

Chinese Legal System

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Course objective and description:

The basic objective of the course is to introduce the constitutional framework of Chinese law, the structure and roles of legal institutions, features of central and local relations, judicial reform and its political limitations, theoretical and practical impediments to establishing judicial review, the development of rule of law ideal and administrative legality in recent years, the development of constitutional rights and deficiencies in their implementations, as well as the populist model of Chinese constitutional development.

The course will roughly cover the following aspects. Course readings are listed below, in addition to relevant legal texts to be provided.

1. Introduction: General Principles
2. Rule of Law or Rule of Virtue? Traditional Chinese View of Law
Eric W. Orts, The Rule of Law in China, 34 *Vanderbilt Journal of Transnational Law* 43 (2001).
Randall Peerenboom, One Hundred Flowers Bloom, One Hundred Schools Contend: Debating Rule of Law in China, 23 *Michigan Journal of International Law* 471 (2002).
Qianfan Zhang, Propriety, Law, and Harmony: A Functional Argument for Rule of Virtue.
H.Y. Chen, Ch. 1; RL1, RL3, Harmony.
3. China's Quest for Modernization and Rule of Law: A Historical Overview
Stanley Lubman, Bird in a Cage: Chinese Law Reform After Twenty Years, 20 *Northwestern Journal of International Law & Business* 383 (2000).
H.Y. Chen, Ch. 2; RL4
4. The 1982 Constitutional Structure
Pu Zengyuan, A Comparative Perspective on the United States and Chinese Constitutions, 30 *William & Mary Law Review* 867 (1989).
Hal Blanchard, Constitutional Revisionism in the PRC: "Seeking Truth from Facts", 17 *Florida Journal of International Law* 365 (2005).
H.Y. Chen, Ch. 2;
5. The People's Congresses and Law-making Procedures
Peter Howard Corne, Creation and Application of Law in the PRC, 50 *American Journal of Comparative Law* 369 (2002).
Li Yahong, The Law-making Law: A Solution to the Problems in the Chinese Legislative System? 30 *Hong Kong Law Journal* 120.
Chen, Ch. 6; Jiang Jinsong; Legis1, Legis2.
6. Legal Structure: Central Local Relationship

Stanley Lubman, Looking for Law in China, 20 *Columbia Journal of Asian Law* 1 (2006).
Chen, Ch. 4; Legis3

7. Role of Courts and Judicial Reform

Benjamin L. Liebman, China's Courts: Restricted Reform, 21 *Columbia Journal of Asian Law* 1 (2007).

Veron Mei-Ying Hung, China's WTO Commitment on Independent Judicial Review: Impact on Legal and Political Reform, 52 *American Journal of Comparative Law* 77 (2004).

Zhang, The People's Court in Transition: The Prospects of the Chinese Judicial Reform, *Journal of Contemporary China*, Spring 2003, 12 (34): 69-101.

Chen, Ch. 7.

8. Civil Law and Procedure

Jerome A. Cohen, Reforming China's Civil Procedure: Judging the Courts, 45 *American Journal of Comparative Law* 793 (1997).

Zhang Lihong, The Challenge of Recodification Worldwide: The Latest Developments in the Codification of Chinese Civil Law, 83 *Tulane Law Review* 999 (2009).

Mark Wu, Piercing China's Corporate Veil: Open Questions from the New Company Law, 117 *Yale Law Journal* 329 (2007).

Steven M. Dickinson, Introduction to the New Company Law of the People's Republic of China, 16 *Pacific Rim Law & Policy Journal* 1 (2007).

Chen, Chs. 9 & 10; Civil1, Civil2; Civil5, Civil6

9. Criminal Law and Procedure

Pamella A. Seay, Law, Crime, and Punishment in the People's Republic of China: A Comparative Introduction to the Criminal Justice and Legal System of the People's Republic of China, 9 *Indiana International & Comparative Law Review* 143 (1998).

Daphne Huang, The Right to a Fair Trial in China, 7 *Pacific Rim Law & Policy Journal* 171 (1998).

Chen, Chs. 9 & 10; Crim1, Crim2.

10. Theoretical Developments in Chinese Administrative Law

Randall Peerenboom, Globalization, Path Dependency and the Limits of Law: Administrative Law Reform and Rule of Law in the People's Republic of China, 19 *Berkeley Journal of International Law* 161 (2001).

Qianfan Zhang, From Administrative Rule of Law to Constitutionalism: The Changing Perspectives of Chinese Public Law, 3 *Asia Law Review* 47-75 (2006).

Haibo He, The Dawn of the Due Process Principle in China, 22 *Columbia Journal of Asian Law* 57.

Lin Feng (1996); Admin1, Admincon, Admin5

11. Administrative Litigations in China: Legal Progresses and Limitations

Conita S C Leung, Chinese Administrative Law Package: Limitations and Prospects, 28 *Hong Kong Law Journal* 104 (1998).

