computers, the internet, industry-specific software, etc. The diversity of the student body can also lend itself to a challenging teaching assignment. As an instructor of Law in the Law and Policy Lab, my primary responsibility is to work with an English teacher and a Government and Economics teacher to integrate all three curricula with technology, in order to maintain student interest and facilitate authentic understanding of legal concepts. At the end of the school year, students have earned credit for five courses: Law and Policy, Government, Economics, English and Technology.

Although our focus is primarily the American legal system, we recognize that – in light of globalization and the information revolution - it is essential that high school graduates be able to examine the larger global community critically and empathetically. In fact, the Law and Policy Lab is a part of the “Global Dynamics” cluster at CART. Many of our students will never leave this small part of the United States. However, they will likely encounter people from other countries and cultures by remaining in California, a state which has close ties to the Pacific Rim. As such, my students' understanding of China and its role in the global marketplace is necessary to their understanding of change in their own local economy.

An integral aspect of the American legal system is a thorough understanding of the concept of “rule of law.” According to the US Department of State, the Chinese government's “efforts to promote rule of law are significant and ongoing” (Hibbits, 2003). While I was in China with the Fulbright group, I had many discussions with colleagues and counterparts in Beijing and elsewhere about the development of rule of law in China. Clearly there were some serious human rights issues in China. Certainly, there were murmurings of abuses of human rights by the government itself, but I could not wrap my head around the situation, nor could I see tangible examples. While I heard about government efforts to enforce the rule of law, no one seemed to be able to explain the Chinese legal system (which is, indeed, convoluted even for experts). How can the law be enforced if there are no clearly defined expectations for the government? In other words, without individual rights written down in black and white, how can the government be held accountable in a courtroom for violating those rights, assuming international law is not enforceable in a Chinese court?

I stumbled upon an English copy of the “Constitution of the People's Republic of China” in a Beijing bookstore, which I promptly purchased. As soon as a couple of my friends and I got into our taxi, heading back to the hotel, I ripped off the plastic wrapper and began to read aloud. We were all stunned: the Chinese Constitution contained as many – in fact, more – individual rights than the United States Constitution! I thought I had found a gold mine, and I had; but I later discovered that this document is widely available on the internet, which makes my lesson perhaps all the more ironic.

Many questions still remained. Clearly, population played a major role in every government action. Anne Thurston lectured about containment of chaos before we left American soil, and that concept – the government's commitment to stability – became all the more apparent when we arrived in Beijing. The more conversations we had in China, and the more I researched upon returning home, the more sharply I saw the opportunity cost of this containment of chaos; perhaps the government has to sacrifice individual rights in order to establish security, dissuade dissent, and maintain power.

The State Department asserts that the Chinese government has made concrete attempts to reform China's criminal justice system and curb local government corruption. The 1994 Administrative Procedure Law allows citizens to sue government officials for abuse of power or "malfeasance" (Chinese Law, 2006). Also, 1990s criminal procedures reforms have "encouraged the establishment of a more transparent, adversarial process" (Hibbits, 2003). The judge we spoke with in Hong Kong shared his opinion that people in Hong Kong recognize the judiciary as fair-handed, independent and transparent. Perhaps this system will influence the mainland judiciary.

Despite attempts to reform, China struggles with implementing the rule of law. As previously mentioned, the Chinese Constitution provides individuals with various fundamental rights, including due process; however, these "are often ignored in practice" (Hibbits, 2003). We hear and read about cases of this shortfall in the media, so I used two common examples and one which I personally encountered while in China for my classroom lesson.

Rule of law is a difficult concept for high school students to define, but they can often recognize when it exists if they encounter a situation in which it does not exist. This serves as the basic premise for my lesson. I kept the case studies very simple, as my students' understanding of Chinese history and contemporary society are limited.

As a teacher, I have found that the constructivist method of teaching, or facilitation, is highly effective in helping students gain perspective on potentially foreign or confusing topics. I sought to develop a lesson plan which would give students the opportunity to engage directly with the material, using the knowledge and skills they had acquired after six or so weeks in a high school law class. Rather than lecture on rule of law in the United States versus rule *by* law in China, I felt I had to help my students draw the contrast themselves.

