

LAW IN CHINESE SOCIETY

Legal Studies 161

Fall 2016 | Tuesday/Thursday 2pm-3.30pm

Professor Rachel Stern

Contact Information

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Office Hours

Wednesday 2-3.30pm

Sign up at: www.wejoinin.com/rstern@law.berkeley.edu

2240 Piedmont Avenue, #202¹

COURSE DESCRIPTION

This course uses law as a window onto Chinese politics and society. We start with two strands of Chinese philosophy with contrasting views of law, Confucianism and Legalism, before turning to a historical overview of key legal developments during the 19th and 20th centuries. By week six, we will make our way to the contemporary period and the historic project of legal construction that followed Mao Zedong's death in 1976. Our focus will be on 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. Topics to be covered include: the emergence of the private bar, the constitution, judicial decision-making, human rights, international law, environmental law, and family law. In addition to scholarly books and articles, course materials will include primary sources as well as documentary films that illustrate how law matters to ordinary people.

COURSE READINGS

All course readings are available on Bcourses.

COURSE REQUIREMENTS

Grades and Assignments

The assignments for this class add up to a total of 400 points, as follows:

- Two two-page thinkpieces on documentary films: 150 points (75 points/~18.7% of your grade each)

¹ Drop-ins are welcome, but those who sign up will have priority. To find my office, turn left at the top of the stairs and follow the hallway to the end.

- In-class midterm: 100 points (25% of your grade)
- Final exam: 150 points (~35.7% of your grade)
- Attendance and participation: 50 points (~12.5% of your grade)

Final course grades will be allocated using the following scale:

Score	Grade	Percent
380-400	A	95-100%
360-379	A-	90-94%
348-359	B+	87-89%
336-347	B	84-86%
320-335	B-	80-83%
308-319	C+	77-79%
296-307	C	74-76%
280-295	C-	70-73%
268-279	D+	67-69%
256-267	D	64-66%
240-255	D-	60-63%
>240	F	Below 60%

Thinkpieces

Students are responsible for two 2-page double-spaced short essays responding to two documentary films (roughly 500 words each). Essay cues will be distributed before each film screening. Please feel free to discuss the film with your classmates, but go home and write your thinkpieces independently so the final product is the result of your independent work. Note that late papers will be marked down 5 points per 24 hours, following a half hour grace period.

- *The Chinese Mayor* (2015), to be screened at the Pacific Film Archive on Friday, September 30. All students must attend this screening, unless they receive permission from the professor to view the film separately. The thinkpiece will be due to your GSI via email by 5pm on Sunday, October 9.
- *Hooligan Sparrow* (2016), optional class screening to be announced or you can stream it online. The thinkpiece will be due to your GSI via email by 5pm on Sunday, November 13.

Exams

In-class Mid-term Examination: A mid-term examination will be held in class in **Tuesday, October 18** and will consist of IDs and short answer questions. A pool of all possible questions that might appear on the exam will be provided to students at least one week ahead of time.

Final Exam: The final exam will be held from 8am-11am on **Tuesday, December 13**. The final exam will consist of a mixture of IDs, short answer questions, and short essays. As with the midterm, a list of all possible exam questions will be circulated to students at least one week before the exam.

General Exam Policies: Out of concern for fairness, make-up exams will not be available except in the case of documented extreme illness or excused university absence. All grades determined by the GSI are final—I will not re-grade the examinations. If you have a disability that requires accommodation, please let either me or your GSI know within the first two weeks of the semester.

Attendance and Participation

Regular attendance of the lectures is important, as much of the material on exams will be covered in lecture and not in the reading. More important, the vitality of the course and the depth of your understanding partly depend on questions and comments raised during lecture. I will leave time for student participation, and look forward to hearing from you during the semester.

As for the participation portion of the grade, the basic starting point is regular attendance in section and completion of any assigned readings beforehand. Each student is entitled to one absence from section over the course of the semester, no questions asked. After that, absences will start to affect the participation portion of the grade. The overall expectation is that students will thoughtfully participate in section discussion, with the understanding that first-rate participation corresponds to quality of comments rather than quantity.

