CHINA AND THE Rule of Law
**4 China: Communism with Capitalist Characteristics** Kellee S. Tsai analyzes China’s economic transformation since 1976. She describes how entrepreneurs and multinational corporations alike have been accommodated and nurtured, while communist officials at the national and local levels have protected their power and limited political reforms.

**7 Rule of Law in China** Randall Peerenboom discusses two models of the rule of law. He assesses China’s progress toward a democratic rule of law, as well as the political and legal reforms necessary to achieve an independent judiciary, individual rights, and a democratic society.

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Director’s Note

China is very much in the news today. Its economy is rapidly growing. The most populous country in the world, China holds a permanent seat on the UN Security Council and is a growing voice in international affairs. This summer, China will host the Olympics in Beijing. But there is also bad news out of China—unprecedented levels of pollution, the exporting of dangerous or tainted products, poor working conditions and growing labor protests, and human rights abuses.

*Insights* begins an exploration of these issues with an overview of the changing Chinese economy since 1976. Kellee S. Tsai discusses the growth of the economy and, in particular, the rise of private enterprise in China. And she explores how and why the Communist Party-government has accommodated these economic changes but not wide-ranging political reforms.

Is China committed to a rule of law? If so, what reforms might be necessary for China to achieve this goal? These questions, critical to the future of China, form the central themes of this issue of *Insights*. Randall Peerenboom explores the meanings of the rule of law in the context of modern China, and he suggests the need for an ambitious agenda of political and legal reforms. Ching Kwan Lee focuses on one particular area of the rule of law—the workplace and workers’ rights—as she explores the convergence of new labor laws, the growing numbers and influence of the Chinese legal profession, and new pressures from international NGOs. To complement Lee’s article, Teaching with the News provides a story about recent labor law reforms enacted by the National People’s Congress. An interview with practicing lawyer Alice Young offers a first-person perspective on the changing laws and legal climate, particularly as they impact the United States and other foreign or multinational business investments in China. And Gang Xie describes some of the American Bar Association’s exciting new work with Chinese lawyers, judges, and courts.

Human rights are a significant part of any discussions about China today. In Perspectives, Merle Goldman assesses the slow and unsteady growth of political rights after Mao through the lenses of students, political activists, and intellectuals. *Insights* editor John Paul Ryan discusses both signs of progress and international reports about continuing human rights abuses in China.

The accompanying lessons and classroom resources complement these central themes. Use the timely lesson in Learning Gateways about the struggle between China and Tibet’s reach for independence. In Students in Action, learn about the wide range of summer study programs throughout China for high school students in the United States and beyond. For more resources, visit *Insights* online at www.insightsmagazine.org.

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China’s economy is now booming. How and why did this economic transformation come about? In this article, political scientist Kellee S. Tsai explores the growth of private businesses and entrepreneurs in China, the ruling Communist Party’s adaptation of its ideology and practices to this new economic reality, and the prospects for political reform.

In the last three decades, China has moved from a planned socialist economy to one where the private sector generates two-thirds of the country’s industrial output, a level comparable to that of the United Kingdom on the eve of Margaret Thatcher’s reforms in the 1980s. China’s economic transformation has inspired many observers to speculate that an emerging capitalist class will demand democracy in the spirit of “no taxation without representation.” Meanwhile, rapid economic growth in China has been associated with a range of social dislocations: migrant workers from the countryside have flooded urban centers, the formerly privileged stratum of urban state workers now faces mass unemployment, levels of income inequality are at an all-time high, and social protests are making headlines both domestically and abroad. Despite these challenges, the Chinese Communist Party (CCP) continues to monopolize political power, as it has since 1949. Neither communist demise nor democratic transition appears imminent.

The seemingly paradoxical co-existence of capitalism and communism can be explained by the incremental manner in which the party-state has enacted various economic and political reforms. The gradual manner in which China’s leaders have pursued reforms unexpectedly created today’s situation, where communist-era political institutions are accommodating the interests of capitalists. Ironically, this reversal in the CCP’s founding principles is precisely the source of communist resilience.

