

LAW IN CHINESE SOCIETY

Legal Studies 161 | Summer 2021
University of California, Berkeley
Lecture: M Tu W Th 10-11:59am PST
Sections: M 12-1:59pm (101); Tu 12-1:59pm (102)
Location: <https://berkeley.zoom.us/j/91291674698>

Instructor

Dr. Kristin M. Sangren
ksangren@berkeley.edu
Office Hours M-Th by appointment: [Calendly](#)
Location: <https://berkeley.zoom.us/j/8780>

COURSE DESCRIPTION

This course uses law as a window into Chinese culture, society, history, and politics. It is not primarily about contemporary laws and legal institutions in the People's Republic of China (PRC) (although we will explore select topics towards the end of the session.) Rather, we consider the lineage and legacies of law spanning back to ancient times. We take as our premise the idea that one cannot understand China's present without an understanding of its past.

We begin by examining law in 'traditional' Chinese society. In doing so, we must understand the foundations of Chinese social organization, formative political and cosmological philosophies, and the structure of the imperial Chinese state. We examine in particular the classic debate between Confucian and Legalist philosophies, and their subsequent ebbs and flows in the history of the dynastic state. We will also consider the tensions between theory, law-on-the-books, and law-in-action. We close this unit with an exploration of folk-religious conceptions of the Chinese underworld (diyu 地狱) as a way to understand popular legal consciousness.

We then segue into a discussion of imperial China's encounters with the West. We consider in particular how law figured in framing Western conceptions of, and later treatment of, China during the 18th, 19th, and early 20th centuries. American legal encounters with China will be emphasized. We will explore how the so-called "century of humiliation" at the hands of Western and Japanese colonialism facilitated the political unraveling of China's dynastic order and catalyzed the push for modernity—including within the realms of law and justice.

We will consider briefly the Westernization of legal institutions during the Republican period, before transitioning to the place of law and justice in the early decades of the People's Republic of China. We will touch on the Civil War period and the rise of Mao Zedong and the Chinese Communist Party (CCP) and focus in particular on Mao's theory of government and revolution. We will examine the PRC's founding constitution and several key laws, as well as examine (and trouble) the characterization of the Maoist period as one of lawlessness.

The latter part of the class will examine legal reform in the period since Mao's death in 1976. We will cover the geopolitical circumstances informing Chinese legal reform, as well as the structure of the post-Reform PRC state and the role of the CCP with a focus on the form and functions of the legal system. We will then explore some select topics related to contemporary PRC law (subject to change)—the legal profession, gender and family law, popular legal and rights consciousness, environmental law, and the ongoing developments in Hong Kong.

Jump to:

[Course Description](#)

[Grade Breakdown](#)

[Logistics & Expectations](#)

[Readings](#)

[Perusall annotations](#)

[Synchronous classes](#)

[Attendance](#)

[LecturePods](#)

[Reading Quizzes](#)

[Midterm Exams](#)

[Final Project](#)

[Policies](#)

[Questions & Communications](#)

[Cameras/Microphones](#)

[Recordings/Asynchronous Participation](#)

[Disability-related accommodations](#)

[Statement on Copyright and Recording](#)

[Academic Integrity and Misconduct](#)

[Territory Acknowledgement](#)

[Course Schedule](#)

GRADE BREAKDOWN

<u>High-Quality Engagement (HOE)</u>	<u>25%</u>
• Daily attendance	
• LecturePod participation	
• In-class discussion (including Zoom chat)	
• Asynchronous engagement (Perusall annotations, Discussion Threads, etc.)	
<u>Reading quizzes</u>	<u>10%</u>
<u>In-class midterms (2)</u>	<u>20% each</u>
<u>Final Project</u>	<u>25%</u>

Key Dates:

- *Midterm 1*—Monday, June 7th
- *Final project topic proposal deadline*—Friday, June 11th, before 5pm PST
- *Midterm 2*—Monday, June 21st
- *Final project deadline*

LOGISTICS & EXPECTATIONS*Readings:*

All readings will be available in the Modules tab on bCourses. You are expected to come to class having completed all assigned readings in advance. **It is imperative that you keep up with the reading if you want to succeed in this class!**

Perusall annotations:

Perusall is a group-annotation app that allows you to make annotations on PDFs, as well as respond to your classmates' annotations. All readings on bCourses will be Perusall enabled. Active Perusall engagement will contribute to your High-Quality Engagement assessment. If you are uncomfortable speaking up in class, Perusall is a great option to demonstrate engagement.

Synchronous classes:

Because our class is small, I will be running sessions currently scheduled as synchronous lectures in a hybrid lecture/seminar format. The first part of each class will be devoted to lectures on the daily topic, followed by a 10-minute break, and the second part of class will incorporate LecturePods (see below) and seminar-style group discussions.

