



中國法律研究中心

WINTER 2013

CENTER FOR CHINESE LEGAL STUDIES

From the White House to Huangshan: Professor Liebman Advises Senior U.S. and Chinese Officials



Benjamin Liebman speaks at Xinxiang Intermediate People's Court.

It was a busy spring for Professor Benjamin Liebman, the Robert L. Lieff Professor of Law and the director of the Center for Chinese Legal Studies. In the course of two months he found himself meeting with Vice President Joe Biden at the White House, addressing a conference on judicial review convened by officials from National People's Congress in Huangshan, speaking to hundreds of students at four law schools in Zhejiang and Henan, and participating in the U.S.-China Legal Experts Dialogue at the Diaoyutai State Guest House in Beijing.

Liebman at the White House. Liebman met with Vice President Joe Biden and senior White House advisers on February 8, 2012, to discuss human rights and legal reforms in China. Liebman, a leading expert on China's legal system, was the only scholar invited to the White House for the gathering.

"Vice President Biden made his view clear that developing a society that provides robust protections of basic rights is in China's interest both politically and economically," said Liebman. He added that there is a growing awareness that human rights issues in China must go beyond high profile cases and address the rights of average Chinese citizens.

Liebman's meeting at the White House took place a week before a visit to the United States by Chinese Vice President Xi Jinping, who became China's top leader later in the year. The meeting was thought to signal the Obama administration's commitment to human rights issues abroad, as well as its interest in China's stability and growth. Liebman added that White

House officials also showed a strong interest in understanding some of the broader trends influencing the development of the Chinese legal system. "The U.S.-China relationship is extremely complex," he noted. "It is clear that human rights and rule of law issues continue to be one important aspect of the relationship."

Despite the slowing pace of legal reforms in China, Liebman pointed out in the meeting that deepening Chinese rule of law reforms is in the interest of both the U.S. and China. "There is a lot of instability in China; in the long run, China needs to continue improving its legal system if it is going to enhance stability," he said. "There remain significant areas for potential cooperation between the U.S. and China on rule of law issues."

In particular, Liebman explained that there is a large constituency for legal reform within China, including many officials within the legal system, who believe legal reforms should be deepened. "Despite recent setbacks and very serious ongoing problems," he said, "it is also important to recognize the progress China has made."

U.S.-China Legal Experts Dialogue. Liebman and Sarah Cleveland, the Louis Henkin Professor in Human and Constitutional Rights and faculty co-director of the Human Rights Institute, were in Beijing the week of April 27, 2012, as part of the United States delegation to the latest round of the U.S.-China Legal Experts Dialogue.

The discussions, co-sponsored by the U.S. State Department and China's Ministry of Foreign Affairs, focused on the benefits and practical implementation of the rule of law. The U.S. delegation was led by Assistant Secretary of State for Democracy, Human Rights, and Labor Michael H. Posner and State Department Legal Adviser Harold Hongju Koh. Senior Judge Hu Yunteng led the Chinese delegation. Attendees included dozens of officials and nongovernmental experts from both the United States and China.

"It's about fostering dialogue. There are areas in which we can work together," said Liebman. "Being engaged with people trying to make [China's] legal system stronger is a good thing."

(continued on next page)



Liebman was joined on the trip by his Law School colleague, Cleveland, an expert in international human rights who recently completed a two-year term at the State Department as the counselor on international law in the office Legal Advisor Koh. She helped develop the State Department's position on U.S. litigation involving international and foreign relations law issues.

Judicial Review. A few weeks earlier, in March, Liebman traveled to China to speak about judicial review and mechanisms for ensuring the consistency of law at an international symposium organized by the law commission of China's National People's Congress, China's top lawmaking body, in Huangshan, Anhui. In his talk, he noted that the American legal system is a product of unique historical and cultural conditions. But he added that all "systems need some institution that reviews the legality of the vast range of legal and administrative norms that emerge in any complex society."

Liebman also addressed the role of robust public debate in the democratic process and cited the importance of transparency in ensuring that government agencies and legislatures follow the law. "The American example suggests that the formal processes and institutions do not succeed on their own, but rather are supported by a legal and political culture in which transparency, professionalism, and respect for process are deeply rooted," Liebman told the symposium. China has taken steps to improve transparency, he said, by adopting new rules on open government information. But he added that more can be done, noting the importance of creating mechanisms for ordinary people to challenge laws they believe are invalid.

