



中國法律研究中心

SUMMER 2009

CENTER FOR CHINESE LEGAL STUDIES

Professor Liebman Addresses CASS Conference Celebrating 30 Years of Reforms



Benjamin L. Liebman

In December 2008, Benjamin L. Liebman, professor of law at Columbia Law School and director of the Center for Chinese Legal Studies, spoke at a conference in Beijing celebrating 30 years of China's economic and social reforms. The conference, hosted by the Chinese Academy of Social Sciences (CASS), examined changes to China's social, economic, and foreign policy since 1978. Professor Liebman was the only foreign legal scholar to address the conference.

In his remarks, Professor Liebman noted the remarkable changes in China's legal system. "Over the past 30 years," he said, "China has engaged in what is perhaps the most rapid development of any legal system in the history of the world." He noted four trends in the Chinese legal system. First, law has become an important aspect of both state ideology and popular consciousness. Legal reforms have also been part of China's successful reintegration into the world community. Second, legal reforms have begun to limit state as well as individual conduct, in particular through the creation of administrative law. Third, as in other policy areas, experimentation has been an important component of legal reforms. Fourth, legal reforms have resulted in significant professionalization and improved training for judges, procurators, and other actors in the legal system.

Setting aside widely discussed issues, such as lack of enforcement of court decisions, corruption, or external interference in the courts, Professor Liebman also mentioned some unique challenges facing further reforms today. He noted that the Chinese legal system is still searching for a balance between respect for the authority of legal institutions and populism. Also, legal development has been uneven; there is a gap in quality between the legal system in developed and less developed areas of the country. And finally, while noting the importance of the fact that Chinese legal institutions continue to enjoy wide discretion, he cautioned that inconsistent application of law, through China's flexibility and distrust of formality in the legal system, can undermine public confidence and risk the return to populist mass justice.

"One of the lessons of the past 30 years," he said, concluding, "is that China's legal institutions, legal professionals, and ordinary citizens have been tremendously innovative, adaptable, and resilient. Legal reforms have accomplished more than virtually anyone expected in 1978. We may not be able to predict the form of future reforms, but the history of China's first 30 years of legal reforms provides a basis for optimism about the future."



The Speaker Series

Bringing speakers into Columbia Law School is an important way that the Center for Chinese Legal Studies helps disseminate the latest thought and practice in the field of Chinese law. This year the Center arranged 15 lunchtime lecture events.



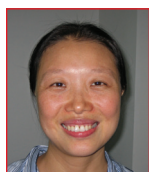
September 24

**Cadre Responsibility Systems:
Legalist Core of Chinese Governance**
Carl F. Minzner '00, *Associate Professor of Law,
Washington University School of Law*



October 8

My Work Place: The Supreme Court
Huang Yih-Feng, *Justice of the Supreme Court,
Taiwan*



October 15

Criminal Negotiated Justice in China
Wei Xiaona, *Lecturer, Renmin University
Law School*



October 27

**Observations on the Development of a Wall
Street Firm's China Practice, 1993-2008**
Robert Chu, *Partner, Sullivan & Cromwell*
This event was co-sponsored by Career
Services and the Society for Chinese Law.

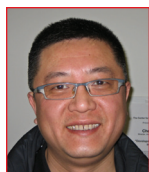


November 19

**Environmental Law Enforcement in
China: A Dynamic View on Changes
Between 2000 and 2006**
Benjamin van Rooij, *Senior Lecturer, Van
Vollenhoven Institute of Law, Governance, and
Development, Faculty of Law; Department of
Chinese Languages and Cultures, Leiden University*

November 20

Internship Panel
2Ls and 3Ls discussed summer internship
opportunities in China. Co-sponsored by the
Society for Chinese Law and Career Services.



