

Law and Society in East Asia

Winter Quarter 2010

Prof. Tom Ginsburg

v. 1.6

This course will cover the East Asian legal tradition, primarily but not exclusively focusing on China and Japan. East Asia is well-known for its remarkable economic development in recent decades, but has also been the home of a long tradition of thinking about law in a way that differs from the assumptions of Western liberal democracy. The course begins by exploring this tradition, and then traces the history of legal institutions in the region, focusing on the encounter with Western legal systems beginning in the 19th century. We will then analyze the major institutions of criminal, civil and administrative law in postwar East Asia and their recent transformations. The focus of this course is not on particular areas of doctrine, but on the ideas and institutions that make East Asia distinctive. Grading will be on the basis of a short research paper (20 pages) or take-home exam. I expect you to participate actively in class, and reserve the right to include class participation in grading decisions.

There is one required book: Milhaupt, et al, THE JAPANESE LEGAL SYSTEM (Foundation Press 2007). All other materials will be available by download from Chalk.

January 4: Course Introduction

Chinese views of law: quotes from SOURCES IN CHINESE TRADITION, edited by Wm Theodore de Bary (1960). [Pp. 1-6 of China Materials.pdf]

Hong Kong University summary on Lord Shang, at <http://www.hku.hk/philodep/ch/Lord%20Shang.htm>

January 5: Imperial Chinese Legal Thought

Derk Bodde and Clarence Morris, LAW IN IMPERIAL CHINA 1-35; 39-51 (1967).

January 6-11: NO CLASS

January 12: Law and Society in Imperial China

Robert van Gulik, *Five Auspicious Clouds*, from JUDGE DEE AT WORK. [Pp. 7-17 of China Materials.pdf]

William P. Alford, *Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China*, 72 CAL. L. REV. 1180, 1190-1227 (1984). [Pp. 18-37 of China Materials.pdf]

January 13: China's Hundred Years of Revolution

Andrew Nathan, CHINESE DEMOCRACY 45-66, 107-19 (1988).

Sun Yat-sen's Three Principles of the People (Sanminzhuyi), available at <http://acc6.its.brooklyn.cuny.edu/~phalsall/texts/sunyat.html>

[weekend reading]: Socialist Legality

Victor Hao Li, LAW WITHOUT LAWYERS 19-31, 71-89 (1977).

January 19: Chinese Legal Reform Today: Public Law

Elizabeth Perry, *Chinese Conceptions of Law from Mencius to Mao—and Now*, PERSPECTIVES ON POLITICS 6(1): 37-51 (2008)

Tom Ginsburg, *Administrative Law and the Judicial Control of Agents in Authoritarian Regimes*, in Ginsburg and Moustafa, eds., RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES (2008)

January 20: Film: The Ballad of Qiu Ju [NOTE: Class begins at 12:30 pm]

January 25: Chinese Legal Reform: Courts and Economic Development

SKIM Peerenboom and He, *Dispute Resolution in Contemporary China*

January 26: Economic Reform Continued: Corporate Reforms and the Antitrust Law

Zhang and Zhang, *The Antimonopoly Law in China: Where do We Stand?* COMPETITION POLICY INTERNATIONAL 3:2 (2007)

http://lawprofessors.typepad.com/antitrustprof_blog/2010/01/chinas-antimonopoly-law-one-year-down-part-6-bigger-is-better-tensions-between-industrial-policy-and-.html

January 27: Chinese Legal Reform Today

Fu Hualing and Richard Cullen, *Weiquan (Rights Protection) Lawyering in an Authoritarian State: Toward Critical Lawyering*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1083925

February 1: Guest Lecture on Taiwan's Constitutional Development, by Prof. Chang Wen-chen of National Taiwan University

Ginsburg, *Law and the Liberal Transformation of the Northeast Asian Legal Complex*, in Halliday, et al, eds. FIGHTING FOR FREEDOM (2007).

February 2: Japanese Legal History and Social Change

Milhaupt, et al. THE JAPANESE LEGAL SYSTEM 1-36

Marius Jansen, China in the Tokugawa World 114-19 (1992)

February 8: Criminal Justice in Japan

Milhaupt, et al. THE JAPANESE LEGAL SYSTEM 402-18 (to Sec III); 431-56

February 9: Lawyers and Judges in Postwar Japan

Milhaupt, et al. THE JAPANESE LEGAL SYSTEM 87-100; 109-30.

February 10:

**February 10: LUNCH MEETING: *Seminar on Constitutional Change in Northeast Asia* (Co-sponsored by China and Japan Law Societies)
Administrative and Constitutional Law in Japan**

Feb 10 (class) Milhaupt, et al. THE JAPANESE LEGAL SYSTEM 191-226

February 15: Dispute Resolution in Japan

Milhaupt, et al. THE JAPANESE LEGAL SYSTEM 151-90

February 16: Current Reform of the Japanese Legal System

Table of Contents and Introduction from Final Report, Justice System Reform Council, June 2001, available also at

<http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>.

Milhaupt, et al. THE JAPANESE LEGAL SYSTEM 71-86

Ingram Weber, Saiban-in System, East Asia Law Review

February 17: Legal Education Reform

Reading TBA

February 22: The Korean Political Tradition and Law

Yang Kun, *Law and Society in Korea: Beyond the Hahm Thesis*, LAW AND SOCIETY REVIEW

Choi Dai-kwon, *Development of Law and Legal Institutions in Korea*, in William Shaw, et al. TRADITIONAL KOREAN LEGAL ATTITUDES (1981).

February 23: Korean Legal Reforms

Ginsburg, *Introduction*, from KOREAN LEGAL REFORM (2004).

Yoon Dai-kyu, *Legal Professions and Judicial Independence*, in RECENT TRANSFORMATIONS IN KOREAN LAW AND SOCIETY (2004).

Kuk Cho, *The New Jury System*, Australian Journal of Asian Law (2009)

February 24: Southeast Asia: The Remarkable Case of Singapore and the Rule of Law

Gordon Silverstein, *Singapore: The Exception that Proves Rules Matter* in Ginsburg and Moustafa, eds., RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES (2008)

March 1: Asia and International Law

Ginsburg, *Eastphalia as a Return to Westphalia*, Indiana J. Global Legal Studies, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1525822

March 2: Asia and Human Rights

Fareed Zakaria, *Culture is Destiny: An Interview with Lee Kuan Yew*, FOREIGN AFFAIRS 1994.

March 3: Asia, the Rule of Law and Economic Development

John Ohnesorge, *Developing Development Theory: Law and Development Orthodoxies and Northeast Asian Experience*, 220-31; 290-308