In an interview, Liebman said he does not expect China to have a system of judicial review by courts anytime soon. "But China is very serious about taking steps to ensure that local

laws and administrative regulations are consistent with national laws," he added. "They are thinking hard about what are the best mechanisms for facilitating review of the vast range of legal documents now in force in China."

In his remarks, delivered over two days of meetings in Huangshan, Liebman noted the importance of professional norms and review by lawyers prior to the enactment of legislation in the U.S., which seeks to ensure that laws are constitutional long before cases ever reach the courts. "This is important for China, where lawyers are just beginning to take on roles advising the government," he said. Liebman added that another message he tried to articulate is that "uniformity is not the only value. Pluralism is also an important value in the U.S. system."

Zhejiang and Henan. Following the meeting in Huangshan, Liebman delivered lectures on his current research on medical dispute resolution on consecutive days at four Chinese Law Schools: Zhejiang University in Hangzhou; Zhengzhou University in Zhengzhou, Henan; Henan University in Kaifeng; and Henan Normal University in Xinxing, Henan. When in China, Liebman lectures frequently in Chinese and also talks to students, judges, and lawyers in smaller cities. "It is really important to be talking to high-ranking government officials, to understand what's going on at the top," he said. "It is equally important to get out there and talk to the people at the local level to know what's happening."

At Chinese law schools far from major cities like Beijing and Shanghai, Liebman said, often he is the first foreign academic to speak to students in their own language. "I talk to them about my research in China," Liebman said. "My goal is to encourage them to do their own research. Many of these students will have an important role in their country in the future."

Workshop on New Research on Chinese Law

Twenty-One Scholars Discuss Works in Progress at Columbia Law School

On May 9, 2012, twenty scholars of Chinese law from around the world gathered at Columbia Law School to discuss new research by scholars early in their academic careers. The conference, sponsored by the Center for Chinese Legal Studies, featured a wide variety of topics, including legal education, state-sponsored corporate social obligations, criminal law, administrative litigation, environmental law, political legitimacy, and health rights. Presenters and commentators included **Margaret Lewis** of Seton Hall Law School, **Benjamin Liebman**, **Li-Wen Lin**, and **Madeleine Zelin** of Columbia University; **Neysun Mahboubi**, University of Connecticut School of Law; **Ethan Michelson**, Indiana University–Bloomington; **Carl Minzner**, Fordham University School of Law; **Rachel E. Stern**, Harvard University; **Frank Upham**, NYU School of Law; **Alex L. Wang**, University of California, Berkeley School of Law; **Katherine Wilhelm**, Yale Law School; **Xu Xin**, Beijing Institute of Technology; **Xing Hong**, Huazhong University Science and Technology; **Xue Yuan**, University of International Business and Economics School of Law; **Xiang Yan**, Wuhan University School of Law; **Yang Fan**, Huazhong University of Science and Technology; **Ye Liangfang**, Zhejiang University Guanghua Law School; **Yue Lin**, Peking University; **Zhang Wanhong**, Wuhan University School of Law.

Professor Curtis Milhaupt Addresses Beijing Business Forum on Chinese State-Owned Enterprises



Curtis J. Milhaupt '89

Curtis J. Milhaupt traveled to Beijing in mid-2012 to deliver a special presentation on China's powerful state-owned enterprises (SOEs) at an event sponsored by AmCham China, the American Chamber of Commerce.

Milhaupt, the Parker Professor of Comparative Corporate Law, the Fuyo Professor of Japanese Law, and the director of the Center for Japanese Legal Studies at Columbia Law School, is currently conducting research into China's SOEs. His July 9 presentation examined problems related to governance and global investment presented by these powerful and politically connected Chinese companies.

In his presentation, Milhaupt raised questions about the competitive implications of Chinese SOEs for U.S. firms operating in China; how an SOE-dominated domestic Chinese economy affects the emergence of private firms; and whether regulatory institutions in developed economies are equipped to address hybrid business-political actors like Chinese SOEs as they expand into global markets.

The event, sponsored by AmCham China's Public Policy Development Committee, featured a Q&A session following the presentation that offered guests the opportunity to discuss these and other issues with Milhaupt, whose recent scholarship on SOEs and state capitalism was featured in *The Economist* earlier this year.