Please also keep in mind that the course may touch on sensitive, controversial or personal topics over the course of the semester. It is critical that we respect one another's thoughts, and address comments to the ideas and arguments, not to the person. Discussions should be productive, respectful and appropriate.

Academic Integrity

Any test or paper you submit is presumed to be your own original work. In all of your assignments, you may use words or ideas written by other individuals in publications, websites, or other sources, but only with proper attribution. If you are not clear about the expectations for completing an assignment or taking a test, ask beforehand.

Additional course policies

Laptops and cell phones. In order to create the best possible environment for listening, learning, and discussion, neither cell phones nor laptops are allowed in the classroom. Please take notes by hand and rest easy with the knowledge that all exam questions will be provided to you ahead of both the midterm and the final. (For more why this policy exists, see "The Case for Banning Laptops in the Classroom" on Bcourses).

Getting in touch with me. The best way to talk substantively is in office hours, rather than through email. I have office hours on Wednesday afternoon and will also meet with students in the afternoons by appointment. Emails on administrative matters (setting up an appointment, asking for a recommendation etc.) will be answered quickly.

Students with disabilities. If you anticipate issues related to the format or requirements of the course, please let me know as soon as possible so we can work together to find a way for you to fully participate.

Scheduling conflicts. Please email me by the second week of the course about any known extracurricular conflicts (such as religious observances, medical school interviews, team activities, etc.). I will try my best to help you with making accommodations, but cannot promise them in all cases.

COURSE SCHEDULE

WEEK 1: CONFUCIUS AND THE FUNCTIONS OF LAW

August 30: Functions of Law

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

September 1: Confucius

- Jeffrey Wasserstrom, *China in the 21st Century: What Everyone Needs to Know* 2nd Edition (Oxford University Press 2013), pp. 1-14.
- The Economist, "Ideology in China: Confucius Makes a Comeback—You Can't Keep a Good Sage Down," in David Shambaugh Ed. *The China Reader* (Oxford University Press 2016), pp. 68-69.

In section: The Analects

- *The Essential Analects: Selected Passages with Traditional Commentary*, ed. Edward Slingerland (Hackett Publishing 2003), excerpts.

WEEK 2: LEGALISM AND IMPERIAL CHINA

September 6: Legalists

- Derk Bodde and Clarence Morris, *Law in Imperial China* (Harvard University Press 1967), pp. 23-27.

September 8: Law in Imperial China

- Kenneth Lieberthal, *Governing China: From Revolution Through Reform* (W.W. Norton and Company 2004), pp. 3-17.

In section: Law Under the Qing

- The Great Qing Code, translated by William C. Jones (Clarendon Press 1994), pp. 33-41.
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WEEK 3: THE ROAD TO 1949

September 13: 19th Century Dilemmas

- Jonathan Spence, *The Search for Modern China*, 2nd Edition (WW Norton 1999), pp. 141-166.

September 15: The Rise of the Chinese Communist Party

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

In section: The Unequal Treaties and the End of Qing Rule

- Treaty of Nanking (1842)
 - Lu Xun, "Medicine" in William A. Lyall, trans. Lu Xun: *Diary of a Madman and Other Stories* (University of Hawaii Press (1990), pp. 49-58. [Originally published in 1919].
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WEEK 4: LAW UNDER MAO

September 20: Revolutionaries Learn to Govern

- Mirjan Damaska, *The Faces of Justice and State Authority* (Yale University Press 1986), pp. 71-88.

September 22: The Cultural Revolution and Mao's Legacy

- Orville Schell and John Delury, *Wealth and Power* (Random House 2013), pp. 244-253 [on the Cultural Revolution].
- "In Praise of Lawlessness," *People's Daily*, January 31, 1967.
- Albert Chen, *An Introduction to the Legal System of the People's Republic of China* (Buttersworth Asia 1992) pp. 29-33.