The students needed prior knowledge of how to write a legal argument using the IRAC method in order to complete the assignment. The argument begins with defining the central legal issue in the form a question, followed by the rule of law, analysis, argument and a brief conclusion. The lesson required them to take on the role of a human rights attorney working for the United Nations Human Rights Council. I played the role of their "boss," and gave them the basic facts of one case of potential human rights abuse. Three unique cases circulated throughout the room. Because they have only had access to the British and American legal systems, they immediately fell back on their experience using the US Constitution to make an argument. This time, they had to use two documents which were previously foreign to them: the Chinese Constitution (I gave them an excerpt) and the Universal Declaration of Human Rights. Links to the documents were available on our class website. The assignment itself provides a more detailed explanation.

I was surprised by how well the students were able to establish the issue of the case and the rules of law they would use to argue in court. A class discussion on many of the topics addressed above followed the lesson. I informed the students that they would probably not be able to use their arguments in a Chinese court. In fact, their "client" might not even have the right to be present when evidence is presented or a verdict is issued. I showed them a short slideshow of pictures representative of each of the events, which generated good discussion. We spent about three hours of class time total on the lesson, including the wrap-up discussion and slideshow. The lesson proved to be effective in exposing them to some of the complexities of China's legal system, as well as some of the differences and similarities between China and the United States. At the end of the day, nearly all of the students could adequately explain the distinction between rule *of* law and rule *by* law.

This lesson served as a catalyst for other discussions of China in class. Students have brought in news articles on China, and we will use China as a comparative case study during our unit on capitalism next semester. I look forward to weaving more experiences from the Fulbright Seminar into the Law and Policy curriculum.

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Fulbright-Hays Seminar Abroad Curriculum Project
Catherine Richelieu Saunders

Essential Question

What is rule of law?

Understandings

Students will understand that...

- One of the functions of individual rights as outlined in a constitution is to protect people from the government.
- Rule of law ensures equal access to justice.
- Rule by law guarantees an uneven application of justice.
- China's legal system can be compared to and contrasted with the American legal system.
- China's judiciary is evolving as its society and government address basic issues related to human rights and rule of law.

Skills

Students will be able to...

- Write a legal argument using the IRAC method (issue, rule, argument, conclusion) with unfamiliar legal documents.
- Apply the Universal Declaration of Human Rights and the Constitution of the People's Republic of China to a legal issue.
- Make an oral argument on a contemporary legal issue in China.
- Defend a position on a contemporary legal issue in China.

Resources

See References page.

Materials

- Universal Declaration of Human Rights
- Constitution of the People's Republic of China
- One copy of the "letter" from the UN Human Rights Council (see attached .pdf document) per student
- Copies of each "Memorandum" for one-third of the class; Each student should receive a copy of one Memorandum
- Computers, if possible, for typing the arguments
- Slideshow of places addressed in the three cases to facilitate discussion

Methods

1. Begin by distributing a copy of the letter to each student. Go over it in class.
2. Pass out the cases randomly throughout the class. Go over instructions.
3. Students read case facts and write legal arguments on their own. Collaboration is encouraged among the students.
4. Students representing each case have the opportunity to present their arguments to the class.
5. Class discussion comparing Chapter II of the Chinese Constitution to the Bill of Rights of the US Constitution and the Universal Declaration of Human Rights.
6. Teacher lecture / slideshow on contemporary China and the issues facing China's judiciary (see "Context and Content: Establishing the Lesson"). Teacher shares personal anecdotes and experiences in China along with slides.
7. Class discussion on the differences between application of the US Constitution in America and the Chinese Constitution in China.
8. Class comes up with definitions of "rule of law" and "rule by law."