Milhaupt, a leading expert on Asian legal systems and comparative corporate governance, also testified this past February before a Congressional hearing held by the U.S.-China Economic and Security Review Commission. The commission was established in 2000 to report on the national security implications of the bilateral trade and economic relations between the U.S. and the People's Republic of China.

NEW RESEARCH

"Malpractice Mobs: Medical Dispute Resolution in China"

The recent surge in medical disputes in China—both in the courts and on the streets—is the subject of an essay by Professor Benjamin Liebman, published in the January 2013 edition of the *Columbia Law Review*. The essay, titled "Malpractice Mobs: Medical Dispute Resolution in China," looks at the interplay between court adjudication of medical disputes and street-level protests arising out of disputes with healthcare providers.

Professor Liebman argues that the threat of protests, often violent, leads hospitals to settle claims for amounts that are greater than courts might award. The threat of violence also influences how judges handle disputes that do wind up in court.

Liebman's findings go beyond understanding medical disputes. They also provide insight into the evolution of legal institutions in China.

"Increased innovation and competence in the courts are not resulting in greater authority," Professor Liebman contends. "Despite thirty-four years of legal reforms and significant strengthening of legal institutions, the shadow of the law remains weak."

The article highlights a number of largely overlooked trends in both law and governance in China, in particular what Professor Liebman deems is "state over-responsiveness to individual grievances." Liebman discusses why legal processes are often not used to resolve contentious social issues.

Liebman's research involved review of more than 150 lawsuits against medical providers from one municipality in central China and extensive discussions with lawyers, judges, officials, and doctors in a range of cities in China. He presented his initial findings in workshops and lectures at more than a dozen Chinese law schools in 2011 and 2012.

The article can be downloaded from Professor Liebman's faculty website: www.law.columbia.edu/fac/Benjamin_Liebman.



EVENTS

Fall 2012

Monday, November 12, 2012

Capital Markets Practice in China: Past, Present and Future

Alan Seem '96, Partner,
Shearman & Sterling LLP, Palo Alto



Wednesday, November 7, 2012

China's Rights Defense Movement: Online and Offline

Teng Biao, Lecturer,
China University of Political Science and Law;
Visiting Staff Member, Faculty of Law,
Chinese University of Hong Kong;
Founder and Director, China Against the
Death Penalty, Beijing

Monday, October 15th, 2012

Ai Wei Wei: Never Sorry

Screening, with the director Alison Klayman, *Freelance*
Journalist and Documentary Filmmaker



Wednesday, October 10, 2012

The Rise and Fall of Chinese Legal Education

Carl Minzner '00, *Professor of Law,*
Fordham University School of Law

Thursday, September 27, 2012

Venture Capital and Private Equity Investing in China

Simon C.M. Luk '78, *Partner,*
Winston & Strawn LLP

EVENTS

2011-2012



April 23, 2012

Skadden China Fireside Chat

Daniel Dusek, Peter X. Huang, and
Jon L. Christianson '89, *Partners, Skadden,*
Arps, Slate, Meagher & Flom LLP & Affiliates



April 12, 2012

The Evolution of China's Electoral Law

Zhu Suli, *Professor of Law and former Dean,*
Peking University School of Law



April 18, 2012

Why Chinese Obey the Law, Methodological Challenges in Studying Tax Compliance Motivations of Chinese Lawyers

Benjamin van Rooij, *Professor of Chinese*
Law and Regulation, Faculty of Law,
University of Amsterdam



April 9, 2012

A Conversation with Pu Zhiqiang (in Chinese)

Pu Zhiqiang, *Executive Partner,*
Beijing Huayi Law Firm

April 16, 2012

The Development and Challenges of Public Interest Litigation in China

Yan Xiang, *Associate Professor, Wuhan University School of Law,*
and Center for Protection the Rights of Disadvantaged Citizens

March 6th, 2012

Toward "Real" Real Property Rights: Land Reform in Modern China

Keliang Zhu, *Attorney, Landesa*
Roy Prosterman, *Founder and Chair Emeritus of Landesa, and*
Professor Emeritus of Law at the University of Washington



February 29, 2012

China: Political Economy and Authoritarianism

Peter Lorentzen, *Assistant Professor, University of California at Berkeley*



February 28, 2012

Cross-border Dispute Resolution in the Context of Capital Investment in China

Ji Xiang, *Partner, Fangda Partners*

February 21, 2012

**Death Penalty Reforms in China
(in Chinese)**

Zhang Peihong, *Attorney, Shanghai Zhaijian Law Firm and Vice-Director, Criminal Defense Committee, Shanghai Bar Association*



