

Case Study: Perceived Differences in Legal Ethics of People's Republic of China Lawyers and American Lawyers

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Abstract:

This case study is based on the life and work of Li Guiying, a Chinese woman who became a lawyer, judge, and law professor. In the past 30 years, she was faced with ethical dilemmas while defending her clients and ruling as a judge. These issues are discussed and her standards are compared with U.S. legal ethics standards.

Basis of the Case Study:

This research is based on interviews and email questions directed to Li Guiying, a lawyer, past judge, and present professor of law at the China University of Politics and Law. (In accordance with the Chinese custom, I refer to Ms. Li by her surname first, and her first given name last.) These are experiences and responses received from her. I offer these experiences as truthful. I hope I have not misconstrued or misinterpreted her statements. I conducted the personal interview research in May and June of 2002 while teaching a business law class for the Beijing Institute of Machinery, in Beijing, China.

Background of Li Guiying and the Political Climate:

Li Guiying was born in Changchun in Jilin province in the People's Republic of China (PRC) on April 24, 1942, (Travel China Guide, 2002). She was raised in Changchun in northern China.

When it was time for her to choose a career, she was influenced by a neighbor who had been a judge. In China, most law degrees are undergraduate degrees. Ms. Li decided to pursue law. She started Jilin University in Changchun in 1962.

Mao Zedong had started his Great Leap Forward just four years before in 1958. It was to continue for five years. This Great Leap was conceived by Mao to modernize the economy. It was a plan to place all people in communes, where the welfare of the individual was placed into the commune's jurisdiction. However, the Great Leap Forward experienced a back step as China experienced catastrophic crop failures in 1959-1960. This famine is said to have killed over thirty million people (Becker 1996).

Hunger and chaos were real, and law was not a high priority subject for the youth of China. Ms. Li was one of approximately one hundred

students in all of China to pursue a bachelor of law degree during this time period. She continued her studies for five years, graduating in 1967. She was young and fresh out of college, ready to pursue law in 1967. However, as the time well indicates, she was willing, but Mao was not ready for her legal contributions. Mao Zedong's Great Proletarian Cultural Revolution was at fever pitch when she graduated. China was plunged into a state of civil war (Frost 1998). Ms. Li was forced to work as a farmer and factory worker in 1967-1968. From 1968-1972 she was reassigned as a teacher in a junior school, which includes eleven to fourteen year old students. (Li 2002).

In 1972 Li Guiying finally used her law training as a judge's clerk until 1975 when she became a judge in Daqing, located in the middle of the Songlen Plain in Heilongjiang province (Xiaodong 2000). This is a city north of Changchun. In 1982, she retired as a judge and practiced law, which she has been doing ever since.

In 1985, expanding her legal horizon, she moved from northern China to Beijing and became an assistant professor at China University. Ms. Li has been at China University ever since.

As a professor in 1989, Ms. Li took water to some of her China University students staged at Tiananmen Square. Student activists were demonstrating for democracy at Tiananmen Square, but were massacred by the Chinese army. It was estimated that 5,000 were killed on June 4, 1989 (Boudreau 1991). That was her only involvement in the Tiananmen Square incident. Her husband, Wu Yu Chen, did not even dare approach Tiananmen Square for he would have lost his job (Li 2002).

Ms. Li achieved full professor status at China University of Law and Politics in 1999. Her specialties include L.L.M. tutor; and her major research field is jurisprudence of attorneys. (Law Department, 2002).

Her Stories:

These are Li Guiying's stories. They include some of her most heart-rending and memorable experiences as a practicing judge and lawyer in the PRC.

The Divorce—the Seventies:

In 1979 Mr. Sun Chang Min appeared before Ms. Li to obtain a divorce. PRC law at the time dictated that if the wife did not want a divorce, the husband could not obtain one. Mr. Sun had been asking for twenty years to obtain the divorce. The couple appeared in her courtroom, and Ms. Li did not grant the divorce. The wife had brought a vial of DDT and threatened to drink it and kill herself if Ms. Li granted the divorce (Li 2002). Ms. Li supported the rule of law and did not grant the divorce.

The Young Rowdies—the Eighties:

Soon after she retired as a judge, Ms. Li represented an ill-fated criminal in 1983. Around that time period, two groups of teenage boys got into a fight. One of the teens was killed. Ms. Li represented the teen who allegedly killed the victim. The cultural environment dictated that someone should pay for the crime. Someone was ultimately responsible. The teens were all underage except one. The police arrested the oldest teen in the group; an eighteen-year-old young man. He was charged with killing the slain boy. Evidence showed that the eighteen-year-old was not the guilty person. He did not kill the younger teen. But he was charged with the crime, convicted, and executed.

The mother and father of the convicted teen did not appeal the judgement within the prescribed fifteen day appeal time period, and the teen was executed (Li 2002).

