

LAW IN CHINESE SOCIETY

Legal Studies 161 | Spring 2024
University of California, Berkeley
Lecture: TuTh 8-9:30am
Location: Wheeler 222

Instructor

Dr. Kristin M. Sangren
ksangren@berkeley.edu
Office Hours: Wednesdays 12:30-2:30pm or by appointment
Signup: [Calendly](#)

GSI

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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 in the latter half of the semester.) Rather, we consider the lineage and legacies of law spanning back to the imperial era. We take as our premise the idea that one cannot understand China's present without an understanding of its past, and that one cannot understand its law without an understanding of its society and culture.

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GRADE BREAKDOWN

High-Quality Engagement (HQE) 20%

- LecturePod participation, section and lecture engagement, knowledge checks, office hours, EdDiscussion, professionalism, misc.

In-class midterms (2) 25% each

Final Project 30%

- Project proposal 5% (due February 23)
- Proposal revisions 10% (due March 8)
- Annotated bibliography 10% (due April 5)
- Outline/draft 10% (due April 19)
- Final submission 65% (due May 6)

IMPORTANT DATES

- Wednesday, February 7th—Add/Drop deadline
- Thursday, February 15th—Midterm #1
- Friday, February 23rd—Final project proposal deadline
- Friday, March 8th—Final project proposal revisions deadline
- Tuesday, March 19th—Midterm #2
- Friday, March 22nd—P/NP Deadline
- Friday, April 5th—Final project annotated bibliography deadline
- Friday, April 19th—Final project outline/draft deadline
- Friday, April 26th—Late drop deadline (fee)
- Monday, May 6th—Final project submission deadline

LOGISTICS & EXPECTATIONS

Course structure:

Lectures are scheduled to meet on Tuesdays and Thursdays from 8:10-9:30am PST. During class, we will use a combination of lecture (where I explain things to you), discussion (where you work out your own ideas in conversation with your classmates), and Q&A (where I answer your questions). Additionally, you will have a weekly hour-long discussion section, the structure of which is at the discretion of your GSI. **You must regularly attend both lecture and section if you hope to succeed in this class!**

Readings:

You are required to read the assigned readings ***before*** each class, and to participate actively in the discussion of them. All readings will be available in the Modules tab on bCourses. You are not required to purchase any books or additional materials for this class. **It is imperative that you keep up with the reading if you want to succeed in this class!**

LecturePods and in-class discussion:

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. 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 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. If you feel that these expectations are not being met, please inform the teaching team immediately.

You will be assigned a LecturePod at the beginning of the semester. This group will consist of ~4 students (your 'PodMates'), and you will be broken-out into your Pods during Tu/Th lecture sessions for small-group discussions and activities. You will record and submit PodMate participation on your 'PodDoc' (to be explained in lecture). Your PodDoc is assessed based on completion, NOT on accuracy/correctness.

PodMates are mutually accountable—if you miss class, you should reach out to your PodMates to inquire about missed material. You are encouraged to leverage your LecturePod for group study, collaborative research, and general community. You will conduct peer assessments of your own and your PodMates' engagement during LecturePod activities at the end of the semester. These assessments will be factored into your final HQE grade.

This class prioritizes active learning. Regular lecture attendance is critical, 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 LecturePod participation and completion of assigned readings beforehand.

Midterm Exams:

We will have two (2) in-class midterm exams (February 15th and March 19th). The format of the exams will be announced in advance. Make up exams will be permitted only in instances of [University sanctioned circumstances](#) or a documented emergency.

In the event of an emergency, you must email your GSI within 24 hours of the missed exam with attached documentation verifying the emergency (from the doctor/ER, dean of students, police report, etc.) If your email is not received within 24 hours, you forfeit your right to make up an exam. All makeup exams will be administered during the University final exam period (May 6-10) at a designated time of the instructor's choosing.

Final Project:

The final project in this course will be a presentation of a topic related to law in China not covered in this course, pitched to a general audience, and based on original research. You will have considerable latitude in how you choose to present your argument—a conventional research paper, website, blog, 'Last Week Tonight'-style video segment, podcast, whitepaper, etc.

You will collaborate with your LecturePod group and submit a single final project. You will submit milestones throughout the semester including a project proposal, proposal revisions, annotated bibliography, and an outline/draft. Separate, detailed guidelines and a rubric will be provided.

