

LAW IN CHINESE SOCIETY

Legal Studies 161

Spring 2020 | Tuesday/Thursday 2pm-3.30pm

LeConte 3

Professor Rachel E. Stern

Contact Information

Professor Rachel Stern: rstern@law.berkeley.edu | 510-642-2008

GSI Alexandria Ku: alexandriaku@berkeley.edu

GSI Yen-Tung Lin: ytl@berkeley.edu

Office Hours

Monday 2-4.20pm

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

- Attendance and participation: 15%
- Reading responses posts: 20% (10% 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.

- Questions for David Yang: 5%
- In-class midterm: 25%
- Final exam: 35%

Attendance and participation

Regular lecture attendance is important, as some 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 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.

For the participation portion of the grade, the basic starting point is regular attendance in lecture and section and completion of any assigned readings beforehand. To this end, we will regularly take attendance in both section and lecture. In keeping with the honor code, we ask that you only check off your own name on the attendance sign-in sheet.

In the interest of mental health, physical well-being and generally taking care of ourselves, all students are entitled to three absences (from either section or lecture) over the course of the semester. This is a “no questions asked” policy, which means that there is no need to tell us where you were, or provide documentation. After that, absences will start to affect the participation portion of the grade. The overall expectation is that students will thoughtfully participate in 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.

Reading responses

Each student is responsible for two short reading responses (200-250 words each) during the semester. Your GSI will be in touch with instructions about how to sign up. At least one of your dates should be in the first six weeks of class (before March 3).

These short, informal responses to the readings must be sent to your GSI via email **24 hours ahead of section**. Following a 30-minute grace period, posts sent before 7pm will be marked down a half grade. Responses sent after 7pm will not be accepted.

The reading responses~ are meant to serve as a starting point for discussion for that week’s section. A good response will be clearly written with a distinct voice and point of view. It can draw out points of connection and controversy between authors. It can draw connections between section readings and the readings for lecture, or between readings for section or current events. It can directly suggest questions for discussion. It

can heartily critique (or enthusiastically endorse) articles, arguments or approaches. The content is up to you. The key point is to advance your own ideas rather than summarize. If you feel stuck, you can always fall back on the questions about the readings circulated before class.

Reading responses will be graded check (A-), check plus (A) and check minus (B+). Please expect that most responses will receive a check.

Discussion Questions

In preparation for our conversation with David Yang on March 12, each student will be responsible for posting at least one discussion questions to Bcourses at least 24 hours before class. (Under the “discussions” tab, you will see a No late questions will be accepted.

Exams

In-class Midterm Examination: A mid-term examination will be held in class in Tuesday, March 3rd 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 an open book, open notes essay exam, available on BCourses on Monday, May 11th between 9am and 3pm.

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 lecture attendance is important, as some 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 the midterm. (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: INTRODUCTION & THE FUNCTIONS OF LAW

January 21: Introduction

January 23: Taking this Class in 2020

- Evan Osnos, "The Future of America's Contest with China," *The New Yorker*, January 6, 2020.
- Optional: American Factory (2019), available streaming on Netflix.

WEEK 2: CONFUCIANISM & LEGALISM

January 28: 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.
- Jiang Qing and Daniel A. Bell, "A Confucian Constitution for China," *The New York Times*, July 10, 2012.

January 30: Legalists

- Derk Bodde and Clarence Morris, *Law in Imperial China* (Harvard University Press 1967), pp. 23-27.
- Podcast: BBC Radio Four's "In Our Time," Chinese Legalism, December 10, 2015. Available at <https://bbc.in/34I3bC2>

In section: The Analects

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

WEEK 3: FROM THE QING TO THE CCP

February 4: Law in Imperial China

- Kenneth Lieberthal, *Governing China: From Revolution Through Reform* (W.W. Norton and Company 2004), pp. 3-14.
- Liu-Hung Huang, *A Complete Book Concerning Happiness and Benevolence: A Manual for Local Magistrates in Seventeenth-Century China* (University of Arizona Press, 1984), pp. 258-262.
- Optional: Li Chen, "Legal Specialists and Judicial Administration in Late Imperial China (1651-1911)," *Late Imperial China* (2012).

February 6: 19th Century Dilemmas

- Jonathan Spence, *The Search for Modern China, 2nd Edition* (WW Norton 1999), pp. 141-166.
- Orville Schell and John Delury, *Wealth and Power* (Random House 2013), pp. 197-227.