Synchronous sessions scheduled as discussion sections will not incorporate new material, but rather will be a space for you to ask questions about course materials or work on your coursework (readings, studying for exams, etc.) Attendance at discussion sections is not mandatory, but is encouraged. You are welcome to attend a different discussion section than the one in which you are enrolled.

All synchronous sessions will be held via Zoom. You can find links to the meetings at the top of this syllabus, at the top of the bCourses homepage, and in the 'Zoom' tab on bCourses. You *must* be logged in with your @berkeley.edu associated Zoom account in order to access the meetings.

In order for us to have productive discussions, it is imperative that you come to class prepared and ready to participate in thoughtful and respectful discussion. Successful participation correlates with quality, rather than with quantity of comments. In class we will refer directly to portions of the text, so please remember to **have your copy of the readings accessible during class!**

Please also keep in mind that the course may touch on sensitive, controversial, or personal topics. It is critical that we respect one another's thoughts and experiences, and address comments to the ideas and arguments, not to the person. Discussions should be productive, scholarly, respectful, and appropriate. Discriminatory, inflammatory, or disruptive behavior will not be tolerated.

Attendance:

This class prioritizes active learning strategies and activities. Regular lecture attendance is important, as some of the materials covered in the exam will be covered in lecture and not in the readings. More importantly, your depth of understanding will depend in large part on your degree of in-class engagement, questions, and discussion.

Your High-quality Engagement assessment will take as its starting point regular lecture attendance

and completion of assigned readings beforehand. Attendance will be taken each class. You are permitted **TWO (2)** lecture absences throughout the course, no questions asked. You do not need to inform me of the reason for your absence or provide documentation. Subsequent absences will negatively impact your HQE grade.

LecturePods:

You will be assigned a Zoom LecturePod (Breakout Room) at the beginning of the semester. This group will consist of ~4 students (your ‘PodMates’), and you will periodically be broken-out into your Pods during synchronous lecture sessions for small-group activities. Most of these activities will require you to produce a deliverable or record of your discussion (‘PodDoc’) that will be reviewed and factored in to your HQE assessment.

At the end of the course, you will conduct peer assessments of your own and your PodMates’ engagement during synchronous LecturePod activities. These assessments will be factored in to your overall HQE grade. Be aware that I may join your Lecture Pod discussion at any time. This is a good time to ask questions or for clarification of the material under discussion in a smaller-group setting.

PodMates are mutually accountable—if you miss class, you should reach out to your PodMates to inquire about missed materials. I strongly encourage you to leverage your LecturePod for group study, collaborative research, and general community.

Reading Quizzes:

These 1-question quizzes will be opened in Zoom at a random time during each class and will address content from the assigned readings for the day. Students will have 3 minutes to complete the quiz. Your two (2) lowest quiz scores will be dropped in addition to quizzes missed during your two (2) no-questions-asked absences (for a total of up to four (4) dropped quizzes.) I will not re-open the quiz once it is closed, so be sure to log-in on time!

Midterm Exams:

We will have two (2) in-class midterm exams (June 7 and June 21.) The format of the exams will be announced in advance. Out of concern for fairness, make-up exams will not be available except in cases of documented extreme illness or University excused absence. All exam grades are final unless I have made a calculation error.

Final Project:

The final project in this course will be a presentation of a topic related to law in contemporary China not covered in this course, of your choice, based on original research. You will have considerable latitude in how you choose to present your argument—a conventional research paper, a ‘Last Week Tonight’-style video segment, an op-ed, a podcast, etc. You will be required to submit a short (~1 paragraph) project proposal (June 11th), which I must approve before you begin research. Separate, detailed guidelines and a rubric will be provided.

POLICIES

Questions & Communications:

I will communicate with you primarily through the bCourses platform, and it is your responsibility to keep abreast of any course announcements (so turn on your notifications!) Please notify me ASAP if you are unable to access the bCourses site.

If you have a question about the class, you **must** complete the following steps before emailing me:

- 1) Check the syllabus
- 2) Check bCourses>Modules>Course Toolbox
- 3) Check bCourses>Discussions>the relevant Pinned Discussion ('Course Content Questions' or 'Course Logistics Questions')

If you do not find the answer to your question using the above strategies:

- If your question is not of a personal matter specific to you—e.g., about the logistics or content of the class—post your question to the relevant Pinned Discussion. I will respond to your thread within 24 hours (M-F, 9am-6pm PST).
- If your question is of a personal matter related to your grade, requesting an extension, DSP-related matters, etc., email me. I endeavor to respond to emails within 24 hours, but may take longer on weekends. I will not respond to emails received after 6pm until the following morning.
- If you do not receive a response to your email, it is likely that the information you need is available in one of the three steps listed above. Check again.