January 21

**Good Faith and the Legal System of the
World Trade Organization**
Liu Jingdong, *Associate Research Fellow,
Center for International Law, Chinese Academy of
Social Sciences*



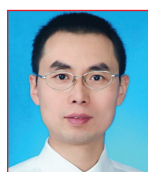
February 11

**Constitutionalism by Other Means?
The Rebuilding of the Legislative
Leviathan in China**
Tian Lei, *Ph.D., Government and Public
Administration, Chinese University of Hong Kong*



February 16

**Private Participation in Public
Administration: Chinese Practice and
American Theory**
Jin Zining, *Associate Professor, Shenzhen Graduate
School of Peking University*



March 4

Development of Legal Aid in China
Chen Dong, *Director, Urumqi Legal Aid Center*



March 9

**China's Regional Ethnic Autonomy Law:
Can It Protect Minority Rights?**
Katherine Palmer Kaup, *Associate Professor of
Political Science; Chair, Asian Studies Department,
Furman University*



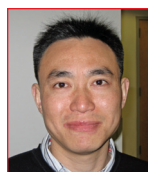
March 11

**How to Reform the Death Penalty
System in China**
Ye Xiaoqin, *Lecturer, Wuhan University School
of Law; Executive Head, Women's Rights
Department, Center for Protection of the Rights of
Disadvantaged Citizens, Wuhan University*



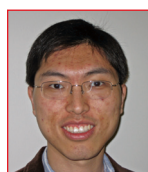
March 23

Securities Regulations in China
Yu Ying, *Vice Dean, Jilin University Law School*



March 25

**The Current State of the Chinese
Commercial Arbitration System: Problems
and Suggestions for Improvement**
Chi Manjiao, *Assistant Professor of Law,
Xiamen University Law School*



April 6

**Xinjiang's Pressure: The Impact of
Petitioning on Litigation and
China's Courts**
Wang Ying, *Ph.D. Candidate, Tsinghua University*



Highlights from Our Speaker Series

Carl F. Minzner '00

Associate Professor of Law, Washington University School of Law

In a talk that took place on Wednesday, September 24, Professor Minzner discussed his article “Riots and Cover-Ups: Counterproductive Central Control of Local Agents” (forthcoming 2009, *U. Penn Int'l Law Review*) and explored a fundamental question facing scholars of Chinese law: What explains the disconnect between formal central norms and the actual actions of local Party officials?

He cited the case of Bobai County in May 2007, when local officials launched a local campaign aimed at implementing family planning policy. The campaign included the use of harsh coercive measures, including the razing of homes of people who failed to pay fines for exceeding family planning quotas, and resulted in widespread rioting by thousands of rural residents. Yet only months earlier, in January 2007, central Party authorities explicitly issued a directive barring the use of such harsh practices and instructing local officials to rely instead on non-coercive measures, such as financial incentives.

Professor Minzner suggested that the problem lies in the disconnect between what central Party directives say and local cadre responsibility systems—incentive systems that evaluate the behavior of local officials and which are linked to their salaries and career advancement. Cadre responsibility systems fulfill a core institutional function of allowing an authoritarian center to maintain a degree of control over its local agents, but they also incentivize local actors to fulfill (or create the illusion of fulfilling) at any cost precise numerical targets that may correspond poorly, or not at all, with the full extent of central demands.

He pointed out the importance of cadre responsibility systems, their deep roots in prior historical practices, and their interaction and conflict with formal legal norms since 1978. He said that despite the great influence of cadre responsibility systems, legal scholars have overlooked them as a subject of study, viewing them as outside the framework of “law.”

Huang Yih-Feng

Justice of the Supreme Court, Taiwan

On Wednesday, October 8, Justice Huang gave a talk titled “My Work Place: The Supreme Court.” In this standing-room-only event, Justice Huang provided a rare glimpse into the workings of the Supreme Court of Taiwan, which is the court of last resort for most civil and criminal cases. Justice Huang outlined the court’s unique structure, practices, and history back to its origins in 1909, during the Qing Dynasty. Following this comprehensive overview was a spirited discussion, which lasted more than an hour. The intensity of the

discussion was not surprising, as his audience included practitioners and scholars from the United States and both sides of the Taiwan Strait who rarely have the chance to speak directly to a Supreme Court justice in an informal setting. Justice Huang answered challenging questions about how particular types of cases were handled under varying circumstances, how the court works administratively, and the care it takes in order to ensure fairness. He offered comparisons of statistics of the Taiwan court system with those of other countries, including the United States. He also spent a good deal of time helping the audience understand precedent, and how the court in Taiwan views precedent, as well as how it was handled during the movement of government from mainland China to Taiwan.

