**Chinese Law and Legal Institutions**

**Rachel E. Stern**

**Fall 2013**

**Thursday 10.00-12.40pm**

Contact information Office hours

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Course description

Over the past thirty years, China has embarked on a historic project of legal construction. This course provides an introduction to how the law works in China today, as well as the ongoing obstacles to justice.  Topics to be covered include: the emergence of the private bar, judicial decision-making, specialized courts, the role of the media, intellectual property rights, environmental law, and mediation.  Attention will be paid to both the elite politics behind legal reforms as well as grassroots encounters with “everyday law” that illustrate how complaints are resolved both inside and outside the legal system. In addition to scholarly books and articles, course materials will include original documents as well as documentary films that illustrate how law maters (or fails to matter) to ordinary people.

**1. August 22: Snapshots of China**

Mark Leonard, *What Does China Think?* (Public Affairs 2008), pp. 5-9, 60-63, 71-75, 79-81.

Stanley B.Lubman, *Bird In a Cage* (Stanford University Press, 1999), pp. 11-32.

Emily Parker, “The 20-Year-Old Crime That’s Blowing Up on Chinese Social Media,” *New Republic*, May 4, 2013.

Donald Clarke, “The Chinese Legal System in 1500 Words,” July 4, 2005.

*In class: Excerpts from the Chinese constitution*

**2. August 29: Law Under Mao**

Mirjan Damaska, *The Faces of Justice and State Authority* (1983) pp. 71-88.

Edgar Snow, *Red Star Over China* (Grove Press, 2007), pp. 35-29. 90-96, 119-125, 219-226.

Mao Zedong, On the Correct Handling of Contradictions Among the People, 1957 (excerpts), pp. 236-244.

Glenn Tiffert, “Epistrophy: Chinese Constitutionalism and the 1950s,” in Stephanie Balme and Michael W. Dowdle, eds. *Building Constitutionalism in China* (Palgrave Macmillan 2009), pp. 59-76.

Neil Diamant, “Conflict and Conflict Resolution in China: Beyond Mediation-Centered Approaches,” *Journal of Conflict Resolution* (2000), pp. 523-544.

Albert Chen, *An Introduction to the Legal System of the People’s Republic of China* (1992) pp. 29-33.

*In class: In Praise of Lawlessness, People’s Daily editorial (1967)*

**3. September 5: Post-Mao Revival of Law**

Alexander Cook, “Settling Accounts: Law as History in the Trial of the Gang of Four,” in *Law and History* (OxfordUniversity Press, 2003), pp. 413-431.

Stanley B. Lubman, *Bird in a Cage: Legal Reform in China After* Mao (Stanford University Press 1999), pp. 122-137.

Fu Hualing and Richard Cullen, “From Mediatory to Adjudicatory Justice: The Limits of Civil Justice Reform in China,” in Margaret Woo and Mary E. Gallagher eds. *Chinese* Justice (Cambridge University Press 2011), pp. 39-43 and 48-53.

Carl Minzner, “The Turn Against Legal Reform,” *The Journal of Democracy*, January 2013, pp. 65-72.

He Weifang, *In the Name of Justice: Striving for the Rule of Law in China* (Brookings Institution Press 2012), pp. 128-130.

Benjamin Liebman, “A Return to Populist Legality,” in Elizabeth J. Perry and Sebastian Heilmann eds. *Mao’s Invisible Hand: The Political Foundations of Adaptive Governance in China* (Harvard University Press 2011), pp. 165-200.

Randall Peerenboom, *China’s Long March Toward Rule of Law* (Cambridge University Press 2002), pp. 2-6.

*In class: First advice column in Democracy and the Legal System (Minzhu Yu Fazhi) (1979).*

**5. September 12: External Influences on the Legal System**

Xin He, “Black Hole of Responsibility: The Adjudication Committee’s Role in a Chinese Court,” *Law & Society Review* (2012), pp. 681-712.

Ling Li, “Corruption in China’s Courts,” in Randall Peerenboom ed. *Judicial Independence in China: Lessons for Rule of Law Promotion* (Cambridge University Press 2010), pp. 196-220.

Benjamin Liebman, “Changing Media, Changing Courts,” in Susan Shirk ed. *Changing Media, Changing China* (Oxford University Press 2011), pp. 150-174.

Ethan Michelson, “Global Institutions, Indigenous Meaning: Lessons from Chinese Law for the New Institutionalism,” Buffalo Legal Studies Research Paper Series (2005), pp. 1-7, 31-44.

Optional:Zhu Suli, “The Party and the Courts,” in Randall Peerenboom ed. *Judicial Independence in China: Lessons for Rule of Law Promotion* (Cambridge University Press 2010), pp. 52-68.

