

Fostering Critical Engagement and Cross-Cultural Comparison
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ISL Project Results and Examples

(1) Nearly all students developed better basic analytical skills.

In their first essays, about a third of the students simply repeated the law in their own words, failing to do any real explanation or analysis. In the second set of essays, many of these more critically analyzed the law, pointing out inconsistencies, loopholes, or ambiguities. Others, who had already engaged in closer readings in their first essays, improved them in their second efforts. They also were more likely to consider historical-social context or engage in cross-cultural comparison of other legal systems. E.g. A – I.

(2) Half of the students developed better critical analytical skills (i.e., how they make judgments or ascribe values to laws). However, nearly all students showed a better use of evidence.

In the first set of essays, most students viewed the law as unfair, either in discriminating against foster parents or non-foster children. From the first essay to the second, about half the students maintained their previous positions regarding evaluation of the law itself (e.g. E). However, in the second essay, many more students really argued for their positions or presented them in more nuanced or qualified terms. In some cases this had the effect of neutralizing earlier (more) strongly expressed opinions and judgments (e.g. B, D and I). This was partly a function of their increased analytical treatment of the law. Of those who continued to view the law as unfair, many added explanations of why the law would have been viewed as equitable in its socio-historical context. There was an overall increase in the use of knowledge gained throughout the course in both basic and critical analysis (e.g. A and B.) Very few students demonstrated no change at all in terms of content or form of their analysis.

(3) Students' meta-reflective processes on their reading were uneven.

In reflections, some students were able to effectively trace their own developments and changes in analysis in terms of deeper, conceptual shifts (e.g. B and D), while others focused more literally on the substantive changes and less on what those changes represented (e.g. E). A few students overstated the differences between first and second analyses.

Selected Descriptions of Essays and Reflections

A. A reflected on the different conceptual frames that he'd used when analyzing the laws, noting that the first time round he used a purely "hierarchical perspective" taking for granted that the father was the head of the household and master of his children, whereas the second time around he used a more neutral "property perspective" in which he carefully teased out the possible meanings of the various property arrangements implied by both parts of the law. What A did not note is this: in the first analysis, A spoke in more value-laden terms about the hierarchical arrangement (effectively patriarchy) and the law (deeming it fair), whereas in the second he did not do so.

B. In B's first paper he wrote about how the law seeks to maintain a certain order of social relations that allows fathers to "steal" from their children. He concluded that the law preferred to uphold "biological" hierarchical family relations, as opposed to adoptive ones. In his second paper, B spent a lot more time on wondering about the inconsistency of the apparent social agenda of this law in light of what he knew about the tendency of the other laws in the code as well as the legal and political philosophy of the Ch'in empire in which the laws were enacted. He set this law in the context of the many other details about punishments for theft and cases of thereof. He also compared it to other legal cultures (e.g. Hindu) in which privileged parties enjoyed special legal protections and exemptions (e.g. Brahmins) and immunities from punishment/prosecution. In this second paper B also engaged much more forthrightly in a contrast of the competing legal, political and social moralities of Ch'in and contemporary US cultures, finding this law "unfair" if one were to apply contemporary standards, but also recognizing the differing concepts that may have made this law "fair" by ancient Chinese standards.

In his reflection B noted that he had engaged much more in analysis of the ideals and values that the law embodied in his second attempt. He rightly observed that in the first attempt he focused much more on the plain and obvious language of the law, and that in the second round he centered more on the unspoken context of values that could explain the law and its formulation. His assessment of his judgment of the fairness of the law is best quoted in his own words: "I have to also admit that my notion of fairness has evolved, more maybe more fittingly, has been complicated. Naturally when there are more factors to take into account, reaching a judgment of fairness is that much tougher. To declare this law blatantly unfair would seem a little shortsighted to me now. Instead, the realistic thing seems to be dissecting the laws and declaring which notions are fair in the context of which times and which systems they came from."

C. C's first paper was very nuanced: while she confessed that she found problematic the distinction between "biological" and "foster" children, she nonetheless noted how the law tells us as much about the definition of family in ancient China as it does about law and theft. In her second analysis, she demonstrated her greater familiarity with legal analysis by distinguishing between "ownership" and "possession" with respect to property law. She maintained her former concerns about the law but in arguably more nuanced terms, supporting the policy of protecting children but questioning whether "natural" parents are any more likely to do so than "foster" parent. However, her ultimate reflection was, "Most importantly, when expressing my opinion I placed myself in a Ch'in mindset and decided that I thought the law was fair since it protects children from being adopted by those who act out of their own self-interest and is in alignment with the values of that time."