Benjamin van Rooij

Senior Lecturer, Van Vollenhoven Institute of Law, Governance, and Development, Faculty of Law; Department of Chinese Languages and Cultures, Leiden University

On Wednesday, November 19, Professor van Rooij presented research on the current state of environmental law and policy in China. He presented official statistics and independent survey data that show that in the past decade China has witnessed a remarkable change in enforcement of environmental pollution violations. China seems to be moving towards more formalistic and coercive law enforcement, with more cases as well as higher fines. He explored these findings, seeking to understand the explanation and meaning of these changes. He used three sets of data: 1) governmental statistics from 1998–2006, 2) a series of surveys conducted among enforcement officials in three provinces from 2001–2006, and 3) fieldwork-derived data showing actual practices at the grassroots level.

The presentation concluded that enforcement improves when there is a convergence of institutional forces and other factors, including changes in national policy and law, increased wealth and diversification of the economy, grassroots community pressure, privatization of polluting enterprises, and increased pro-environment policies of local governments.

The implications of such changes are not all positive. First, van Rooij questioned whether the changes observed will be effective in dealing with the persistent problems of widespread violations of the law. More coercive and formal law enforcement does not necessarily lead to better compliance. In addition, although he observed a strong trend shift, the level of sanctions remains low. Average fines per case have tripled, but still remain at about only US\$1,000. Second, the basis for the observed trend remains fragile, as national pressures have lacked consistency and local community and government support evaporates when dominant sources of income are at stake.



PILI Fellows, 2008–2009

This year the Center welcomed two PILI Fellows from China, Chen Dong and Ye Xiaoqin. PILI fellows spend the fall semester conducting research, developing projects, and auditing classes at the Law School, and then spend three months during the spring semester at a public interest organization in New York.

Chen Dong

Director, Urumqi Legal Aid Center

Chen Dong interned at Legal Services New York City. He acted as an assistant to the attorneys and as an interpreter for the care workers who were helping the elderly in Chinatown.

In Fall 2008, he conducted research in the field of public interest law at Columbia Law School. He also worked at PILI on a project to promote the protection of rural migrant workers' rights in China. When he returns to China, he hopes to establish an organization that will strengthen the legal aid system there by acting as a bridge between migrant workers and the law firms that provide legal aid. He hopes that his organization will also provide legal consultation to migrants and train pro bono lawyers.

Mr. Chen has spent most of his career in Urumqi in northwest China. First as a public servant in the Urumqi Department of Justice and then as the director of the Urumqi Legal Aid Center, Mr. Chen has been directly involved in enhancing the legal aid system there. He has also volunteered in several legal and social services organizations, including as a council member of

the All China Lawyers' Association, the standing director of the Urumqi Lawyers' Association, the commissioner of the Urumqi Youth Committee, and a counselor for the Urumqi Consumer Protection Council.

Ye Xiaoqin

Lecturer, Wuhan University School of Law; Executive Head, Women's Rights Department, Center for Protection of the Rights of Disadvantaged Citizens, Wuhan University

Dr. Ye completed an internship at the Bronx office of Safe Horizon, an organization that provides court assistance, counseling, and information services to domestic violence and other crime victims. She also attended client interviews and observed many of Safe Horizon's other programs.

During the fall semester of her fellowship, Dr. Ye developed a project to reduce domestic violence in China and conducted comparative research on the American and Chinese death penalty systems. She worked on developing a project on the protection of human rights through public interest litigation and the criminal justice system. After completing her fellowship, Dr. Ye took a study tour to the PILI Budapest office and visited other public interest organizations in Europe.