Creeping Economic Reforms
After the death of Mao Zedong in 1976, the reform-oriented coalition led by Deng Xiaoping sought to revitalize the economy and various political and bureaucratic institutions that had been neglected during the preceding decade of the Cultural

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Revolution. But the post-Mao leadership did not have a blueprint for how the reforms would proceed, and at every step, they had to contend with other political leaders who opposed deviations from socialist economic practices. As such, Deng’s reform coalition was limited to experimenting with only a handful of new economic policies with a pragmatic attitude. Only when certain reforms proved to be successful were they extended to other parts of the country. For example, the privileges granted to foreign investors in the original four special economic zones were carefully extended to fourteen coastal cities, which later spread to additional localities. By the same token, the dismantling of agricultural collectives (“decollectivization”) was originally only intended as a desperate measure for the most impoverished and remote localities. But decollectivization spread rapidly throughout rural China, as farmers, local officials, and key central leaders converged in recognizing the economic benefits of returning to household farming.

The decade-long shift from allowing “individual entrepreneurs” to engage in petty commerce to legalizing “private enterprises” with more than eight employees occurred through a similar process. Entrepreneurs also played a key role in creating the economic conditions that enabled reformers to justify legalizing larger private enterprises. Specifically, before 1988 it was illegal for private businesses to hire more than eight employees. However, it was legal and indeed encouraged for township and village governments to operate “collective enterprises.” To avoid outright violation of private sector regulations, entrepreneurs thus came up with the adaptive strategy of registering their businesses as collective ones. This disguising practice was dubbed “wearing a red hat” because running a collective enterprise was more ideologically acceptable in the uncertain political climate of the 1980s. Collective enterprises also enjoyed a host of advantages over private businesses, including tax breaks and access to bank loans and use of land. Before long, red hat enterprises became extremely popular—and in most cases, profitable—and as a result ordinary people and officials alike knew exactly what it meant to wear a red hat. It became increasingly unrealistic, even anachronistic, for central leaders to enforce the ban on larger private businesses. By the time that private enterprises with more than eight employees were formally legalized in 1988, there were already an estimated 500,000 red-hat operators.

As the private sector of the economy flourished, state-owned enterprises (SOEs) remained burdened by various competitive disadvantages, including the expenses associated with over-employment, outdated equipment, and comprehensive provision of social services such as housing, education, health care, and pensions. Although the declining profitability of SOEs was already evident in the 1980s, it was not until the 15th Party Congress in 1997 that the central government endorsed restructuring all but the very largest state-owned enterprises through mergers, acquisitions, bankruptcy, or outright sales.

Note, however, that the central government never referred to the SOE restructuring process as “privatization.” In fact, the term privatization remains politically sensitive, and the stated objective of SOE restructuring is “corporatization,” meaning the conversion of SOE assets into corporate shares rather than the official transfer of public assets to private owners, i.e., privatization. Furthermore, in practice the dominant form of SOE restructuring has been “management buyouts”—whereby shares of SOEs are sold to their former managers—rather than sales to private investors unaffiliated with the original SOE. Economists have observed that the prevalence of management buyouts may be a key reason why restructured SOEs have not produced the higher rates of profitability that reformers were hoping for.


Limiting Political Reforms

Political reforms have been much more limited than economic reforms. While liberalization is typically associated with reducing the role and the size of the state, China’s reform-era has been a period of significant state-building. Vast bureaucracies have been established to deal with new regulatory issues (e.g., industrial and commercial administration, banking and securities regulation, and environmental protection); the size of the civil service has expanded significantly; and even Communist Party membership has grown by over 30 million people: there are now 73.4 million members, making it by far the largest political party in the world.

At the same time, some observers have pointed to the introduction of village elections, semicompetitive elections for local people’s congress deputies, increasing dissenting votes in the National People’s Congress, and pilot experiments with township and county-level elections foreshadowing a transition to democracy. The significance of these procedural changes should not be overstated, however. The CCP has no intention of allowing alternative political parties to emerge and compete for “elected” positions in the political system. Organizers of the short-lived China Democratic Party in 1998 were swiftly imprisoned; the Internet police are busy censoring and shutting down “subversive” Web sites; and the government’s concern about the color revolutions in central Asia (which overturned various authoritarian governments through peaceful means) has resulted in heightened scrutiny or repression of both foreign and domestic nongovernmental organizations. China’s leaders have made it clear that “socialist democracy with Chinese characteristics” will never emulate “western-style democracy.”

About Chinese Leaders

Mao Zedong (1893–1976) co-founded the Communist Party of China in 1921 and became the first chairman of the People’s Republic of China (PRC) when it was established on October 1, 1949, serving until his death in 1976. His rule is associated with both the growing military influence of China in the 20th century and failed domestic initiatives such as the Great Leap Forward and the Cultural Revolution.