D. In D's first paper she pointed out that the law shows the relationship between different units, whether that of family or of individuals. She understood the effect of the law to be the creation of the foster child as another kind of independent unit (with legal standing against the "natural family unit"). She saw the law as expressing lesser right for children in the biological family unit in its aim to promote the "sacredness of the natural family" rather than its "low regard for natural-born children." She concluded that "this law should not be interpreted as unjust towards biological children, but simply an act of protection for foster children." In her second paper, D compared the law to ancient Jewish law (specifically the Mishnah), focusing particularly on the legal notions of vulnerability and punishment for

different categories of victim/perpetrator. In these terms she understood the foster child as more vulnerable and thus in greater need of legal protection – hence the greater punishment when injured. Her concern was different she worried that without specifying the requisite intent or defining theft more closely, foster parents might be unfairly punished. In her reflection she observed that her negative assessment of the law’s differential treatment of foster vs. natural children and children’s interests v parents initially was significantly altered when she considered questions of legal status. It was apparent to me that this more nuanced analysis allowed her to appreciate the potential subtleties written into the law rather than immediately jumping to evaluate it negatively. This is not to say that D denied herself her instinctive drive to prefer equality (e.g. for foster vs. other kinds of children), but rather her pausing before making the judgment allowed her to delve more deeply into the culture at hand and to draw out the complexities and subtleties of the law.

E. E. found the law fair, seeing in it on the one hand a purpose of protecting foster children’s possessions (or possibly inheritance) from rapacious foster parents, and on the other hand as instilling family values and a seamless family unit in other cases. “It is meant to protect children if the parents are being corrupt, and it’s meant to protect the parents if their children are being selfish.” In his second analysis he paid much more attention to the specific legal formulation, including his assumption (shared across almost all the students) that foster vs. father means biological vs. not. He considered the additional category of the adoptive father and where that would fit into the law as presently written. He further considered whether positivist or natural law philosophy best describe the values that underlie the law, nonetheless concluding that, “the statute is not universally adequate, and in my opinion does not promote justice.” After a much more nuanced analysis E. reversed his opinion about the law.

F. In F’s first paper she pointed out that while the law may have seemed fair and obvious in its social context, it does not to her in her Western cultural context in which she views “families of any sort as equally important and valuable” and that theft is theft “no matter the relationship.” In her second paper, she made the interesting observation that the law distinguishes between what is considered “family” and what is just a “household” and that the law attempt to define the outer limits of both. She notes that there may have been other exceptions to theft laws (or immunities) and that to understand this exception it would be good “to look at the others to see how it would play out legally.” In her reflection she observed that “the main difference I noticed was that before I only talked about what the law literally said. In this assignment, though, I talked also about what the law would have also inferred for other relationships within and without the family. I talked more about what the law was like in relation to other laws of the time period, and how it fit in within the entire Ch’in legal system.” F further observed: “All the laws and legal systems we have looked at in class taught me how to look at individual laws but then to also relate them back to the system and society in general. I was able to look at this law and then think about more than just what it literally says.”

G. In G’s first paper he read the law as conferring ultimate power upon the father and as undermining “one of the most basic human rights of maintaining property.” Viewing it as unethical to steal he cast the law as unfair and as negatively impacting family dynamic. He further stated “A father should not be allowed to steal from his children because he should have already earned the love and respect from them to be given whatever it is he deemed necessary to take. By instituting this law, the father is not obligated to create a loving relationship amongst his family; instead, he is enabled to view his family as slaves that he may utilize for as much material benefit as he desires.” In his second paper, G’s tone and analysis were significantly changed; even as he still questioned the law, he set his own beliefs in historical context: “This notion of a father being the solo authoritarian in a family is not something that I consider to be very far removed from modernity. It was only in this recent century where women and children began to obtain a more equal status in society and the father has always been the dominant familial figure.... I don’t think this law would be fair in today’s world because the family does not always consider itself one entity.”

H. In H's first paper he claimed that the distinction regarding theft between fathers and foster-fathers is "based upon the premise of a natural right for parents to discipline their children. If a child misbehaves, it is the parents' duty to show the child their wrongdoing, and punish them to make the lesson sink in. One very common method of this would be to take away a valued toy or possession. ... In this case, the law is actually protecting the child. It is common practice for foster parents to take advantage of foster kids. Sometimes they do this out of greed, taking valuable possessions that had belonged to the child's biological parents and sometimes it is through an overly harsh sense of discipline, for they have no love for a child that isn't theirs." Despite this, he thought that the law was unfair because it might deprive good foster parents of power to discipline child. In his second paper, H abandoned this reasoning entirely, focusing instead upon a close reading of both clauses of the law and discussing what this may have meant about the state of social and family relations at the time the law was made.

I. In I's first paper he claimed that the law "immediately asks the questions: what is family." He then proceeded to delineate the law's answer in biological and hereditary terms. He contrasted this was contemporary notions of family which he deemed broader and found the ancient Chinese law wanting in this regard. In the second paper, I. wondered about whether the law was a hypothetical or based on real events, seeing it as the latter. He discussed the social and familial context that may have triggered questions and cases of this kind to arise. He concludes that the ensuing definition of family "may seem cold and rigid, but to the ancient Chinese this law made sense, as there needed to be some defined power structure and hierarchy, as well as some legal definition as to what constituted a family." In his reflection, I. accurately pointed out that while in the first paper he focused on the "what does this law mean" but in the second he dealt more with the question "why did this law arise?" He concluded that "this attention to the origin of law is most likely spurred on by studying different legal systems that have distinct and different origins and beginnings."