Keith Hand, Watching the Watchdog: China's State Compensation Law as a Remedy for Procuratorial Misconduct, 9 *Pacific Rim Law & Policy Journal* 95 (2000).

Wang Canfa, Chinese Environmental Law Enforcement: Current Deficiencies and Suggested Reforms, 8 *Vermont Journal of Environmental Law* 159 (2007).

Chen, Ch. 9; Admin2, Admin4, Env1.

12. Fundamental Rights and Freedoms

Guo Luoji, A Human Rights Critique of the Chinese Legal System, 9 *Harvard Human Rights Journal* 1 (1996).

Randall Peerenboom, Assessing Human Rights in China: Why the Double Standard? 38 *Cornell International Law Journal* 71 (2005).

Keith J. Hand, Using Law for a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizen Action in the People's Republic of China, 45 *Columbia Journal of Transnational Law* 114 (2007).

Lin Feng (2000), Ch. 10; Rights2, Rights4, Rights6

13. Right to Property and the Legacy of Socialist Dilemma

Frank Xianfeng Huang, The Path to Clarity: Development of Property Rights in China, 17 *Columbia Journal of Asian Law* 191 (2004).

Mo Zhang, From Public to Private: The Newly Enacted Chinese Property Law and the Protection of Property Rights in China, 5 *Berkeley Business Law Journal* 317 (2008).

Wang & Zhang (eds.), Ch. 17; Prop1, Prop2.

14. Equality before Law?

Ronald C. Brown, China's Employment Discrimination Laws during Economic Transition, 19 *Columbia Journal of Asian Law* 361 (2006).

Xun Zeng, Enforcing Equal Employment Opportunities in China, 9 *University of Pennsylvania Journal of Labor & Employment Law* 991 (2007).

Lin Feng (2000), Ch. 10; Equal1, Equal2.

15. Freedom of Speech

Christopher Stevenson, Breaching the Great Firewall: China's Internet Censorship and the Quest for Freedom of Expression in a Connected World, 30 *Boston College International and Comparative Law Review* 531 (2007).

Benjamin L. Liebman, Watchdog or Demagogue? The Media in the Chinese Legal System, 2005 *Columbia Law Review* 1 (2005).

Kam C. Wong, Law of Assembly in the People's Republic of China, 12 *Washington and Lee Journal of Civil Rights and Social Justice* 155 (2006).

Press2, Speech3, Speech4

16. Religious Freedoms

Anne S.Y. Cheung, In Search of A Theory of Cult and Freedom of Religion in China: The Case of Falun Gong, 13 *Pacific Rim Law & Policy Journal* 1 (2004).

Eric R. Carlson, China's New Regulations on Religion: A Small Step, Not a Great Leap, Forward,

2005 *Brigham Young University Law Review* 747.

Relig1, Relig3

17. Pluralism in a Unitary Structure: Autonomous Nationalities and SARs

Pitman B. Potter, Governance of China's Periphery: Balancing Local Autonomy and National Unity, 19 *Columbia Journal of Asian Law* 293 (2005).

The Committee on International Human Rights, One Country, Two Legal Systems? The Rule of Law, Democracy, and the Protection of Fundamental Rights in Post-handover Hong Kong, 55 *The Record of The Association of The Bar of the City of New York* 325 (2000).

Todd Schneider, David v. Goliath?: The Hong Kong Courts and China's National People's Congress Standing Committee, 20 *Berkeley Journal of International Law* 575 (2002).

Chen Ch 4; NRA, HK3, HK5

18. Future of Rule of Law in China: Political Parties and Political Reform

Dingjian Cai, The Development of Constitutionalism in the Transition of Chinese Society, 19 *Columbia Journal of Asian Law* 1 (2005).

Zhu Suli, Political Parties in China's Judiciary, 17 *Duke Journal of Comparative & International Law* 533 (2007).

Chen Ch. 5; Lin (2000), Ch. 8; Const, Party

Exam/Grades:

The evaluation consists of a research paper of 4000-5000 words in length, exclusive of footnotes and bibliography, which will account for 80% of the final grade. The additional 20% of the grade is based on the evaluation of a class presentation on the readings assigned for a particular class that each student will sign up for at the beginning of the course.

Basic Reading:

Chen Hongyi (Albert): An Introduction to Legal System of the People's Republic of China (LexisNexis Butterworths, 4th Ed. 2011).

Recommended Readings:

Wang Chenguang and Zhang Xianchu (eds.), *Introduction to Chinese Law*, Sweet & Maxwell Asia (1997).

Lin Feng, *Constitutional Law in China* (Hong Kong: Sweet and Maxwell Asia, 2000).

Lin Feng, *Administrative Law Procedures and Remedies in China* (Hong Kong: Sweet and Maxwell, 1996).

Jiang Jinsong, *National People's Congress of China*, Foreign Languages Press (2003).

Useful website for English Translation of the Constitution and Laws:

<http://www.chinalawinfo.com> (法律信息网)