Deng Xiaoping (1904–1997) gained prominence as one of the leaders of Mao’s Red Army. After Mao’s death, Deng succeeded in ousting Mao’s appointed successor. As the new leader of the PRC, he initiated reforms to revitalize the education system, dismantle communes and return to household farming, revive private businesses, and attract foreign investment. Deng used tanks and guns to remove student protestors from Tiananmen Square in 1989, resulting in more than 700 deaths and thousands of injuries.

Jiang Zemin (1926–) became the party secretary of Shanghai in 1987 and then party secretary of the Communist Party in 1989. Upon Deng’s death in 1997, Jiang consolidated his power as the core of China’s third generation of leadership and initiated wide-ranging economic reforms. Justified by Jiang Zemin’s Theory of the Three Represents, capitalists were allowed to join the Communist Party in 2001.

Hu Jintao (1942–) was an engineer and rising young star in the Communist Party, becoming party secretary of the Tibet region in 1988. Hu became the youngest member of the Politburo in 1998, which positions him as Jiang Zemin’s likely successor. As China’s party secretary since the 16th Party Congress in 2002, Hu has stressed the importance of building a “harmonious society” to ensure that rapid economic growth does not undermine social stability and environmental sustainability.

To learn more about these leaders, go to the official Chinese Communist Party biographies at: english.cpc.people.com.cn; or to China Vitae (a Hong Kong publisher) at: chinavitae.org/; or to CNN at www.cnn.com/SPECIALS/1999/china.50/inside.china/

—Editor

Accommodating Capitalists

While wielding these expressions of authoritarian power, however, the CCP itself has changed dramatically. On the occasion of the CCP’s 80th anniversary in July 2001, the party went from banning to welcoming capitalist members. Jiang Zemin’s Theory of the Three Represents—which recommended that the party should represent “the most advanced forces of production, the most advanced cultural forces, and the interests of the overwhelming majority of people”—served as the ideological justification for this change. But it was the innovative grassroots practices of entrepreneurs that provided Jiang Zemin and his supporters with concrete evidence that the party’s membership base could change and become more inclusive, notwithstanding the objections of more conservative party elders. Specifically, the adaptive strategy of wearing a red hat enabled party members to run businesses in a less conspicuous manner. This, in turn, led to the rise of “red capitalists,” meaning CCP members who were also private entrepreneurs. By the time that capitalists were formally

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Rule of Law in China

China moves slowly toward key legal reforms.

by Randall Peerenboom

Rule of law is a contested concept in China and elsewhere. Legal scholars distinguish between thin (or procedural) conceptions of the rule of law and thick (or substantive) conceptions. Briefly put, a thin theory stresses the formal or instrumental aspects of rule of law, including the notions that laws should be general, public, prospective or forward-looking, clear, consistent, capable of being followed, stable, and enforced. In contrast, thick, or substantive, conceptions of the rule of law begin with the basic elements of a thin conception but then incorporate substantive normative elements such as democracy or human rights.

Many critics who complain about “the lack of rule of law” in China highlight the authoritarian nature of the political system and its failure to adequately protect civil and political rights. As such, they judge China’s legal system by the standards of a thick, liberal democratic conception of rule of law, and they conclude that China’s legal system leaves much to be desired. This is not particularly surprising, given that the government has expressly rejected a liberal democratic rule of law in favor of a socialist rule of law.

Moreover, China is following a model of development similar to that of other successful East Asian countries, such as Japan, South Korea, Taiwan, and Singapore. In my own research, I have found that the East Asian Model involves, among other things, a dual-track path of legal reforms, with relatively rapid progress in the commercial law area, but continuing tight restrictions on civil and political rights—at least when the exercise of such rights is perceived to threaten social stability or the control of the ruling regime. Thus, a legal system may be compliant with a thin

“The quality of justice in China varies by type of case, level of court, and region.”

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rule of law to different degrees in different areas of law. In the East Asian Model, democracy is also postponed until a higher level of economic and institutional development is attained. Even after democratization, East Asian states tend to be less liberal in interpreting and enforcing individual rights than economically developed Western countries.

The key substantive issue here is whether the limitations on civil and political rights are necessary to maintain social stability and sustained economic growth. Even those who believe that greater restrictions are necessary, given China’s level of development and the rising danger of instability, often take issue with the limitations in particular cases. Moreover, whatever the substantive merits, the failure to provide procedural due process in politically sensitive cases clearly violates the basic requirements of even a thin rule of law.