UNITED NATIONS HUMAN RIGHTS COUNCIL

United Nations Headquarters / New York City, New York

13 November 2006

To Whom It May Concern:

Congratulations on your recent graduation from Harvard Law School. On behalf of the Human Rights Council, I would like to welcome you to the United Nations. We are busy at work around the world promoting peace and security, economic and social development and, of course, human rights. I would like to give you your first assignment with the Council without further delay.

There have been some claims of human rights abuses in Beijing, China, and you have been chosen by the council to travel to Beijing and argue a case in a Chinese court. The government in Beijing has agreed to allow this as a show of good will and cooperation with the United Nations.

China has signed the Universal Declaration of Human Rights, a document containing international laws giving rights to humans. China also has its own Constitution, an excerpt of which I have included in this packet. **You must use both of these documents.** There is a copy of the UDHR in your *Street Law* book, and links are available online. You must use at least two “rules,” but keep in mind the more law you use, the stronger your case. Structure your argument using the IRAC method, with which I trust you are familiar. Should you choose to use more than one rule in your argument, you do not need to rewrite the issue. Simply structure it I, R, A, R, A, etc., C.

Your argument will be reviewed by your Chinese counterpart in Beijing, and then translated into the Chinese for review by the judge. Do not be discouraged if you are criticized by your counterpart. The Chinese legal system is different from our own.

The facts of your case are enclosed in this packet.

Best,

Catherine R. Saunders
Associate Director, UNHRC

Cc: Kofi Annan, UN Sec Gen

Enc: Memo, Case Facts
Constitution of the People’s Republic of China, excerpts

M E M O R A N D U M
UNITED NATIONS HUMAN RIGHTS COUNCIL

TO All Members of UNHRC Special Commission on China – Beijing Team

FR Catherine R. Saunders, Associate Director, UNHRC

RE Li Family

Tiananmen Square is a massive area in the middle of Beijing, China's capital city. The Square was built facing the Forbidden City, the old home of the Chinese Emperor, now a tourist attraction. The Square is now flanked on one side by the building where the National People's Congress (China's lawmaking body) meets.

In the spring of 1989, thousands of students began to gather in the Square in protest of the Chinese Communist Party. They demanded democracy in China, and as the movement gathered strength and popularity, the numbers of students rose to nearly one million. Students sat in the Square for days and weeks, and the longer they sat, the more demands they had.

In June 1989, the government lost its patience with the people. It declared martial law in Beijing, which gave the military the authority to remove the protesters by force. Tanks rolled through the streets of Beijing and into Tiananmen Square.

It is unclear how many university students were killed by the government.

One of the students killed was Fred Li, who went by his English name. He was one of the student organizers. His family, which still consists of his two parents, is suing the government for the wrongful death of their son. Mr. and Mrs. Li believe their son had the right to protest against the government.

The government has not responded to their requests for meetings.

The Universal Declaration of Human Rights can be accessed at
<http://www.un.org/Overview/rights.html>

The Constitution of the People's Republic of China can be accessed at
<http://english.people.com.cn/constitution/constitution.html>

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TO All Members of UNHRC Special Commission on China – Beijing Team

FR Catherine R. Saunders, Associate Director, UNHRC

RE Lau Family

Lau Junping (in China the family name comes first) is a nine-year old girl living just outside Beijing. Her parents work in a clothing factory. They left their village in another province (similar to a state) when Junping was just five years old, and her brother was only two years old.

When the family arrived in Beijing, they tried to enroll Junping in the local public school. But they were told they could not enroll their daughter because they did not have the proper papers. In particular, the family does not have proper birth certificates because their children were born in the countryside, and they do not have a “one-child certificate,” because they have two children. Although the government requires that families in the cities have one child, the law is generally overlooked in the country.

Junping rides a bus for three hours each day to attend an elementary school, which is operating illegally. The school is funded by mostly international donors. However, it has been shut down several times by the government. Mr. and Mrs. Lau want to send their son to school as well, but he has some health problems, and they worry about him riding a bus for three hours a day. The local public school, which has rejected the Lau children, is within walking distance of their home.

Mr. and Mrs. Lau believe their children have the right to be educated in a government school.