Dr. Ye's academic research focuses on a variety of criminal law issues and frameworks, as well as women's rights law and theory. When in China, she also works part time as a practicing attorney at a local law firm and is the secretary general of the Ma Ke-chang Jurisprudence Foundation.

PILI and the Center for Chinese Legal Studies: A History of Collaboration

Since 2002, the Public Interest Law Institute (PILI) and the Center for Chinese Legal Studies have enjoyed a collaborative relationship.

In addition to the Center hosting fellows cooperatively with PILI, PILI works locally in China in consultation with the Center to promote and strengthen the development of public interest law. Edwin Rekosh '88, PILI's executive director, is a member of the adjunct faculty of Columbia Law School. Professor Benjamin L. Liebman, who sits on PILI's board of directors, advises PILI's efforts in China, which include a recently initiated slate of activities that seek to expand the scope and effectiveness of public interest law networks, promote the provision of pro bono legal services to public interest organizations, and create career paths for public interest lawyers. Law School faculty, such as Clinical Professor of Law Barbara Schatz, president of PILI's board of directors, also participate in PILI's in-country activities. In the future, PILI plans to create opportunities for Law School students to go to China to help former PILI fellows implement the projects they developed while at Columbia as part of their fellowship.

In Fall 2008, the Center and PILI co-organized a breakfast presentation and discussion about the experiences and efforts of Chinese PILI fellows. Hosted by White & Case LLP, the event, titled "After the Olympics: Prospects for Public Interest Advocacy in China," was moderated by Professor Liebman and featured Professor Rekosh. The event also included prominent Chinese public interest lawyer and former PILI Fellow Zhang Jingjing, director of litigation of the Center for Legal Assistance to Pollution Victims. Also present were Chen Dong and Ye Xiaoqin, the current PILI fellows.

PILI was founded in 1997 with the support of the Ford Foundation as the Public Interest Law Initiative in Transitional Societies at Columbia University. In February 2007, PILI separated formally from Columbia University and adopted its current name. Currently, PILI maintains offices in New York, Moscow, and Belgrade, and a presence in Beijing. PILI continues to work closely with the Law School and the Center, operating a public interest fellowship program for eight to 10 lawyers a year at the Law School, two of whom are from China.



The Changing Chinese Courts

The Center for Chinese Legal Studies Co-sponsors Conference of Top Scholars Across Disciplines to Examine Development of Chinese Courts

To better understand the rapidly evolving Chinese judiciary, the Center for Chinese Legal Studies co-sponsored a conference on February 19th and 20th titled “China’s Changing Courts: Populist Vehicle or Party Puppet?” The Center organized the conference in conjunction with the US-Asia Law Institute of NYU. The conference comprised a public panel discussion on the first night and a private workshop the next day. About 100 people attended the public panel discussion.

During the public session, Frank K. Upham, Wilf Family Professor of Property Law at NYU School of Law, introduced the moderator Professor Benjamin L. Liebman, who pointed out that over the past 30 years courts have become more professional, handle more cases, and have shown innovation and independence. In the past year, however, the new president of the Supreme People’s Court has renewed calls for the courts to follow the will of the Party. After raising the question of how autonomous courts can be, given the political context in which they operate, Professor Liebman introduced the four panelists: Nicholas C. Howson ’88, assistant professor of law at the University of Michigan School of Law; He (Frank) Xin, associate professor of law, City University of Hong Kong School of Law; Rachel E. Stern, Ph.D. candidate, Department

of Political Science, University of California, Berkeley; and Carl F. Minzner ’00, associate professor of law, Washington University School of Law.

Professor He noted a surprising amount of innovation in the courts when dealing with labor disputes. For example, rather than push away what may be politically sensitive cases that cause unrest on the streets, they proactively take cases in order to diffuse public frustration. Ms. Stern also observed trends of independence and creativity. She said that in environmental litigation, judges had significant room to make decisions. Professor Minzner noted that Party cadres’ actions often seem to be at odds with written law. They act this way because of an incentive system which rewards them for meeting targets rather than upholding law. Professor Howson described how in 2006 courts received authorization to pursue sophisticated corporate cases, such as those concerning corporate veil piercing. Ironically, however, it was before 2006 when courts showed greater autonomy in pursuing such cases.