February 15, 2012

Milbank Asia Practice Lunch

Douglas A. Tanner, *Partner, and Jessica Yeping Zhou '06, Associate, Milbank, Tweed, Hadley & McCloy LLP, New York*



February 8, 2012

Property across Time and Culture: Land Rights in Ancient China

Kentaro Matsubara, *Visiting Faculty, Council on East Asian Studies, Yale University and Associate Professor, Legal History, University of Tokyo*



February 6, 2012

Minority Shareholders in China

Liu Junhai, *Professor, Renmin University of China School of Law*

January 31, 2012

Davis Polk Asia Presentation

Antony Dapiran, Bonnie Y. Chan, Miranda So, *Partners, Davis Polk & Wardwell LLP, Hong Kong*



November 30, 2011

China's First Choice-of-Law Act

Xiao Yongping, *Dean and Luoia Special Service Professor of Private International Law, Wuhan University School of Law*

November 22, 2011

**Adventures in Chinese Law:
A Chat with Professor Ben Liebman**



November 7, 2011

Lunch with Judge Xue Hanqin of the ICJ

Xue Hanqin, *LLM '83, JSD '95, Judge, International Court of Justice*



November 3, 2011

Chinese Hacking Through a Legal Lens: National Security & International Law Issues

Adam M. Segal, *Ira A. Lipman Senior Fellow for Counterterrorism and National Security Studies, Council on Foreign Relations*

November 8, 2011

Practicing Law in China as a U.S.-Trained Attorney

PANELISTS

John G. Crowley, *Partner, Davis Polk & Wardwell LLP*

Patrick J. Naughton, *Partner, Simpson Thacher & Bartlett LLP*

Robert Pietrzak '74, *Partner, Sidley Austin LLP*

Gregory G.H. Miao, *Partner, Skadden, Arps, Slate, Meagher & Flom LLP*

MODERATOR

Hao Yong (Alex), *Partner, Jun He Law Offices, New York*



October 27, 2011

A Conversation with Charles Li

Charles Li '91, *Executive Director and Chief Executive, Hong Kong Exchanges and Clearing Limited (HKEx)*



October 26, 2011

Chinese Law Public Interest Career Panel

PANELISTS

Thomas Kellogg, *Program Director and Advisor to the President, Open Society Foundations*

Margaret K. Lewis, *Associate Professor of Law, Seton Hall University School of Law*

Aaron Halegua, *Staff Attorney, Employment Law Unit and Skadden Fellow, Legal Aid Society*



October 24, 2011

Judicial Decision-Making in an Authoritarian Regime: Piercing the Veil of the Adjudication Committee in a Chinese Court

He Xin, *Associate Professor, City University of Hong Kong School of Law*

October 19, 2011

The Complexity of Derivative Actions in Asia: An Inconvenient Truth

Daniel William Puchniak, *Assistant Professor, National University of Singapore*

October 6, 2011

Representing Multinationals in China: Reflections of an IP Lawyer

Joseph Simone, *Partner, IP department, Baker & McKenzie, Hong Kong*

October 5, 2011

Reading Empire: Colonial Archive and Euroamerican Discourse on Sovereignty and Law in the Contact Zone of South China, 1720s–1830s

Li Chen, *Assistant Professor of History and Global Asia Studies, University of Toronto*



September 28, 2011

Human Rights and Rule of Law in China: What Now? What Next?

Thomas Kellogg, *Program Director and Advisor to the President, Open Society Foundations*

September 28, 2011

Tapping the U.S. Capital Market—Challenges for Chinese Companies

PANELISTS

William K. (Ned) Dodds, *Partner, Dechert LLP*

John Du, *Partner, Jun He Law Offices, New York*

Yingcong (Ying) Lan, *Principal, Cornerstone Research*

Yuanyuan (Iris) Jiang, *Principal, Cornerstone Research*

MODERATOR

Yong Hao (Alex), *Partner, Jun He Law Offices, New York*



September 26, 2011

Progress or Retrogress? Comments on the Draft Amendment to Criminal Procedure Law of PRC

Guo Zhiyuan, *Associate Professor, China University of Political Science and Law*



