

Legal Studies 161
Chinese Law & Society
Spring, 2009
T-Th 9:30-11 390 Hearst Mining

Berring
LS 161
SP 09

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The Rules of the Road

The class will meet in Room 390, Hearst Mining on Tuesday and Thursday from 9:30-11. The course has an ambitious agenda. We start by talking about traditional Chinese thinkers and the basic questions about law, politics and society that they raise. Unless you understand these questions, and the disputes around the answers to them, you cannot understand modern China. From that beginning in the world of the ancients, we will progress all the way to 2009. That is a lot of ground to cover, but we seem to make it most years. I will not assume that you have any background in China or in law. If you do have some background, you may disagree with some of what I say, but if so, that is all to the good.

Beginning the second week of the semester, there will be one section meeting per week. Grades will be based on a midterm, a short paper and a final exam. You are required to purchase Peter Hessler's, *River Town*. This is a paperback. It is the saga of an American who went to teach at a local teachers college in rural China in 1996. Hessler does a good job of blending in a bit of history with his recounting of the China that he experiences. I will refer to this book throughout the course so I suggest that you start reading it now. (Besides it's a good read.) If you prefer to wait, I will assign parts of it starting in Week 4. In addition you must buy a novel by Robert van Gulik. Van Gulik wrote mystery novels set in ancient China. You may find the stories to be odd, but it is the setting that is important. Van Gulik provided a good glimpse of life in traditional China. A paper based on your reading of the novel will be worth 25% of your grade. The paper will be short and creative and will be due March 19. Another 25% of the grade will come from your midterm. 50% will come from the final. I will also allocate points to each GSI to reward those who participate in sections.

There will be a course website on bSpace. I will use it to post readings and links to useful information. By using this will be able to avoid using a Course Reader. At the first class I will post a link for a reading about Confucius. It would be a good idea for you to check this out right away. Some folks are put off by the idea of starting with such an ancient thinker. Checking this out is a good way to determine if you will enjoy what follows. I am going to assign a fairly light reading load, but I will assume that you have done it. For those of you interested in going deeper into a topic, I will provide some optional readings on the course website. We will talk about the plan in class.

What Lies Ahead

In the early part of the class we will look at traditional Chinese thinkers. You cannot understand the way that China deals with the issues of today unless you understand the basic questions that have framed Chinese legal and political thought for centuries. In this part of the course the lectures are especially important. After covering that material we will skip to the 19th Century when the western powers, with their legal systems, collided with China. The reverberations of this period are still with us. We will trace China's various attempts at legal reform in the 20th

Century and then close with a look at the China of 2009. This is not a course in how to do business in China, but we will end up discussing how business is done in China. Inevitably events in China will grab our attention. Thus the syllabus is always subject to change. Last year the Olympics and the situation in Tibet took over the final weeks of the course. This semester, the worldwide financial crisis might demand our focus. Only time will tell. The one sure thing about studying China is that nothing is sure.

Readings for Week 1-3

First look at the link under Assignments on bSpace that leads you to a reading about Confucius. It is the one mentioned above. If you decide to stick with the class there will be links to Mencius and Han Fei Tzu as well. The one on Mencius covers some other thinkers, Motze and Yangtz. They are only important for purposes of contrast. The point of these readings is not to make you an expert on Confucian or Legalist doctrine. We are only using them as a basis for understanding the relationship of law and society in China. As stated above, the lectures are especially important in this part of the course.

You should also use the first three weeks to read the Van Gulik book. It will be most relevant at this point in the course. As we go along I may assign a few sources on the Internet that you can consult for background.

Week 1

Tuesday, January 20

The first day will be devoted to discussing what the course will cover, why you might want to take it, as well as why you might not want to do so. Some very preliminary reflections on the problems inherent in the study of law and in the study of China will be set out.

Thursday, January 22

This lecture will set out a framework for looking at legal issues in China. To this end I will introduce a model that includes six functions that law can play in society. This is not a perfect model, nor is it one that all scholars would approve. But it is a tool that we can use to ask questions. The functions are: Criminal Matters, Dispute Resolution, Family Issues, Property, Status and Human Rights. We will begin to apply this structure to China. We will reflect on how America in 2009 views these issues and then ask how a traditional Confucian might view each of them?

Week 2

Tuesday, January 27

Today we discuss the impact of Confucius on China's traditional social structure and theories of government. The discussion of Confucius under the Resources link will be important here. How does a Confucian society function? We will introduce ideas that will resonate throughout the semester. How does Confucius see government structured? What is the role of law? Though Confucius was a failure in his own time, why does his philosophy carry such power? The Pole Star theory of leadership will be introduced. The five relationships and the four classes will be set out. How can you make society harmonious? What is the role of law in a just society? The political thought of Confucius is what matters most.