While China’s legal system fares poorly when judged in terms of the protection of civil and political rights and the standards of a thick, liberal democratic rule of law, it does better when assessed against the standards of thinner conceptions of rule of law. Because rule of law and other good governance indicators are highly correlated with wealth, China’s performance is best judged relative to other countries in its income class. In this regard, China performs better than average in its lower middle income class on the World Bank’s rule of law index, as well as on most other core indicators of good governance. Indeed, China outperforms the average in its income class on most measures of human rights and human well-being, with the notable exception of civil and political rights.

**Legal Reforms Since the 1970s**

The Chinese government’s efforts to establish a socialist rule of law state have resulted in major changes affecting virtually all aspects of the legal and political system. Reforms have led to significant changes in party-state relations, state-society relations, and major governing institutions including the people’s congresses, the procuracy or state prosecutor, the police and the legal profession, as well as to the administrative law apparatus and the judiciary.

Judicial reforms fall into three broad categories: (1) efforts to make the adjudicative process more efficient and just, (2) reforms aimed at enhancing the quality and professionalism of judges, and (3) attempts to increase the authority and independence of the courts. Most of the recent reforms have taken place in the first two categories.

Although the courts in China have also become more authoritative and independent, they continue to lack the competence, independence and authority to handle certain types of cases, including (1) politically sensitive cases and (2) large socioeconomic cases involving pension and other welfare claims, labor disputes, land takings, and environmental issues. The politically sensitive cases are a direct challenge to the authority of the ruling regime. The socioeconomic cases threaten social stability, especially when they involve a large number of plaintiffs, just as they do in other developing countries where administrative and judicial institutions are weak and the state lacks the financial resources to address essentially economic issues.

These general observations about “the rule of law in China” are subject to two major caveats. First, national statistics fail to capture the wide diversity in China. The quality of justice varies by type of case, level of court, and region. The courts regularly handle commercial and civil cases, and even most criminal and administrative cases, in a fair and efficient fashion. In general, judges in higher level courts are more competent, less corrupt, and less subject to local political pressure than judges in lower level courts. Most significantly, while large cities in China such as Beijing, Shanghai, and Guangdong are similar to middle-income countries, other parts of China are as poor as some of the poorest countries in the world. In keeping with the general global relationship between wealth and most good things in life, including rule of law and the development of legal institutions, the legal system in the more developed areas of China functions better than in poor areas. For example, there are more and better law schools and lawyers in the more developed areas of China, the courts are better funded, judges are more qualified, there is less local protectionism where local officials pressure courts to favor local companies and corruption, and the enforcement of judgments is easier.
Insights on Law & Society

A second major qualification about the rule of law in China is that while China has made remarkable progress in improving its legal system in the last thirty years, China is now embarking on a new—and critical—phase in the reform process. Economic reforms have resulted in a dramatic change in Chinese society, leading to greater demands on the legal system. All state actors—people’s congresses, administrative agencies, the procuracy or state prosecutor, the police—are under pressure to reform to meet the demands of a more diversified market economy and an increasingly pluralistic citizenry with greater consciousness of their rights. They are expected to handle matters in a just and efficient way, to be more transparent, and to allow more public input in the decision-making and supervision processes. Yet existing mechanisms for resolving the conflicts generated by economic, social, and political reforms are inadequate, and the state lacks the resources to satisfy all claims, many of which are legitimate. As a result, the number of protests has risen sharply—from 58,000 in 2003 to over 74,000 in 2004. Such protests, many of them violent, are a threat to social stability and thus to sustained economic growth.

The period of easy reforms, if there ever was one, is over. Deeper reforms are required, as widely acknowledged in China. However, such reforms are highly controversial and disputed by different interest groups and state actors. In some cases, the conflicts can be traced to differences in political ideology or moral views. In other cases, the conflicts are a reflection of differences in personal or professional interests.

China is not unusual in encountering obstacles and opposition to the implementation of rule of law and good governance at this stage of development. Many countries are able to make some initial progress and show improvement in terms of economic growth, institutional development, and good governance, given low starting points. However, once they reach the middle-income level, they experience the “middle-income blues.” Powerful interest groups capture the reform agenda, opposing further reforms or pushing for reforms that do not benefit the broad public. State organs vying for power defeat attempts to establish good governance. Economic growth slows or reverses. The reform momentum is dissipated. Some states settle into a stable but dysfunctional holding pattern, while others sink into chaos and become failed states. As a result, citizens of these countries are then trapped in a cycle of dehumanizing poverty, growing income inequality, environmental degradation, dysfunctional institutions, and government malfeasance.