*In class: The People’s Courts (PBS, 2007)*

**4. September 19: Courts**

Philippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (2d printing) (Transaction Books, 2001), excerpts.

Xin He and Yang Su, “Do the Haves Come Out Ahead In Chinese Courts,” *Journal of Empirical Legal Studies*, March 2013, pp. 120-145.

Ethan Michelson and Ke Li, “[Judicial Performance without Independence: The Delivery of Justice and Political Legitimacy in Rural China](http://www.indiana.edu/~emsoc/Publications/Michelson_Li_Judicial_Performance.pdf),” Working paper (2012).

Nicolas Howson, “Judicial Independence and the Company Law in the Shanghai Courts,” in Randall Peerenboom ed. *Judicial Independence in China: Lessons for Rule of Law Promotion* (Cambridge University Press 2010), pp. 134-153.

Stephanie Balme, “Local Courts in Western China,” in Randall Peerenboom ed. *Judicial Independence in China: Lessons for Rule of Law Promotion* (Cambridge University Press 2010), pp. 154-179.

William Glaberson, “In Tiny Courts of N.Y., Abuses of Law and Power,” *New York Times*, September 25, 2006. http://tinyurl.com/8sk26qv

**6. September 26: Lawyers**

William P. Alford, “Of Lawyers Lost and Found: Searching for Legal Professionalism in the People’s Republic of China,” pp. 287-310.

Austin Sarat & Stuart Scheingold, “Cause Lawyering and the Reproduction of Professional Authority, An Introduction”, in *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press 1998), pp. 3-12.

Ethan Michelson, “The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work,” *Law & Society Review* (2006), pp. 1-38.

Fu Hualing and Richard Cullen, “*Weiquan* (Rights Protection) Lawyering in Authoritarian State: Building a Culture of Public Interest Lawyering,” *China Journal* (2008), pp. 111-127.

Sida Liu and Terence C. Halliday, “Political Liberalism and Political Embededess: Understanding Politics in the Work of Chinese Criminal Defense Lawyers,” *Law & Society Review* (2011), pp. 831-865.

*Optional:* Mo Shaoping, “China’s Lawyers Confront Systemic Dangers,” trans. Elizabeth Lynch, February 16, 2011.

**7. October 3: Legal consciousness, rights consciousness and legal discourse**

Margaret L. Boittin, “New Perspectives from the Oldest Profession: Abuse and the Legal Conciousness of Sex Workers in China,” *Law & Society Review* (2013), pp. 245- 278.

Mary Gallagher and Yuhua Wang, "Users and Non-Users: Legal Experience and Its Effect on Legal Consciousness," in Margaret Woo and Mary E. Gallagher eds. *Chinese* Justice (Cambridge University Press 2011), pp. 204-233.

Keith Hand, Exploring Constitutional Reforms in the Wake of the Bo Xilai *Affair, China* Brief, May 11, 2012.

Charles Gardner Geyh, “Introduction,” in *What’s Law Got to Do With It?* (Stanford University Press 2011), pp. 1-4.

He Xin and Yang Su, “Pragmatic Discourse and Gender Inequality in China,” *Law & Society Review* (2013), pp. 285-298.

**8. October 10: Outside the Law: Petitioning and Protest**

Kevin J. O’Brien, “Rightful Resistance,” *World Politics* (1996), pp. 31-55.

Ching Kwan Lee, and Yong Hong Zhang, “The Power of Instability: Unraveling the Microfoundations of Bargained Authoritarianism in China,” *American Journal of Sociology* (2013), pp. 11-21, 29-31.

Isabelle Thireau and Hua Linshan, “One Law, Two Interpretations: Mobilizing the Labor Law in Arbitration Committees and in Letters and Visits Offices,” in Neil J. Diamant, Stanley B. Lubman and Kevin J. O’Brien, eds. *Engaging the Law in China* (Stanford University Press 2010), pp. 84-107.

Carl Minzner, “Xinfang: An Alternative to Formal Chinese Legal Institutions,” *Stanford Journal of International Law* (2006), pp. 140-158.

Yu Jianrong, trans. Josh Horowitz, “Managing the Petition Crisis as a Basis for Legal Reform,” June 3, 2010.

“Charter 08,” trans. Perry Link, *New York Review of Books*, December 18, 2008.

“Open Letter to the NPC on Human Rights,” trans. David Bandurski, February 26, 2013.

**9. October 17: Labor**

Ching Kwan Lee, *Against the Law: Labor Protests in China’s Rustbelt and Sunbelt* (University of California Press, 2007), pp. 3-30 and pp. 170-203.