The private portion of the conference took place the following day at Columbia Law School. Forty researchers from across disciplines gathered for in-depth discussion of a series of research papers on the courts.



Panelists (left to right): Rachael E. Stern, Carl F. Minzner, Nicholas C. Howson, Benjamin L. Liebman, He (Frank) Xin, Frank K. Upham



A webcast of the panel discussion is available at
www.law.columbia.edu/center_program/chinese.



R. Randle Edwards Fellowship for Visiting Chinese Legal Scholars, 2008–2009

The Center for Chinese Legal Studies selected five outstanding young Chinese legal scholars to be R. Randle Edwards Fellows during the 2008–2009 academic year. The fellowship, named for Professor Edwards in honor of his role in establishing Chinese legal studies at Columbia and in fostering U.S.–China legal exchanges, supports scholars during a period of residence at Columbia Law School. Professor Edwards was the founder and director of the Center for Chinese Legal Studies until his retirement in 2002. This year the Center hosted Chi Manjiao, Jin Zining, Mou Xiankui, Tian Lei, and Zhang Qun.

Chi Manjiao

Assistant Professor of Law, Xiamen University Law School

Professor Chi's areas of specialization include international arbitration and international economic law. His research topic while at Columbia was called "Moving Toward a Depoliticized Arbitration System: Problems and Prospects in China." He was in residence during the spring semester.

Jin Zining

Associate Professor, Shenzhen Graduate School of Peking University

Professor Jin's areas of specialization are general administrative law and the public/private law distinction. Her research topic while at Columbia was the distinction between public and private law, especially how public participation in private law facilitates China's social transformation. She was in residence during the fall and spring semesters.

Mou Xiankui

Associate Professor; Director, Center for East Asian Legal Studies;

Dean's Secretary of Foreign Affairs, Shandong University Law School

Professor Mou's areas of specialization are constitutional law, civil and commercial law, and comparative law. His research topic while at Columbia was a judicial review of East Asia, including the human rights of students in compulsory education in China. He also researched the disclosure obligations under contract law in China and the U.S. He was in residence during the fall and spring semesters.

Tian Lei

Ph.D., Government and Public Administration, Chinese University of Hong Kong

Dr. Tian's areas of specialization include constitutional theory, the history of American constitutional law, comparative constitutional engineering, and the dynamics of the central-local relationship in China. His research topic while at Columbia was American constitutional theory and its influence on Chinese legal academia. He was in residence during the fall and spring semesters.

Zhang Qun

Assistant Researcher, Institute of Law, Chinese Academy of

Social Sciences

Dr. Zhang's areas of specialization include legal history and housing law. His research topic while at Columbia was a comparative study of the legal profession in housing cases in the U.S. and in China. He was in residence during the spring semester.

Alumni News



Sienho Yee '93 was designated a university professor at Wuhan University Institute of International Law, China, in August 2008. The institute is the only National Key Research Center for international law designated by the Ministry of Education of China. Since graduating from Columbia Law School, he has been conducting research on the structural issues of public international law and the case law of the International Court of Justice. In 2001, he proposed the idea of the "international law of co-progressiveness." In 2004, Martinus Nijhoff published Mr. Yee's collected essays, *Towards an International Law of Co-progressiveness*. In 2002, he co-founded with Wang Tieya, former visiting scholar at Columbia Law School and judge of the International Criminal Tribunal for the former Yugoslavia, the *Chinese Journal of International Law*. Mr. Yee's homepage is www.sienhoyee.org.



Visiting Scholars, 2008–2009

In addition to the PILI and Edwards Fellows, the Center also hosted six visiting scholars. They were Hu Shuijun, Huang Yih-Feng, Liang Shangshang, Liu Jingdong, Wang Ying, and Yu Ying.