In section: Law Under the Qing

- *The Great Qing Code*, translated by William C. Jones (Clarendon Press 1994), pp. 33-41.

WEEK 4: 1949 AND THE AFTERMATH

February 11: 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.
- Optional podcast: BBC Radio 4's *In Our Time*, "The Long March," November 29, 2018. Available at <https://bbc.in/2JXN1fW>

February 13: Revolutionaries Learn to Govern

- Mirjan Damaska, *The Faces of Justice and State Authority* (Yale University Press 1986), pp. 71-88.
- Jennifer Althenger, *Legal Lessons: Popularizing Law in the People's Republic of China* (Harvard East Asian Monographs 2018), pp. 1-19.

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.

WEEK 5: FROM LAWLESSNESS TO LEGAL REVIVAL

February 18: The Cultural Revolution and Mao's Legacy

- Orville Schell and John Delury, *Wealth and Power* (Random House 2013), pp. 229-257.
- Liqun Qian, "Mao Zedong and His Era," in *Voices from the Chinese Century* (Columbia University Press 2020), pp.174-191.

February 20: 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.

In section: Documents from 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.

WEEK 6: POST-MAO: LEGAL REVIVAL AND ECONOMIC DEVELOPMENT

February 25: 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.
- Karoline Kan, *Under Red Skies* (Hachette Books 2019), pp. 194-205.

February 27: From Deng To Xi: The Turn Toward Law

- Evan Osnos, "Born Red," *The New Yorker*, April 5, 2015.
- Wang Shaoguang, "Representative Democracy and Representational Democracy," in *Voices from the Chinese Century* (Columbia University Press 2020), pp. 236-253.

In section: Crowdsourcing the midterm

WEEK 7: THE PIVOT TOWARD LAW

March 3: In-class midterm

March 5: Courts and the Constitution

- Benjamin L. Liebman, "China's Courts: Restricted Reform," *The China Quarterly* (2007), pp. 620-638.
- Ian Johnson, "China Grants Courts Greater Autonomy on Limited Matters," *The New York Times*, January 2, 2016.
- He Weifang, *In the Name of Justice: Striving for the Rule of Law in China* (Brookings Institution Press 2012), pp. 128-130. "The Constitution and the Party-State," in Sebastian Heilmann ed. *China's Political System* (Rowman and Littlefield 2017), pp. 56-62.

In section: The Constitution

- Excerpts from the Chinese Constitution
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WEEK 8: LAW, CENSORSHIP AND HISTORY

March 10: The Mechanisms and Logic of Censorship

- Margaret E. Roberts, *Censored: Distraction and Diversion Inside China's Great Firewall* (Princeton University Press 2018), pp. 25-54.

- Glenn Tiffert, “Peering Down the Memory Hole: Censorship, Digitalization, and the Fragility of Our Knowledge Base,” *The American Historical Review*, April 2019. Excerpts to be announced.

March 12: Guest lecture by David Yang, Assistant Professor of Economics, Harvard

- Yuyu Chen and David Y. Yang, “The Impact of Media Censorship: 1984 or Brave New World?” *American Economic Review* 106 (9): 2294-2332.

In section: The Censor’s Perspective

- “The Eye of the State: An Interview with Soviet Chief Censor Vladimir Solodin,” *Russian Review* (1997), pp. 581-590.

WEEK 9: ENVIRONMENTAL LAW

March 17: Environmental Litigation

- Ma Tianjie, “How Green is China?” *New Internationalist*, November 11, 2019.
- Rachel E. Stern, “From Dispute to Decision: Suing Polluters in China,” *China Quarterly* (2011).

March 19: Class canceled, instructor out of town

In Section: Section canceled, screening of “The Chinese Mayor” to be announced. The film is also streaming on Amazon Prime.

WEEK 10: PEOPLE INSIDE THE SYSTEM

March 31: Judges

- Charles Gardner Geyh, “Introduction,” in *What’s Law Got to Do With It?* (Stanford University Press 2011), pp. 1-4.
- Rachel E. Stern, *Environmental Litigation in China: A Study in Political Ambivalence* (Cambridge University Press 2013), Chapter 5.

April 2: Officials and the Supervision Commission

- Jamie Horsley, “What’s So Controversial About China’s New Anti-Corruption Body?” *The Diplomat*, May 30, 2018.
- “In the Name of GDP,” *The Economist*, May 13, 2017.
- Long Ling, “What Really Happened in Yancheng?” *The London Review of Books*, January 2020.