Cameras/Microphones:

In general, students will be expected to turn on their cameras and use their microphones to participate during seminar/discussion/collaborative portions of synchronous lecture classes. Because our class is small and designed as a hybrid lecture/seminar, cameras-on facilitates the trust, atmosphere, and interaction necessary for high-quality engagement. Occasional exceptions can be made (for example, if your internet connection is weak during a given day.) If you are experiencing a circumstance that prevents you from using your camera regularly, you must notify me during the first week of class and request an accommodation.

Occasional exceptions to microphone use can also be made (for example, you are in a loud environment that may prove distracting to the group.) During these periods, you will be expected to engage with the class using the Zoom chat function.

If I have not granted you a camera or microphone accommodation and notice that you regularly have yours off, I will arrange to speak with you.

Recordings/Asynchronous Participation:

This course is **NOT** designed to accommodate asynchronous participation. I will not be recording synchronous sessions or making them available asynchronously.

Disability-related accommodations:

If you need disability-related accommodations in this class, you must arrange to meet with me during the first week of class to discuss your requirements. Please remember that accommodations and extensions are meant to specifically address the impact of a student's disability on their ability to complete an assignment by the deadline provided to students who do not share the student's disability identity.

Late Work and Grading

Requests for extensions on assignments, **including those related to DSP accommodations**, must be submitted to me via email no less than 4 hours before the scheduled deadline. Absent a *documented* emergency, requests submitted later than 4 hours before the scheduled deadline will not be considered.

All assigned grades are final, absent a calculation error on my part. I do not round final grades. It would be unethical and against University policy for me to grant special dispensations for individual students (for example, rounding a grade or giving extra credit) without giving the same opportunity to

every student in the class, and it would be inappropriate for you to ask.

Statement on Copyright and Recording:

Materials in this course—unless otherwise indicated—are protected by United States copyright law [Title 17, U.S. Code]. Materials are presented in an educational context for personal use and study and should not be shared, distributed, or sold in print—or digitally—outside the course without permission.

Video and audio recording of lectures and sections without my and all of your fellow students' consent is prohibited. You may not reuse or circulate recorded lectures, my slides, or other course resources to anyone without my permission. This includes screenshots of course materials and/or participants, unauthorized recording of lectures, presentations, or discussions.

Academic Integrity and Misconduct:

UC Berkeley's [Honor Code](#) states "As a member of the UC Berkeley community, I act with honesty, integrity, and respect for others."

You are expected in this class to uphold the honor code commitment to academic integrity and ethics. Honesty, integrity, and ethical behavior are of great importance in all facets of life. They are so important that it is generally assumed that one has learned and internalized these qualities at an early age. As a result, these issues rarely get explicitly addressed by the time one gets to be a university student. However, it cannot be overstated just how important honesty is to the academic enterprise. If you are struggling in this class, it is imperative that you communicate these challenges early and *honestly* to your instructors.

You must be original in composing the writing assignments in this class. To copy text or ideas from another source (including your own previously, or concurrently, submitted coursework) without appropriate reference is plagiarism and will result in a failing grade for your assignment and usually further disciplinary action. For additional information on plagiarism, self-plagiarism, and how to avoid it, see, for example: <http://www.lib.berkeley.edu/instruct/guides/citations.html#Plagiarism>

The University defines academic misconduct as “any action or attempted action that may result in creating an unfair academic advantage for oneself or an unfair academic advantage or disadvantage for any other member or members of the academic community” ([UC Berkeley Code of Student Conduct](#)). Incidents of misconduct will be handled in accordance with the policies and procedures prescribed by the [Center for Student Conduct](#).

Finally, you should keep in mind that as a member of the campus community, you are expected to demonstrate integrity in all of your academic endeavors and will be evaluated on your own merits. The consequences of plagiarism, cheating, and academic dishonesty of any type—including a formal discipline file, possible loss of future internship, scholarship, or employment opportunities, and denial of admission to graduate school—are simply not worth it.

Territory Acknowledgement:

Although we are meeting remotely and most students are away from Berkeley, I would like to acknowledge that the brick-and-mortar buildings of UC Berkeley sit on the territory of Huichin, the ancestral and unceded land of the Chochenyo [Ohlone](#), the successors of the historic and sovereign Verona Band of Alameda County. This land was and continues to be of great importance to the Ohlone people. We recognize that every member of the Berkeley community has, and continues to benefit from the use and occupation of this land, since the institution's founding in 1868. Consistent with our values of community and diversity, we have a responsibility to acknowledge and make visible the university's relationship to Native peoples. By offering this Land Acknowledgement, we affirm Indigenous

sovereignty and will work to hold University of California Berkeley more accountable to the needs of American Indian and Indigenous peoples (Statement adapted from the [Native American Studies library website](#)).