September 21, 2011

The Plight of China's Criminal Defense Lawyers

Jerome A. Cohen, *Professor of Law, New York University School of Law*



September 20, 2011

China's Environmental Tipping Point? New Developments in Environmental Law and Governance in the PRC

Alex Wang, *Visiting Assistant Professor of Law, University of California, Berkeley School of Law*

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Oldham Fellows

Several students from Columbia Law School were awarded Oldham Fellowships in 2011-2012. The fellowships, named for John Rochester Oldham '83 and administered by the Center for Chinese Legal Studies, support work in greater China in public interest, government work, or research. Three students worked in China during the winter intersession 2011 and three more were in China during Summer 2012.



Elizabeth Skeen '13, worked on two projects during the four-week winter break. She researched the experiences of Chinese students who participated in the “Summer Work and Travel” J1 visa program to the U.S. Her interest in the J1 stemmed from the walkout of 400 foreign students hired by a Hershey’s plant, 80 of whom were Chinese. The students thought they were signing up for cultural exchange, opportunities to practice English, and relatively high salaries. Instead they found themselves wrapping chocolates for Hershey’s. Elizabeth’s other research surrounded the revisions to China’s Criminal Procedure Law. Her work led her to believe that one important but underappreciated part of the criminal procedure revisions were the articles that allowed the police and prosecution to conduct relatively unconstrained “electronic investigations” of suspected criminals.



Henri Benaim '13, also traveled to China during the winter recess to research the Basic Law of Hong Kong. He reported a clear difference in the perception of the Basic Law between scholars on the mainland and scholars in Hong Kong. Mainland scholars did not view the Basic Law as a constitutional text, but rather a law like all laws of the PRC passed and promulgated by the National People’s Congress, but “with constitutional characteristics.” Hong Kong scholars, in contrast, gave the law constitutional weight.



Yae-Ji Park '13, studied the relationship of the Red Cross Society of China (RCSC) and the government using the 2008 Wenchuan earthquake as her case study. RCSC insisted that they had authority to set priorities, agenda, and partnerships without government interference. Others perceived the RCSC to be a *de facto* government organization. She found that the RCSC often does play the role of a government agency, even though in 1993, legal ties between the organization and the government were cut. Evidence from her research suggests that these relationships have not been truly severed, but only repackaged.



The Oldham Fellowship also supported three students in greater China during the summer of 2012. **Angela Zhu '14**, interned with the Jiangsu Province People’s Procuratorate. She ended the summer with a solid foundation in the workings of the criminal justice system in China, particularly the treatment of public officials under charges of corruption. She worked in a group that authorizes warrants, approves arrests, and charges criminals. An objective of hers was to understand how criminal justice actually works on the ground, not just in theory. “I [wanted] to find out what rights [people] believed they had,” she said, “whether they had legal representation, and whether they believed there was any political interference in their cases.”



Jasmine Jin '14, worked at the Taiwan Legal Aid Foundation (LAF), Shilin branch office. Because the LAF is the largest legal aid organization in Taiwan, Jasmine felt that her work there allowed her valuable insight into the modern legal landscape of Taiwan. She worked in three areas: 1) Consumer Debt Clearance; 2) Legal Aid for Victims of Human Trafficking; and 3) Legal Aid for Migrant Workers. She also explored how debtors can apply for debt relief and court-approved restructuring plans for unreasonable conditions or terms. She was able to compare the law of Taiwan with the laws of a range Asian countries and with the U.S.



After graduation, **Tina Wang '12**, joined Editor Chen Xiaoping as a part-time staff member of *China Law Digest*, an online publication that highlights China’s legal news and developments—current cases that are in the media spotlight, translations of Chinese-language op-eds and commentaries, and legislative and regulatory developments. In addition to researching and translating Chinese legal news and commentary, Tina has helped improve the site’s traffic and sustainability and helped sharpen the site’s design and focus areas: rule of law and constitutional changes, social justice and the protection of underprivileged and minority groups, and law related to social development. “In having regularly translated and edited the news articles and commentaries culled for the digest in the past,” Tina said, “I was struck by the oft-observed gap between the promise of legislation and reform and the reality of enforcement and cases.”



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Please direct questions, comments, or changes of address to the editor of the newsletter, Paulette Roberts at prober@law.columbia.edu.
Our website address is www.law.columbia.edu/center_program/chinese.