The Car Thieves—the Nineties:

The worst experience Ms. Li had as a lawyer occurred between 1990 and 1993. She represented three criminal clients who were involved in stealing five cars. The total value of the cars was RMB 970,000, or over \$100,000. They were a gang of professional car thieves; and because of that, the sentence was harsh. The three thieves spent two years in a Beijing jail before the trial was held. The verdict by a three-judge panel at the Beijing Advanced Peoples Court was DEATH. They were executed by a gun to the back of the head in 1994. It was a hard experience for Ms. Li to handle as their lawyer. She thinks she might have kept them alive by stalling until the Chinese Code was changed. The Chinese Criminal Code was revised in 1997, and now car theft is not a death sentence. It does carry a ten-year-to-life sentence. There are still death sentences in place for bank and museum theft, however. If a

criminal steals \$1500 or more, it carries a sentence of three years. If a criminal steals a small amount of money, jail time is short (Li 2002).

Explaining Chinese Ethics:

It has been said of visitors to the PRC, “Stay two weeks and write a book about China; stay two months and become confused.” So, I believe I am in the second category. I saw and understood the ramifications of the legal system in China, especially when I heard these real-life stories of law and legal practice in China. However, I am confused as to what Chinese legal ethics means. I do not think that the PRC even knows. I saw signs of upward and positive changes in the ethicality of the law for lawyers, or professional ethics of lawyers, as we know them in the United States. But still today, those laws are not being observed. Are there really ethics?

John Copper asserts, “[In China] rights are not endowed by nature but depend on class status and are granted by leaders whose interpretation of society's interest determines what rights can be given at any specific time and to whom. Rights given today can be taken away tomorrow in accordance with changing circumstances and a changing party line” (Copper 1985). Replace the word *rights* with the word *ethics*, and my perception of legal ethics in China becomes clearer.

How did the Chinese lawyer feel about the ethics in these cases?

The Utah Professional Rules Preamble states it succinctly: “As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system” (Preamble 2002). Li Giuying was also being an advocate for her clients. She felt agony because they received the death penalty. She felt sorry that she did not prolong their case. But she had hindsight. She was speaking of her 1990's experience in 2002. Did her advocacy thoughts change because the government changed the Chinese Criminal Code in 1997? Or did her perception and ethical values change? I believe that as the Chinese Rules of Professional Ethical Conduct (or Law for Lawyers) have come closer to aligning with Western ways of ethical thinking, so too has the Chinese lawyers way of legal ethical thinking changed. This statement is illustrated in my limited research.

Consider the 1980's case that Ms. Li advocated. She defended an eighteen-year-old youth charged with a killing he did not commit. As she said to me “Chinese law is strict sometimes. There are

lots of criminals, and this is a deterrent method. This helps prevent crime. I do not think the law was very popular, but it controls the peace, and I like peace" (Li 2002).

Ms. Li was the defense lawyer, the advocate in this case. Did she advocate her client's case? Or did she merely mirror the "people's will"? Perhaps. Ms. Li did not discuss this case until my last interview with her. It wasn't one she volunteered readily. After much discussion and prodding, she finally shared this teen case with me. She didn't remember this case as well or was reluctant to share it.

Ms. Li's teenage case was probably decided by a panel of three judges. All three of the judges came to a consensus that the youth should be executed for the crime. Is there too much ethicality in this case? Too much of one person (the ill-fated eighteen-year-old) taking responsibility for something he should not have shouldered? What about the judges? Is there too little ethics in this case? Three detached, perhaps unschooled judges decided on the death sentence of an individual. Was it to deter others or merely to avenge an innocent person's death? The ethical responsibility of an American, particularly a Utah judge, is that they "shall apply the law and maintain professional competence. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism" (Utah Code, 2002). Did this occur? Perhaps the law dictated that the youth be executed for the crime. Or did cultural ethics dictate louder than the law?

The parents of the teen in this case did not appeal his death sentence. Perhaps they felt cultural ethics dictated that their son must pay for the life of another. Perhaps Ms. Li's comment about the parent's appeal indicated her own feelings in the case.

An innocent youth was sentenced to death in the 1980s, and a gang of car thieves were executed in the 1990s. I find it interesting that Ms. Li's reactions to the cases were different. Ms. Li was a defense lawyer in both instances, an advocate in both instances. She was an advisor and intermediary to the court in both instances. She was ten years further in practice in 1993. What changed her thinking? I contend that the ethical times in China have changed and are still changing. Their social conscience is being pricked as never before.

