

## **Law and Society in East Asia**

**Fall Quarter 2013**

Prof. Tom Ginsburg

M-W-Th: 2:45-3:50 pm

Room F

v. 1.4

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. The paper can be used for the Law School's writing requirement, though a SRP designation will require at least 25 pages. I expect you to participate actively in class, and reserve the right to include class participation in grading decisions.

### **September 30: 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>

### **October 2: Imperial Chinese Legal Thought**

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

### **October 3 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]

Skim Jonathan K. Ocko, "I'll Take It All the Way to Beijing: Capital Appeals in the Qing", THE JOURNAL OF ASIAN STUDIES, Vol. 47/2, 1988, pp.291-315

### **October 7 China's Hundred Years of Revolution**

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

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

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

### **October 8 12:30 [MAKEUP, Room I] Lunch talk by Jun Zhao, Zhejiang University**

"China and the International Rule of Law"

### **October 9 Chinese Legal Reform Today**

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

### **October 10 Chinese Legal Reform: Public Law**

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)

Randall Peerenboom, *Social Foundations of China's Living Constitution*, in Ginsburg, ed., COMPARATIVE CONSTITUTIONAL DESIGN (2012).

### **October 14: Chinese Legal Reform: Lawyers & Courts**

pp. 1-19 He Xin, *Black Hole of Responsibility: The Adjudication Committee in Chinese Courts* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2038216](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038216)

Carl Minzner, *China's Turn Against Law*, in the AMERICAN JOURNAL OF COMPARATIVE LAW (2011) 935-40, 949-64

The Li Zhuang Case [file on Chalk]

## **October 16**

Xueyao Li and Sida, Lui, *The Learning Process Of Globalization: How Chinese Law Firms Survived The Financial Crisis*, Fordham Law Review 2011.

Skim: Ethan Michelson, *Justice from Above or Below*, China Quarterly 2008.

**6:30 Evening: MAKEUP: Film: The Ballad of Qiu Ju**

## **October 17 Japanese Legal History and Social Change**

Curtis Milhaupt, et al. THE JAPANESE LEGAL SYSTEM 1-37

Marius Jansen, CHINA IN THE TOKUGAWA WORLD 114-19 (1992)

## **October 21 Lawyers and Judges in Postwar Japan**

Milhaupt, et al. THE JAPANESE LEGAL SYSTEM 117-47.

## **October 23 Criminal Justice in Japan**

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

**Possible Makeup October 23 Film: *I Just Didn't Do It* (2007).**

## **October 24 The Constitution**

Constitution of Japan, Arts. 1-9; available at [http://www.kantei.go.jp/foreign/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html)

Elkins et al, *Baghdad, Tokyo, Kabul*, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1022686](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1022686) pp. 17-24.

Excerpt from Beate Sirota, THE ONLY WOMAN IN THE ROOM

**October 25 1:30-4:30 pm MAKEUP:**

**Workshop on Making People: Constitutional Origins in Korea and Japan**

Chapters 1 and 4.

## **October 31 Dispute Resolution in Japan**

Milhaupt, et al. THE JAPANESE LEGAL SYSTEM 166-200

**November 4 NO CLASS**

**November 6 Recent 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 72-80

Setsuo Miyazawa, *Successes, Failures, and Remaining Issues of the Justice System Reform in Japan*, *Hasting Int'l and Comparative Law Review* 36:313. 313-18, 330-41

**November 7 TBA**

**November 11 The Korean Political Tradition and Law**

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

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

**November 13 Cases from the Korean Constitutional Court**

Case on Impeachment

Case on Capital City Location

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

**November 14 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)

**November 18-21 NO CLASS**

**December 2 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

**December 4 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](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1525822)

**December 5 TBA**