In Section: Discussion of “The Chinese Mayor.”

WEEK 11: RIGHTS TALK

April 7: Protest and Petitioning

- Kevin J. O'Brien, "Rightful Resistance," *World Politics* (1996), pp. 31-55.
- Rui Hou, "Maintaining Social Stability Without Solving Problems: Emotional Repression in the Chinese Petition System," *The China Quarterly* (2019), pp. 13-16.

April 9: Human Rights

- Congressional Executive Commission on China, *2019 Annual Report: Executive Summary*, pp. 5-11 [section on key findings].
- State Information Council, "Human Rights Record of the United States in 2018," foreword.
- Elizabeth Perry, "Chinese Conceptions of Rights: From Mencius to Mao and Now," *Perspectives on Politics* (2008), pp. 37-46.

In Section: The Petition System

- Yu Hua, "In China, The Grievances Keep on Coming," *New York Times*, January 1, 2012.
- Jun Mai, "Fewer Chinese Citizens Filing Petitions Against Authorities as Beijing Tries to Curb Use," *South China Morning Post*, August 23, 2017.
- 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 12: THE LEGAL PROFESSION

April 14: The Birth of the Legal Profession

- John Sutton, "Law as a Profession," in *Law/Society: Origins, Interaction and Change* (Pine Forge Press 2001), pp. 223-237.
- Sida Liu, "The Changing Roles of Lawyers in China: State Bureaucrats, Market Brokers, and Political Activists," in Heinz Klug and Sally Merry eds. *The New Legal Realism: Studying Law Globally Vol. 2* (Cambridge University Press 2016), pp. 180-197.

April 16: Possibilities for Activism

- 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. 3-10.
- Alex W. Palmer, "Flee At Once: China's Besieged Human Rights Lawyers," *The New York Times*, July 30, 2017.

- Optional: Rachel E. Stern, “Activist Lawyers in Post-Tiananmen China,” *Law & Social Inquiry* (2017).

In Section: Activist Voices

- Charter 08,” trans. Perry Link, *New York Review of Books*, December 18, 2008.
- 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.
- Xu Zhiyong, “A 2020 New Year’s Message,” January 1, 2020.

WEEK 13: GENDER, SEXUALITY AND FAMILY LAW

April 21: The One Child Policy

- Karoline Kan, *Under Red Skies* (Hachette Books 2019), pp. 13-45.

April 23: Contemporary Battles

- Leta Hong Fincher, *Leftover Women* (Zed Books 2014), chapter 2, pp. 44-74.
- Jiang Qing, “Only Confucians Can Make a Place for Modern Women,” in *Voices from the Chinese Century* (Columbia University Press 2020), pp. 330-335.
- Optional podcast: “Fighting for Change: A Conversation with Feminist Activist Zhang Leilei,” Women podcast, September 2, 2019. Available at <http://bit.ly/2PDaOFv>

In Section: Legislating Morality

- Yu Hua, “When Filial Piety is the Law,” *The New York Times*, July 7, 2013.
- Chu Cheng, “Incomplete and Opaque: The Problem with China’s Porn Laws,” *Sixthtone*, December 8, 2016.
- Wanqing Zhang, “China Is Updating the Dos and Don’ts of Saying I Do,” *Sixthtone*, December 25, 2019.

WEEK 14: TOWARD THE FUTURE

April 28: Xinjiang

- Austin Ramzy and Chris Buckley, “Absolutely No Mercy: Leaked Files Expose How China Organized Mass Detentions of Muslims,” *The New York Times*, November 16, 2019. Available at <https://nyti.ms/2FyFnGe>
- “What Chinese Officials Told Children Whose Families Were Put in Camps,” *The New York Times*, November 16, 2019. Available at <https://nyti.ms/2QDwdyz>
- “Protecting Peace, Stability is Top of Human Rights Agenda for Xinjiang,” *The Global Times*, August 12, 2018.

- Jeremy Daum, "XJ Education Centers Exist, But Does Their Legal Basis?" *China Law Translate*, August 14, 2018.
- Darren Byler, "China's Hi-Tech War on Its Muslim Minority," *The Guardian*, April 11, 2019.

April 30: Toward the Future

- Readings to be announced

In Section: Reflection Exercise