My second interview elicited the divorce-DDT case. What an interesting idea. American law

does not imbue the wishes of the spouse in divorce law. In American law a judge shall apply the law and maintain professional competence. A judge shall perform judicial duties without bias or prejudice (Utah Code, 2002). In this case, Ms. Li was the judge. Did she perform her judicial duties without bias or prejudice and apply the law? I believe in this instance, her conduct was similar to an American judge's standard of using the law and applying the law to a situation. However, it has been argued that Chinese judges do what they are told, and this notion dispels the idea of justice (Marquand 2001).

Implications: Ethics in the New Millennium

The new Beijing Law for Lawyers booklet (that Ms. Li had in her possession) was dated June of 2001. Of course I could not read the Chinese characters, but I received rudimentary ideas on what it possessed. It contained such things as:

- a. Lawyers shall not break the law
- b. Lawyers shall be honest and responsible and follow the client's interest
- c. Cherish the professionalism of a lawyer
- d. Keep confidentiality and the client's commercial interest
- e. Lawyers shall study in the professional field
- f. Lawyers shall respect each other
- g. Lawyer shall perform pro bono service
- h. Lawyers shall avoid a conflict of interest
- i. Lawyers shall be careful in handling the payment of money from clients
(Beijing Lawyers, 2001).

All these professional responsibilities, as we term them in the United States, are present. They are stated thus in the Utah Rules of Professional conduct.

- a. Preamble and Rule 1.1 Competence
- b. Rule 1.2 Scope of Representation and Rule 2.1 Advisor
- c. Rule 2.1 Advisor
- d. Rule 1.6 Confidentiality of Information
- e. Rule 1.1 Competence
- f. Rule 3.4 Fairness of Opposing Party and Counsel and Rule 3.5 Impartiality and Decorum
- g. Rule 6.1 Pro Bono Public Service

- h. Rule 1.7, 1.8 1.9 Conflict of Interest and Rule 1.10 Imputed Disqualification
- i. Rule 1.5 Fees (Utah Rules, 2002).

Of course, other Utah Rules of Professional Conduct may also apply; this list is not all inclusive. These Beijing Lawyer Laws, as I understand them, are based on United Kingdom and American Rules of Professional Conduct.

Implications

Notice the word “shall” in most of the Chinese rules. “Shall” is also present in the American version of ethical rules. The word “shall” was emphasized to me in law school civil procedure class. The word is obligatory. It is a command. It is not to be disputed. Lawyers must do certain things to maintain their ethical standards. I maintain that the word “shall” is used in the Chinese rules, but the real word is “should.” The word “should” is an expectation—something that can be done but is not necessary. That is the main difference, I believe, between the American legal culture and the Chinese legal culture—the shall/should dilemma. Ms. Li emphasized to me that the Laws of Lawyers were merely the hope, but not the true direction of lawyer’s law (Li 2002). Ethical law is honestly not being observed.

Some notes received from Ms. Li are revealing. One note particularly contradicts the “shall” rule listed in the Beijing Lawyer’s Rule of Conduct pamphlet. This further illustrates the shall/should dilemma. The confidentiality rule listed in (d) was refuted by Ms. Li in some notes I obtained on my first interview. She wrote in Chinese characters, and I did not get it translated until the last week of my stay. My thanks to an unknown Chinese judge who did a wonderful service in translating her notes.

Her first note states “The Lawyer Law of the People’s Republic of China does not provide attorney-client privilege for lawyers. They sometimes are forced by law to testify against their clients with information that clients have told them as secrets. The lawyers in China wish to keep communications between an attorney and his client confidential and bar them from being used as evidence in trial” (Li 2002). I feel this is a valid statement from Ms. Li, since she is a full professor at a premier Chinese university, the China University of Law and Politics.

Part of her emphasis in teaching is jurisprudence of lawyers, or the law of lawyers. I have full confidence that she speaks the truth. Therefore, confidentiality is one of perhaps many ethical rules that are merely a hope and not a true direction.

Another noticeable difference that I perceive between the American and Chinese written rules is the tone. I believe American ethical rules are there to protect the client, and they address the relationships between client and lawyer. The word client appears many times in the Utah Rules of Professional Conduct (Utah Rules, 2002). When a client is dissatisfied, he or she may seek remedy through a Bar Ethics Committee.

The client is not the basis or the driving force behind Chinese ethical rules. It is a second thought. Ethics are imposed by the state because they are perceived as something that must be considered. However, new judicial reform is approaching (Marquand 2001), and with it, true ethical rules.

The fact the Chinese have even changed the Law of Lawyers, and published them is a step in the right direction. Even though many ethical rules are flouted, the rule of law is gradually coming forth, and perhaps one day, the People’s Republic of China may enjoy ethical laws which are accepted universally.

This is the life of one remarkable woman. She has seen great legal change in her life. As China’s metamorphosis from a Communist cocoon to a delightful free butterfly emerge, legal ethics will play a role in China’s world status.

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