Yang Su and Xin He, “Street as Courtroom: State Accommodation of Labor Protest in South China,” *Law and Society Review* (2010), pp. 157-184.

Feng Chen and Xin Xu, “Active Judiciary: Judicial Dismantling of Workers’ Collective Action in China,” *China Journal* (2012), pp. 87-108.

Ross Perlin, “Chinese Workers Foxconned,” *Dissent* (Spring 2013), pp. 46-52.

*In class: Mid-term evaluations and takeaway exercise*

**10. October 24: Environment**

Rachel Stern, *Environmental Litigation in China: A Study in Political Ambivalence*, Introduction, Chapter 2 and Chapter 5.

Anna Lora-Wainwright, *Fighting For Breath: Living Morally and Dying of Cancer in a Chinese Village* (University of Hawaii Press 2013), excerpts to be announced.

Wang Jin, “China’s Green Laws are Useless,” *China Dialogue*, September 23, 2010.

*In class: Warriors of Qiugang* *(dir. Ruby Yang)*

**11. October 31: Police and criminal law**

Susan Trevaskes, “The Shifting Sands of Punishment in China in the Era of Harmonious Society,” *Law & Policy* (July 2010), pp. 333-361.

David T. Johnson and Franklin E. Zimring, *The Next Frontier: National Development, Political Change and the Death Penalty in Asia* (Oxford University Press 2009), pp. 227-231, 270-282.

Murray Scott Tanner, “Rethinking Law Enforcement and Society: Changing Police Analyses of Social Unrest,” in Neil J. Diamant, Stanley B. Lubman and Kevin J. O’Brien, eds. *Engaging the Law in China* (Stanford University Press 2010), pp. 193-212.

Jianhua Xu, “The Robbery of Motorcycle Taxi Drivers (*Dake Zai*) in China,” *British Journal of Crimonology* (2009), pp. 491-512.

Rachel E. Stern, “Poor Rural Residents in China Seen as Easy Target for Environmental Lawsuits,” *China Dialogue*, April 24, 2013.

Vincent R. Johnson and Stephen C. Loomis, “The Rule of Law in China and the Prosecution of Li Zhuang,” *The Chinese Journal of Comparative Law* (2013), pp. 4-11, 15-18.

**12. November 7: Administrative Law**

Kevin J. O’Brien and Lianjiang Li, “Suing the Local State Administrative Litigation in Rural China,” in Neil J. Diamant, Stanley B. Lubman and Kevin J. O’Brien, eds. *Engaging the Law in China* (Stanford University Press 2010, pp. 31-53.

John Givens, “On Their Best Behavior: Foreign Plaintiffs in Chinese Administrative Lawsuits,” Indiana University Research center for Chinese Politics and Business, Working Paper #17, January 2012. Excerpts to be announced.

Pang Qinghui, “Familiar Farce, Familiar Face,” NewsChina, October 2011

Jamie Horsley, Update on China’s Open Government Information Regulations, April 23, 2010

Article 41 of the constitution

**13. November 14: Intellectual Property and the WTO**

Andrew Mertha, “Policy Enforcement Markets: How Bureaucratic Redundancy Contributes to Effective Intellectual Property Implementation in China,” *Comparative Politics* (2006), pp. 295-316.

Martin Dmitrov, *Piracy and the State* (Cambridge University Press, 2009), pp. 3-15, 20-28, 101-108.

Susan Shirk, *China: Fragile Superpower* (Oxford University Press 2005), pp. 105-111, 131-139.

Yu Hua, *China In Ten Words* (Vintage 2012), excerpt.

WTO, Protocol on the Accession Of the People’s Republic of China, November 23, 2011, pp. 1-5.

Li Jia, “Crying Wolf: China in the WTO,” and “Trading Places,” NewsChina, January 2012.

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“Chinese Politics and the WTO: No Change,” *The Economist*, December 10, 2011

**14. November 21: Future of Chinese Legal Reforms**

Lawrence M. Friedman, *Total Justice* (Russell Sage Foundation 1985), pp. 47-52.

Yunxiang Yan, “Food Safety and Social Risk in Contemporary China,” *The Journal of Asian Studies*, August 2012, pp. 705-707, 716-729.

Jamil Anderlini, “Bo Xilai: Power, Death and Politics,” Financial *Times*, July 20, 2012.

“Burst Balloons: The Frightening Lessons of the Bo Xilai Affair,” *The Economist*, August 4, 2012.

Matt Schiavenza, “Will the Bo Xilai Case Change China?” *The Atlantic*, April 16, 2013.