Milestones are due before 11:59pm on the stipulated due date. You may either upload a file (Word or PDF only), or input your entry directly into the bCourses Assignment. Links to external websites (e.g., a Google doc) will *NOT* be accepted. ***It is your responsibility to ensure that your correct file is accessible to your GSI at the time of submission/in advance of the deadline.*** Absent an error on the part of the bCourses platform documented by Berkeley's Educational Technology Services, submissions not accessible to the instructors at the deadline will be marked late.

Late submissions will be accepted with a 4% per hour penalty, up to 24 hours after the deadline. Additionally, each group will start the semester with 1 slip day, which permits you to submit a milestone (including your final submission) 24 hours after the deadline without a late penalty.

- A slip day is 24 hours, any day, including weekends and holidays.
- Partial slip days are not allowed. In other words, it is not possible to use part of a slip day to push a deadline back by a few hours.
- To use a slip day, submit your milestone after the deadline with a bCourses comment indicating you are using your slip day.

Your final submission is due on May 6, 2023. Your individual grade will be assessed based on (1) your group grade on each milestone, (2) the overall quality of your group's final project, and (3) peer assessments of your contributions to the group.

Milestones will not be accepted for credit beyond the above-stipulated submission windows. **There will be no additional extensions for final project-related assignments.**

POLICIES

Questions & Communications:

You are responsible for all information contained in course announcements posted to bCourses (so [turn on your notifications!](#))

If you have a question about the class, you **MUST** complete the following steps before emailing the teaching team:

- 1) Check the syllabus
- 2) Check bCourses>Modules>Course Toolbox
- 3) Check bCourses>Ed Discussion

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., you have a question about the logistics or content of the class—post your question to Ed Discussion in the relevant folder (readings, logistics, etc.) Someone from the teaching team will respond to your thread within 24 hours (M-F, 9am-6pm PST).
- If your question is of a personal matter—e.g., a question about your grade, DSP-related matters, etc.—email your GSI or me (Dr. Sangren).
 - Direct messages must be sent to my email (ksangren@berkeley.edu) from an @berkeley.edu email address. ***I do not read or respond to messages sent via the bCourses messaging system.***
 - ***Your e-mail must contain the course number in the subject line*** (e.g., Subject: [LS 161] Question about my grade).
 - I endeavor to respond to emails received during the week within 24 hours. I will not respond to emails received after 6pm until the following morning. You should not expect a response to an email received after 6pm Friday until the following Monday.
 - Consult with your GSI about their email policy.
- 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.

Course Format (Remote/Recording/Asynchronous Participation):

This is an in-person course. In line with [University guidance](#), you are expected to be on campus and attend class in person unless University policy recommends otherwise. This course does ***NOT*** accommodate asynchronous, remote, or hybrid participation while the University and/or the class is in-person. Recording of lectures without a verified DSP accommodation and express permission from me is prohibited.

Grading

Final grades will be assessed based on the following grade cutoffs:

A 93 | A- 90 | B+ 87 | B 83 | B- 80 | C+ 77 | C 73 | C- 70 | D 60 | F <60

I do not round or bump grades, though I may make minor adjustments to ensure equity across sections and graders. It would be unethical and against University policy for me to grant special dispensations for individual students (for example, rounding a grade, giving extra credit, or granting an extension) without giving the same opportunity to every student in the class, and it would be inappropriate for you to ask.

Disability-related accommodations:

If you need disability-related accommodations in this class, arrange to meet with your GSI during the first week of class to discuss your requirements. Exams will be administered by DSP proctoring services—[schedule your exams](#) ***immediately*** if you plan to remain enrolled in the class.

Statement on Course Content and Topics

Some of the readings, lectures, films, presentations, and discussions in this course may include material that is upsetting or conflicts with the core beliefs of some students enrolled in the course. Please review the syllabus carefully to confirm that you will be able to meet the core requirements of this course, and that this is a course you are committed to taking. If you have a concern, please discuss it with Prof. Sangren immediately.

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 classmates' consent is prohibited. You may not reuse or circulate or post to any websites any recorded lectures, slides, exams, or other course resources authored by the teaching team without Prof. Sangren's 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." 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](#).

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.

ALL WRITING ASSIGNMENTS IN THIS CLASS MUST BE ORIGINALLY COMPOSED. To copy text or ideas from any source (including your own previously or concurrently submitted coursework, AI chatbot and automated summarizing, paraphrasing, or translation software or apps) without permission and/or appropriate attribution is unacceptable and will result in an automatic F in the course and usually further disciplinary action. If you are unsure about basic standards of academic writing and attribution in the United States, consider undertaking this [tutorial and certification test](#).