In section: Documents from the 1950s

- "The Marriage Law of the People's Republic of China," May 1, 1950.
 - Mao Zedong, "Strike Surely, Accurately and Relentlessly in Suppressing Counterrevolutionaries," 1950-1951.
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WEEK 5: POST-MAO: LEGAL REVIVAL AND ECONOMIC DEVELOPMENT

September 27: Law and Economic Growth

- Arthur Kroeber, *China's Economy: What Everyone Needs to Know* (Oxford University Press 2016), pp. 27-39, 43-59 and 62-66.
- Optional: Orville Schell and John Delury, *Wealth and Power* (Random House 2013), Chapter 11 on Deng Xiaoping.

September 29: Tiananmen

- Jeffrey Wasserstrom, *China in the 21st Century: What Everyone Needs to Know* 2nd Edition (Oxford University Press 2013), pp. 81-5.
- Liao Yiwu, "The Tiananmen Father" in *The Corpse Walker: Real Life Stories, China From the Bottom Up* (Pantheon Books 2008), pp. 214-229.
- Deng Xiaoping, "Explanation of the Crackdown," June 9, 1989.

In section: No reading

- Crowdsourcing the midterm

REQUIRED EVENT: September 30th from 7-9.45pm. Screening of "The Chinese Mayor" @ the Pacific Film Archive. Conversation with director Zhou Hao to follow.

WEEK 6: LAW AND LEGAL INSTITUTIONS

October 4: Building a Legal System

- Jamie Horsley, "The Rule of Law: Pushing the Limits of One-Party Rule," in David Shambaugh ed. *The China Reader* (Oxford University Press 2016), pp. 237-248.
- Carl Minzner, "The Turn Against Legal Reform," *Journal of Democracy* (2013), pp. 65-72.
- Yang Su and Xin He, "Street as Courtroom: State Accommodation of Labor Protest in South China," *Law & Society Review* (2010), pp. 157-169 and 178-181.

October 6: The Constitution

- Excerpts from the Chinese constitution on Bcourses
- *Optional*: Susan V. Lawrence, "China's Political Institutions and Leaders in Charts," Congressional Research Service Report to Congress, November 12, 2013.

In Section: TBD

DEADLINE: Thinkpiece on "The Chinese Mayor" due by email to your GSI by Sunday, October 9th at 5pm.

WEEK 7: LAW AND POLITICS

October 11: External Influences on the Legal System

- He Weifang, *In the Name of Justice: Striving for the Rule of Law in China* (Brookings Institution Press 2012), pp. 128-130.
- Mary E. Gallagher, "Mobilizing the Law In China: Informed Disenchantment and the Development of Legal Consciousness," *Law & Society Review* (2006), pp. 783-794 and 799-809.

October 13: Petitions and Protest

- Kevin J. O'Brien and Lianjiang Li, *Rightful Resistance in Rural China* (Cambridge University Press 2006), pp. 1-24.
- Yu Hua, "In China, The Grievances Keep on Coming," *New York Times*, January 1, 2012.

In Section: The Logic of Petitioning

- Zhu Rongji, "Letters and Petitions are an Important Channel for Gaining a Sense of the People," in *Zhu Rongji on the Record* (Brookings Institution Press 2013). [Original document from October 1995]

WEEK 8: MIDTERMS

October 18: In-class midterm examination

October 20: Criminal Law: Guest lecture by Tobias Smith
Readings to be announced.

In Section: TBD

WEEK 9: ENVIRONMENTAL ISSUES

October 25: Warriors of Qiugang

- Rachel E. Stern, *Environmental Litigation in China: A Study in Political Ambivalence* (Cambridge University Press 2013), Chapter 2.

October 27: The Legal Landscape

- Rachel E. Stern, *Environmental Litigation in China: A Study in Political Ambivalence* (Cambridge University Press 2013), Chapter 5.
- Wang Jin, "China's Green Laws are Useless," *China Dialogue*, September 23, 2010

In Section: TBD

WEEK 10: THE LEGAL PROFESSION

November 1: The Median Lawyer

- Ethan Michelson, "The Practice of Law as an Obstacle to Justice," *Law & Society Review* (2006), pp. 1-24.