During this crucial phase of development, resource limitations and relatively weak institutions will continue to be obstacles to the realization of rule of law in China. However, China now has the institutional infrastructure on which to build an effective legal system. And the government is not completely lacking in resources. Future progress will turn increasingly on political and economic factors. Available resources must be allocated efficiently. Many specific institutional choices must be made, which will benefit some state organs or interest groups and harm others.

Future Reforms Needed

Future reforms to the political and legal system must encompass at least six major areas. Given the growing social tensions, the increasingly pluralism of society, and the inadequacy of current mechanisms for dealing with such tensions, there is a need to prevent disputes from arising in the first place. This entails addressing some of the major social cleavages, including the rural-urban income gap, the regional income gap, and the gap between those urban dwellers who have benefited from economic reforms and those who have lost out.

Second, the current mechanisms for handling conflicts must be strengthened. This will require sorting out some of the institutional conflicts preventing a realignment of powers among state organs, such as the power of the procuracy to challenge final court decisions as part of its supervisory powers. And it will require recognition of the rights of citizens and nongovernmental organizations (NGOs) to challenge government acts, as well as the right of lawyers to represent their clients in controversial economic, criminal, or political cases.

Third, there is a need for macro-level planning regarding which institutes will handle what type of disputes. At present, the many overlapping mechanisms for handling disputes often leads to inconsistencies, inefficiencies and turf-battles among state organs. In the end, many disputes are funneled into the courts, even though the courts lack the capacity to provide an effective remedy.

Fourth, procedural mechanisms must be developed and strengthened to handle the increasingly diverse views in Chinese society. In particular, there needs to be greater political participation in the decision-making processes, whether through public hearings, consultative committees, or participation in the nomination or election of officials. Empirical studies in the United States, for example,

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Workers and Labor Rights Activism in China

Chinese workers demand better wages and working conditions.

by Ching Kwan Lee

In the global workplace, Chinese workers are often severely underpaid or sometimes not paid at all. In this article, sociologist and Chinese Studies scholar Ching Kwan Lee describes the lack of wage and workplace protections for most Chinese workers, the rapid growth of the legal profession, and the growing legal and political mobilization of workers. She also explores the broader implications of the workers’ rights movement for Chinese society.

A legal revolution has taken place in China, a country known more for its capricious and authoritarian one-party rule than for a robust and independent judiciary. And Chinese workers, arguably among the lowest paid and most exploited in the world, are making use of this fledging legal system to demand and defend their rights. In this article, I tell the story of these two unlikely developments and discuss the opportunities and challenges that China’s emerging “labor rule of law” presents to Chinese workers.

Labor Conditions in China: A Global Perspective

China is the largest remaining socialist country, one that supplies the largest pool of cheap labor for global capitalism. Chinese workers account for 29 percent of the world’s total workforce. The average hourly wage rate for the manufacturing worker in China is only $0.64, far below that in the United States ($24) or even Mexico ($4). This rock-bottom wage level belies more serious problems of labor rights violations: in particular, many workers do not get paid at all. Wage non-payment is the leading cause of labor disputes and protests. According to a Chinese government report published in 2006, less than half (48 percent) of the migrant workforce (120 million workers hailing from the countryside and providing most of the labor for manufacturing and service industries) gets paid regularly. More than half of migrant workers have never been paid the overtime wages that the law requires, and three-quarters of them do not receive the legal holiday overtime wages to which they are entitled. The government report also found that most workers do not have a weekly rest day, and only a tiny minority has signed labor contracts that give them access to social security and medical insurance.

“Chinese workers do not have the legal right to form … unions.”

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One fundamental reason for these abysmal labor conditions is that Chinese workers do not have the legal right to form their own unions. The subordination of the official All China Federation of Trade Unions to the ruling Chinese Communist Party has further undermined the associational and collective bargaining power of the workers. The large numbers of labor-intensive, low-technology industries in China mean that these workers do “unskilled” jobs and do not have the individual workplace bargaining power that skilled workers may deploy. In light of these formidable odds, the new labor laws (passed in 2007) recently the Labor Contract Law (2007) and the Law on Mediation and Arbitration of Employment Dispute (2007). These labor laws are among the more than 400 pieces of legislation, 1,000 administrative acts, 10,000 local rules and regulations, and 30,000 administrative procedures that have been enacted or amended in the past quarter century. This is a phenomenal development, considering that during the Cultural Revolution decade from 1966 to 1978, only 9 laws were passed.