Our policy regarding the use of generative AI follows the [policy of UC Berkeley's Law School](#):

“The class of generative AI software:-

- Never may be employed for a use that would constitute plagiarism if the generative AI source were a human or organizational author. For a discussion of plagiarism, see [Plagiarism | GSI Teaching & Resource Center](#)
- May be used to perform research in ways similar to search engines such as Google, for correction of grammar, and for other functions attendant to completing an assignment. The software may not be used to compose any part of the submitted assignment.
- May not be used for any purpose in any exam situation.”

If we suspect that any part of a written assignment is not originally composed, the teaching team will make immediate arrangements to meet with you. During this meeting, we will assess whether the assignment was originally composed. This meeting is mandatory, and failure to confirm and/or attend the scheduled meeting will result in a report to the CSC.

I report ***all*** instances of academic dishonesty.

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.

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

COURSE SCHEDULE

Part 1: Law in Imperial China

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 consider how imperial law dealt with both criminal and civil matters, and explore folk-religious conceptions of the Chinese underworld (diyu 地獄) as a way to understand popular legal consciousness in imperial China. The recurring theme of 'theory versus practice' will be emphasized.

Week 1: Chinese Social Organization

Tuesday, January 16

Course introduction, no required reading

Thursday, January 18

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]

Week 2: Ideology and Bureaucracy

Tuesday, January 23

Confucius. Excerpts from the Analects. Compiled by Evan Tiffany. Retrieved from:

<https://www.sfu.ca/~etiffany/teaching/phil120/Analects.html#:~:text=%E2%80%9CNever%20look%20without%20Ritual.,Never%20move%20without%20Ritual.%E2%80%9D>

Han Fei. Selections from the Han Feizi: The Five Vermin. From *Sources of Chinese Tradition*, compiled by Wm. Theodore de Bary and Irene Bloom, 2nd ed., vol. 1 (New York: Columbia University Press, 1999), 199-203. Retrieved from:

http://afe.easia.columbia.edu/ps/cup/hanfei_five_vermin.pdf

Thursday, January 25

van der Sprenkel, Sybille. 1966. *Legal Institutions in Manchu China*. LSE monographs on social anthropology. London: The Athlone Press. Selections posted to bCourses

Recommended:

Bodde, Derk and Clarence Morris. 1967. Law in Imperial China: As exemplified by 190 Ch'ing Dynasty Cases. Cambridge: Harvard University Press. Pp. 3-51 (Basic Concepts of Chinese Law)

[Confucian Teaching: Li \[Short videos explaining core Confucian ideas\]](#)

Week 3: Theory and Practice

Tuesday, January 30

The Great Tang Code: The Ten Abominations. 624. Selections posted to bCourses.

van der Sprenkel, Sybille. 1966. Legal Institutions in Manchu China. LSE monographs on social anthropology. London: The Athlone Press. Selections posted to bCourses

Thursday, February 1

Huang Liuhong. 1984[1694] Fuhui quanshu 福惠全書 [The Complete Book of Happiness and Benevolence]. Selections posted to bCourses.

Week 4: Civil Matters

Tuesday, February 6

Cohen, Myron. 2004. Writs of Passage in Late Imperial China. [pp. 37-65]

Thursday, February 8

Lauwaert, Françoise, 2009. Framing the Family in Late Imperial China. Law and Anthropology 12, [pp. 524-549]

Week 5: The Underworld

Tuesday, February 13

Katz, Paul R. 2009. Divine Justice: Religion and the development of Chinese legal culture. Oxon: Routledge. [pp. 24-60]

Thursday, February 15

MIDTERM #1 (in class)

Part II: The Problem of Modernity

Our next part of the class considers Chinese law in the context of encounters with Western actors, wealth, and power. We consider 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 then turn to the impacts of these encounters in the 20th century, considering legal institutions during the Republican and Civil War periods 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 rise of Mao Zedong and the Communist Party of China, 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

Week 6: Encounters with the West

Tuesday, February 20

The Complete Works of M. de Montesquieu (London: T. Evans, 1777), 4 vols. Book 19, Chapters 10-21 [pp. 328-335]

Hegel, Georg W.F. (1991[1837]). *The Philosophy of History*. Amherst: Prometheus Books [pp. 128-156]

Thursday, February 22

Ruskola, Teemu. 2013. *Legal Orientalism: China, the United States, and Modern Law*. Cambridge: Harvard University Press. [pp. 108-151]

Week 7: Early experiments

Tuesday, February 27

Provisional Constitution of the Republic of China. 1912. *The American Journal of International Law*, Jul., 1912, Vol. 6, No. 3, Supplement: Official Documents, pp. 149-154

Recommended: *Selections from Cheng, Lestz and Spence, The Search for Modern China: A Documentary Collection on Law in the Nanjing Decade.*

Peng, Ming-min. 1971. Political Offences in Taiwan: Laws and Problems. The China Quarterly 47 [pp. 471-493]

Thursday, February 29

The Marriage Law of the People’s Republic of China. May 1, 1950.