Thursday, January 29

There will be no class today. Sorry

Week 3: Tuesday, February 3 & Thursday, February 5

We look at variations on the Confucian theme. Mencius and Hsun-tze will be discussed. Why is the nature of man important to the way that a legal and political system is set up? What is the role of law in governing society? We will discuss the beginnings of Legalism in China. Han Fei-tzu will be introduced. Check the References section of the website for links on Hsun-tx (Xunsi) and Han Fei Tzu.

The relationship between Confucian li and Legalist fa will be explored. Then we approach the Confucianization of the Law by examining how Confucian doctrine and Legalist theory are united. We will discuss the Ch'in (Qin) Dynasty, the first Dynasty of China as we know it and how it blended into the Han Dynasty. The Reference section has a link for a brief discussion of the life Qin Shih Huang Dih. I hope to discuss the impact of Taoism (Daoism) and Buddhism briefly. We will also discuss who and what a magistrate was in China. As we will be on the topic of majistrates, on Thursday I will discuss the topics for the paper on the Judge Dee book.

Readings for Weeks 4-6

These are very complicated issues. To help you understand them, I will post the draft of a paper that I wrote on the topic on bSpace on the course website. It is not in final form, but it will give you insight on how I see the topic. I hope to post some links to other discussions as well. History plays an important role in the Chinese identity. It is crucial to see the power of these issues. You should begin reading the Hessler book at this point.

Week 4: Tuesday, February 10 & Thursday, February 12

This week we make an astounding leap from the basic questions raised by ancient philosophers to China in the 19th Century. I will try to make sense of this maneuver. We will discuss what happens when the Qing Dynasty collides with the West in the 19th Century? We will discuss the era of unequal treaties, the Opium Wars, extra-territoriality and outright seizures of Chinese land. Hong Kong will serve as an example. Issues in international law and nationalism will be explored. Did law play a role in the Chinese response? How can the Dynasty try to save itself? We will look at Sun Yat Sen, Yuan Shih Kai and K'ang You Wei as examples of ways in which to respond to China's plight. I will introduce the model of the conservative, the reformer and revolutionary. Perhaps the folk tale at the beginning of class will be the way?

Week 5: Tuesday, February 17 & Thursday, February 19

We will talk about China's turmoil in the 20th Century. We will look at the movement from Imperial Dynasty to nascent Republic to Warlords to the KMT government of Chiang Kai Shek and the birth of the Communist movement. What are the roots of China's problems? How does law fit in? The Long March, the Yen-an Period and the founding of the PRC will be covered. We will explore the concept of the true believer and the process of bringing China back to control of its own sovereignty. Various iterations of the role of law will be explored.

Week 6: Tuesday, February 24 & Thursday, February 26

Tuesday, February 24

Today I will summarize what we have done up to this point. Having the midterm Thursday is a bit early, but it makes sense to have it now as we will discuss more modern problems in the next part of the course. We will do some review for the test.

Midterm Exam: Thursday, February 26

We will have the midterm in class. The midterm will cover the material which we explored to this point in the class.

Week 7

Tuesday, March 3 & Thursday, March 5

Since the midterm broke the flow of our discussion, a bit of review will be in order. To help keep these very complicated matters clear I will post a timeline for the events that take place in 20th Century under the Resources tab. It should help you keep things straight. Based on some of the questions that have come my way I also will step back on Tuesday and discuss the issues surrounding the formation of a state and the concept of sovereignty. The current crisis in the Israel and Palestine is bringing this question out in sharp relief for some students. We will get there soon with the Taiwan issue, but this may be a good point to reinforce the concept. Then we will discuss the first decades of the PRC from 1949 until 1978. We will use the legal categories of Property, Status and Criminal Law as major discussion points. The issues of "red versus expert" and the "mass line" will be explored. What was Mao's theory of government and revolution? We will discuss the role of Constitutions, the legal profession in the PRC.

Week 8: Tuesday, March 10 & Thursday, March 12

This week we enter the era of Deng Xiaoping. I will post some good links for you to get background. How did he manage to pull off the move away from Maoism? Why was law such a big part of it? This week we will begin to work through the functions of law as they apply to modern Chinese Law and Society. Our first two topics will be criminal law and property. Criminal law is a good test of the heart of any system. How much is law and how much is policy? Capital punishment will be an example. Property is an explosive topic in a Communist society and it has always been very sensitive in China. It should be fun to discuss these topics. I will post some readings.

Week 9: Tuesday, March 17 & Thursday, March 19

The Judge Dee Papers are due Thursday, March 19

This week we will explore issues of Family Law. Questions of marriage, divorce, population control and inheritance will be discussed. Population control and family planning, a very sensitive topic, will be discussed. We will also take a serious look at gender issues. Social values and civil society will be discussed.

The Week of March 24 – March 26 is Spring Break. May you be on a beach somewhere far from here seeking the tao.

Weeks 10 – 15 TBD by Prof. Barring
later on during the semester