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M E M O R A N D U M
UNITED NATIONS HUMAN RIGHTS COUNCIL

TO All Members of UNHRC Special Commission on China – Beijing Team

FR Catherine R. Saunders, Associate Director, UNHRC

RE Falun Gong

Falun Gong is the practice of five meditation exercises, and Falun Dafa is a set of religious practices. The people who believe in these things and practice them belong to a group known in China and around the world as Falun Gong.

In 1999, China banned the Research Society of Falun Dafa and the Falun Gong organization under its control after deeming them to be illegal.

The Chinese newspaper, *The People's Daily*, reported on July 22, 1999 that “the Ministry of Civil Affairs said that according to investigations, the Research Society of Falun Dafa had not been registered according to law and had been engaged in illegal activities, advocating superstition and spreading fallacies, hoodwinking people,...creating disturbances, and jeopardizing social stability.”

Since then, Falun Gong and Falun Dafa have been banned in mainland China. They are allowed to practice on the island of Hong Kong.

Members of the group in Beijing believe they have a constitutional right to practice these beliefs.

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The practice of Falun Gong should be allowed in China

Issue:

Falun Dafa is a set of religious practices that are said to bring better health and inner peace. Falun Dafa is a spiritual movement that includes Buddhist principals, Taoist principles, and healing and meditation techniques. Should the people of China be allowed to practice Falun Gong?

Rule:

Chapter 2 Article 36 of The Constitution of the People’s Republic of China states, “... No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.”

Argument:

The people of China should be allowed to practice Falun Gong, and Falun Dafa freely. According to Article 36, as long as they are not impairing the health of citizens or interfering with education they should be allowed to practice whatever religion they want.

Rule:

Chapter 2 Article 33 of The Constitution of the People’s Republic of China states, “All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China. All citizens of the People's Republic of China are equal before the law...”

Argument:

According to article 33, the people of the Republic of China have the same rights to practice Falun Dafa as others have the rights to practice a different religion.

Rule:

Chapter 2 Article 35 of The Constitution of the People’s Republic of China states, “Citizens of the Peoples Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and demonstration.”

Argument:

Article 35 allows the people of the Republic of China to freely express the way they feel and demonstrate any religious beliefs they may have.

Rule:

Article 18 of the Universal Declaration of Human rights states, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Argument:

The Universal Declaration of Human rights gives every person the freedom of thought, and the right to believe in whatever they want. It gives theme the right to practice, worship and observe the way they want.

Conclusion:

The people of The Republic of China should be allowed to practice Falun Gong or Falun Dafa because it is their right according to the Universal Declaration of Human rights and The Constitution of the People’s Republic in China. All people have the right to their own opinions and beliefs meaning that we can practice religion in our own way.

Government Liability in the Death of Fred Li

Issue: Is the government liable for the death of Fred Li?

Rule: Article 41 of the Constitution of the People's Republic of China states, "Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law." In other words, the people of China have the right to protest against the state and if they have suffered losses through the infringement of their civil rights then they have the right to receive compensation for it.

Argument: According to Article 41, Fred Li had the right to criticize the government and his parents have the right to just compensation for their loss if the government did in fact infringe on their sons civil rights.

Rule: Article 35 of the Constitution of the People's Republic of China states, "Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration." In other words, the people of China have the right to free speech, freedom of the press, to assemble, to associate, and to have a procession and a demonstration.

Argument: According to Article 35, the people of China have the right to assemble and demonstrate, and have the freedom of speech, therefore Fred Li was involved in a legal demonstration and he had the right to his own opinion.

Rule: Article 19 of the Universal Declaration of Human Rights states, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." In other words, everyone has the right to express their opinion without interference from anyone, and they can use any media they want to express that opinion, no matter what.

Argument: According to Article 19, Fred Li had the right to protest against the government without interference.

Conclusion: Fred Li had the civil right to protest against the government through the Universal Declaration of Human Rights as well as the Constitution of the People's Republic of China, and was unjustly killed. Because the government infringed on their son's civil rights, the government is liable for his death, so Fred's parents have the right to just compensation for their loss.

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