November 3: Possibilities for Activism

- Rachel E. Stern, "Activist Lawyers in Post-Tiananmen China," *Law & Social Inquiry* (forthcoming).
- Xu Zhiyong, "For Freedom, Justice and Law: My Closing Statement to the Court" in David Shambaugh ed. *The China Reader* (Oxford University Press 2016), pp. 56-64.
- "China's New Age of Fear?" (with Eva Pils, Taisu Zhang, and Isabel Hilton), *ChinaFile*, February 18, 2016.

In Section: TBD

DEADLINE: Hooligan Sparrow thinkpiece due to your GSI by 5pm on Sunday November 9th.

WEEK 11: GENDER, SEXUALITY AND FAMILY LAW

November 8: The Activist State Revisited

- Information Office of the State Council, "Gender Equality and Women's Development in China," in David Shambaugh ed. *The China Reader* (Oxford University Press 2016), pp. 169-171.
- Nicholas D. Kristof, "China's Worst Policy Mistake?" *The New York Review of Books*, April 7, 2016.
- Yu Hua, "When Filial Piety is the Law," *The New York Times*, July 7, 2013.

November 10: Contemporary Battles

- Leta Hong Fincher, *Leftover Women* (Zed Books 2014), chapter 2, pp. 44-74.
- Xin He and Kwai Ng, "Pragmatic Discourse and Gender Inequality," *Law & Society Review* (2013), pp. 279-280 and 285-298.

In Section: TBD

WEEK 12: INTERNATIONAL NORMS AND INTERNATIONAL LAW

November 15: Human Rights

- Congressional Executive Commission on China, 2015 Annual Report, pp. 1-10.
- State Information Council, “Human Rights Record of the United States in 2015,” excerpts.
- Elizabeth Perry, “Chinese Conceptions of Rights: From Mencius to Mao and Now,” *Perspectives on Politics* (2008), pp. 37-46.

November 17: The South China Sea

- Taylor Fravel, “Why Does China Care So Much About the South China Sea?” July 13, 2016.
- Jessica Chen Weiss, “What Chinese People Really Think About the South China Sea,” July 14, 2016.
- Jane Perlez, “Defending David Against the World’s Goliaths in International Court,” *The New York Times*, July 15, 2016.

In section: Charter ‘08

- Charter 08,” trans. Perry Link, *New York Review of Books*, December 18, 2008
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WEEK 13: SOVEREIGNTY AND LEGAL AMBIGUITY—TAIWAN

November 22: Taiwan

- Richard C. Bush, “China and Taiwan.” in David Shambaugh ed. *The China Reader* (Oxford University Press 2016), pp. 464-472.

November 24: No class, Thanksgiving break

In Section: TBD

WEEK 14: SOVEREIGNTY AND LEGAL AMBIGUITY—HONG KONG

November 29: Hong Kong

- “Ascribing International Status to Territories and Groups: The Hong Kong Special Administrative Region,” in *International Law: Norms, Actors, Process* (Aspen Law and Business 2002), 237-241.
- Hu Jintao, “Enriching the Practice of “One Country, Two Systems” and Advancing China’s Reunification in David Shambaugh ed. *The China Reader* (Oxford University Press 2016), pp. 460-462.

- The Economist, “Political City: Democracy in Hong Kong” in David Shambaugh ed. The China Reader (Oxford University Press 2016), pp. 462-464.

December 1: Xi Jinping and the Future

- Ian Johnson, “China Grants Courts Greater Autonomy on Limited Matters,” The New York Times, January 2, 2016.
- Benjamin L. Liebman, “Legal Reform: China’s Law-Stability Paradox,” Daedalus (2014), pp. 96-109.

DEADLINE: Final exam at 8am on Tuesday, December 13th