Li Fengjin: *How the New Marriage Law Helped Chinese Women Stand Up*, edited and translated by Susan Glosser (Opal Mogus Books, 2005), <http://www.opalmogusbooks.com/>.

Recommended: [BBC Podcast “The Long March”](#)

Diamant, Neil J. 2000. [Revolutionizing the Family: Politics, Love, and Divorce in Urban and Rural China, 1949–1968](#), chap. 1

lawlessness. The death of Mao in 1976 signaled a monumental shift in the way that the PRC would be governed. Along with economic marketization and global political reopening, the policy rubric of “Reform & Opening” entailed a massive reinvestment in law to facilitate these goals.

Week 8: Socialist justice

Tuesday, March 5

Mao Zedong. 1957. On the Correct Handling of Contradictions Among the People. Speech at the Eleventh Session (Enlarged) of the Supreme State Conference.

Sorace, Franceschini, and Loubere, eds. 2019. Afterlives of Chinese Communism. [pp. 97-102 (Justice); pp. 207-213 (Rectification); Pp. 251-255 (Socialist Law)]

Thursday, March 7

Cook, Alexander C. (2016). The Cultural Revolution on Trial: Mao and the Gang of Four. Cambridge University Press [pp. 35-77, 193-200]

Week 9: Stability and growth

Tuesday, March 12

Deng Xiaoping. 1978. Emancipate the Mind, Seek Truth from Facts, and Unite as One When Looking Towards the Future. In Cheng, Lestz and Spence, The Search for Modern China: A Documentary Collection.

Constitution of China (People’s Republic of) 1982 [excerpts posted to bCourses]

Thursday, March 14

Lam, Esther. China and the WTO: A Long March to Rule of Law. Wolters Kluwer. Chap. 3.

Part III: Law in Contemporary PRC Society

Since the late-20th century, the PRC has pursued a pragmatic program of legal reform guided primarily by practical economic, social, and political challenges of

Week 10: The System, its Actors

Tuesday, March 19

MIDTERM #2 (in class)

governance. In Part III of the class, we explore select topics relating to law in the post-Reform era PRC.

Thursday, March 21

Liu, Sida. 2016. *The Changing Roles of Lawyers in China: State Bureaucrats, Market Brokers, and Political Activists*. *The New Legal Realism: Studying Law Globally*

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

Week 11: Spring Break (no class)

Week 12: Divorce & the Family

Tuesday, April 2

Li, Ke. *Marriage Unbound: State Law, Power, and Inequality in Contemporary China*. Stanford, CA: Stanford University Press. Chap. 2 [pp. 51-75]

Thursday, April 4

Li, Ke. *Marriage Unbound: State Law, Power, and Inequality in Contemporary China*. Stanford, CA: Stanford University Press. Chap. 6 [pp. 189-226]

Week 13: Rights consciousness & Litigation

Tuesday, April 9

Lee, Ching Kwan. 2007. *Against the Law: Labor Protests in China's Rustbelt and Sunbelt*. Berkeley: University of California Press [chap. 2]

Thursday, April 11

Pia, Andrea E. (2016), "We Follow Reason, Not the Law:" Disavowing the Law in Rural China. *PoLAR*, 39: 276-293

Week 14: Litigation/Crime, Security & Policing

Tuesday, April 16

Stern, Rachel. (2011). *From Dispute to Decision: Suing Polluters in China*. *The China Quarterly*, 206, 294-312.

Thursday, April 18

Clift, B. (2020). Hong Kong's made-in-China national security law: Upending the legal order for the sake of law and order. *Australian Journal of Asian Law*, 21(1), 1]-23

Week 15: Crime, Security & Policing/The Future

Tuesday, April 23

Dirks, Emile. 2022. Policing "Target People": Crime Control and Political Repression in the People's Republic of China. Selections posted to bCourses

Thursday, April 25

Chen, Benjamin Minhao, & Li, Zhiyu. (2020). How will technology change the face of chinese justice?. *Columbia Journal of Asian Law*, 34(1), 1-58