Hu Shuijun

Associate Professor, Institute of Law, Chinese Academy of Social Sciences

Professor Hu's areas of specialization include jurisprudence, human rights theory, and law and social theory. His research topic while at Columbia is "The Function of Human Rights in Liberal Political Philosophy: Domestic versus International." Professor Hu is a Ford Fellow who is in residence from the spring semester of 2009 through the fall of 2009.

Huang Yih-Feng

Justice of the Supreme Court, Taiwan

Justice Huang's research topic while at Columbia was medical malpractice litigation. Judge Huang has served as a Supreme Court justice in Taiwan since 2002, the culmination of a career which began in 1979 at the Taiwan Penghu District Court. He received degrees from Loyola University School of Law, Tulane University School of Law, National Taiwan University, and National Chengchi University. He was in residence during the fall semester.

Liang Shangshang

Vice Dean of the Department of Law and Professor of Law, Zhejiang University Law School

Vice Dean Liang's areas of specialization include civil law and commercial law, especially corporate law, securities law, property

law, and tort law. His research topic while at Columbia involved corporate law, corporate governance, securities law, and tort law. He was in residence during the fall and spring semesters.

Liu Jingdong

Associate Research Fellow, Center for International Law, Chinese Academy of Social Sciences

Professor Liu's areas of specialization include international economic law and WTO law. While at Columbia, his research focused on the trade remedy system under the WTO, including anti-dumping rules, countervailing measures, and safeguard provisions. He was in residence during the fall and spring semesters.

Wang Ying

Ph.D. Candidate, Tsinghua University

Mr. Wang's areas of specialization include civil procedure law, dispute resolution, and judicial reform in China. His research topic while at Columbia was called "Xinfang and Justice: An Empirical Study of Shesu Xinfang." He was in residence during the fall and spring semesters.

Yu Ying

Vice Dean, Jilin University Law School

Vice Dean Yu's areas of specialization are corporate law, securities law, and the law of negotiable instruments. Her research topic while at Columbia was corporate social responsibility. Dean Yu was a Center for Chinese Legal Studies Fellow. She was in residence during the fall and spring semesters.

The Center for Chinese Legal Studies Says "Thank You"

The Center for Chinese Legal Studies extends a heartfelt thanks to its global network of alumni. We are delighted to announce that we exceeded our fundraising goal of \$1M during our 25th anniversary year.

In 2008–2009, the Center commemorated its 25th anniversary. As part of that celebration, the Center launched a fundraising campaign to support and expand its programs. The Center's 25th anniversary coincided with Columbia Law School's sesquicentennial. By combining these two landmark events we felt that we could show the importance of Columbia's lengthy, historical relationship with China. The result was a year-long festival and fundraising effort launched in China with a three-city series of events in Hong Kong, Shanghai, and Beijing.

Thanks to your gifts, the Center will be able to do even more. The Law School will be able to offer more financial aid to students from greater China. The Center will be able to hold more conferences, bring in more speakers, produce more research, invite more scholars to work in residence, and send more students to intern and study in China. We will be able to organize more clinics and fellowships, promote more public interest work, create new alliances, and hear more new voices. Because of your generosity, the Center for Chinese Legal Studies will continue to forge an even stronger community of innovative Chinese legal scholars and practitioners.

If you'd like to offer support, please contact Heather Truscinski, executive director of alumni relations and development, at 212-854-8914 or htrusc@law.columbia.edu.



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CLS Students Assist Earthquake Victims

In July and August of 2008 Columbia Law School students worked with students and scholars from Sichuan University School of Law on a project examining legal questions arising from the devastating earthquake in Sichuan Province last May. Edith Beerdsen '10 and Heng Gong '10 conducted research under the supervision of Professor Benjamin Liebman on how other countries had dealt with property rights and other legal questions following devastating natural disasters. The project, which took place in conjunction with the Beijing office of Sullivan & Cromwell, provided guidance to scholars at Sichuan University as they prepared reports for the provincial government on the best responses to a range of legal questions that arose in the wake of the tragedy.

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



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