Any matter not explicitly covered by this syllabus or institution-wide policy is left to my sole discretion as the instructor.

COURSE SCHEDULE

	Topic	Required Reading
Week 1		
5/24	Course Info	No required reading
5/25	Traditional' Chinese social organization	Fei, Xiaotong. 1992. From the Soil: The Foundations of Chinese Society. Gary G. Hamilton and Wang Zheng, trans. Berkeley: University of California press. [pp. 37-44, 60-70, 94-107]
5/26	Imperial political and legal institutions	van der Sprenkel, Sybille. 1966. Legal Institutions in Manchu China. LSE monographs on social anthropology. London: The Athlone Press. [pp. 28-49, 56-79]
5/27	Confucianism, Legalism and the Great Debate	Fung, Yu-lan. 1948. A Short History of Chinese Philosophy. Derk Bodde, ed. New York: The Free Press. [pp.31-48] Bodde, Derk. 1963. Basic Concepts of Chinese Thought: The Genesis and Evolution of Legal Thought in Traditional China. Proceedings of the American Philosophical Society 107(5). [pp. 375-398]
Week 2		
5/31	Memorial Day—No class	
6/2	Penal codes	Xu, Xiaoqun. 2020. Heaven Has Eyes: A History of Chinese Law. Oxford University Press. [pp. 15-39]
6/1	Civil justice	Lauwaert, Françoise, 2009. Framing the Family in Late Imperial China. Law and Anthropology 12, [pp. 524-549] OR Cohen, Myron. 2004. Writs of Passage in Late Imperial China. [pp. 37-65]
6/3	Cosmology, popular religion, and the underworld	Katz, Paul R. 2009. Divine Justice: Religion and the development of Chinese legal culture. Oxon: Routledge. [pp. 24-60]
Week 3		
6/7	MIDTERM 1	
6/8	Early encounters with the West	The Complete Works of M. de Montesquieu (London: T. Evans, 1777), 4 vols. Book 19, Chapters 10-21 [pp. 328-335] AND Hegel, Georg W.F. (1991[1837]). The Philosophy of History. Amherst: Prometheus Books [pp. 128-156]
6/9	The 'Century of Humiliation'	No required reading.

6/10	Legal colonialism and the fall of the Qing	Ruskola, Teemu. 2013. Legal Orientalism: China, the United States, and Modern Law. Cambridge: Harvard University Press. [pp. 108-151]
Week 4		
6/14	Law in the Republic of China	Peng, Ming-min. 1971. Political Offences in Taiwan: Laws and Problems. The China Quarterly 47 [pp. 471-493]
6/15	Politics and justice under Mao	Sorace, Franceschini, and Loubere, eds. 2019. Afterlives of Chinese Communism. [pp. 97-102 (Justice); pp. 207-213 (Rectification); pp.251-255 (Socialist Law)] AND Zedong, Mao (1963). On the Correct Handling of Contradictions Among the People [pp. 236-242]
6/16	Politics and justice under Mao cont.	Cook, Alexander C. (2016). The Cultural Revolution on Trial: Mao and the Gang of Four. Cambridge University Press [pp. 35-77, 193-200]
6/17	China's re-opening	
Week 5		
6/21	MIDTERM 2	
6/22	Contemporary PRC political-legal organization	Trevaskes, Susan. 2018. A Law Unto Itself: Chinese Communist Party Leadership and Yifa zhiguo in the Xi Era. Modern China 44(4) [pp. 347-373]
6/23	The legal profession	Liu, S. (2011). Lawyers, State Officials and Significant Others: Symbiotic Exchange in the Chinese Legal Services Market. The China Quarterly, 206, 276-293.
6/24	Popular legal and rights consciousness	Pia, Andrea E. 2016. "We Follow Reason, Not the Law:" Disavowing the Law in Rural China. PoLAR 39(2) [pp. 276-293]
Week 6		
6/28	Environmental law	Stern, Rachel. 2013. Environmental Litigation in China. Cambridge University Press. [chap. 5, pp. 123-150]
6/29	Gender and family law	Li, Ke and Sara L. Friedman. 2016. Wedding Marriage to the Nation-State in Modern China. Domestic Tensions, National Anxieties: Global Perspectives on Modern Marriage Crises. Oxford University Press [Pp.147-169]
6/30	Hong Kong	TBA
7/1	Course wrap-up	