Growing in tandem with the body of Chinese law is the Chinese bar. Denounced as “rightists” (i.e., critics of the Communist Party) in the Mao era and numbering only about 3,000 at the beginning of the reform period, the Chinese legal profession has detached itself from the state and grown by leaps and bound. Though still formally under the supervision of the Ministry of Justice, the bar is an essentially private profession of 150,000 lawyers, with another 100,000 “barefoot lawyers” serving the economically disadvantaged but without formal certification. Labor lawsuits are not the most desirable businesses for this highly competitive profession. Yet there are young and newly minted lawyers without an established clientele, and “barefoot lawyers” without official registration who actively tap the market of labor lawsuits exactly because they are shunned by bigger firms that focus on more lucrative economic and criminal lawsuits. Realizing the prevalence of labor rights violations and the need for legal services dealing with employment issues, some big law firms host regular and free labor law counseling sessions and law forums. Labor lawsuits put the large law firms in touch with the general population and are ways to entice more profitable litigation (such as property disputes or economic lawsuits), especially in middle class neighborhoods, once the firms have established a concerned and compassionate image.

Finally, in the past decade, nongovernmental organizations (NGOs) serving workers have emerged, thanks to funding provided by international advocacy groups and foundations. Chinese labor NGOs have adopted standard features resembling their counterparts in other countries—legal counseling sessions, hotlines, and labor law classes—to fulfill sponsors’ conditions of support. The protocols of internationally funded projects also often entail annual quotas of labor lawsuits for which these organizations have to provide legal representation. Labor NGOs usually choose cases with “paradigmatic” significance and wide demonstrative effects. For example, a famed NGO servicing women workers, well funded by international foundations and visited by prominent female political figures including Hillary Clinton and Cheri Blair, took up a domestic worker’s complaint about back wages owed and lack of rest days. The goal was to stir public debate about the lack of legal protection for the large numbers continued on page 26

Female workers on the assembly line at a low-voltage electrical appliance factory in Taizhou, in Zhejiang province, China, 2003.
Q: What is your current legal practice and how does it relate to China?

Young: For over 30 years, I have advised corporate clients and entrepreneurs on their business activities throughout Asia, including Japan, Hong Kong, Taiwan, Korea, Singapore, Indonesia, India, Malaysia, the Philippines, and China, as well as Asian clients on their investments in the United States. I provide counsel on complex cross-border transactions, and legal and governmental strategies. My cross-cultural background and knowledge of Asian and American laws, politics, languages, and customs have been invaluable in helping me create legal structures and relationships that will endure beyond the immediate project itself.

As a Chinese-American born of immigrant parents, I grew up speaking Chinese at home. I worked in Hong Kong in the pioneering early 1970s when there were only two American law firms located there. I completed my first China deal in 1979, when China first opened to outsiders (before then, China was completely closed to Western business).

My work in China focuses on direct investment, mergers and acquisitions, restructurings, capital markets, private equity and other financings, and technology and trademark licensing. I represent many well-known multinational corporations, financial institutions, funds and financial advisory firms, entrepreneurs, and non-profit organizations, as well as Chinese companies. I assist clients in negotiating and establishing joint ventures and wholly owned subsidiaries located in almost every special economic zone and province of China. It is important to my clients that I am able to provide up-to-date legal advice, as well as a broader perspective based on my experience in China and many other emerging Asian economies.

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Q: What changes in the Chinese legal system have you seen over the past 20 years?

Young: The changes in the Chinese legal system are unprecedented. In 1959, the founder of the People’s Republic of China, Mao Zedong, disbanded China’s existing judicial system. In the late 1970s, during the “Cultural Revolution” instigated by Mao and the “Gang of Four,” a form of court system was used primarily to persecute “counterrevolutionaries.” Beginning in 1979, Deng Xiaoping, Mao’s successor, initiated economic reforms resulting in China’s promulgation of thousands of new laws and regulations to deal with the transition from a planned to a market economy. In 1982, China formally adopted the “rule of law” in its constitution, as opposed to the previous “rule of man.”

I receive close to 100 newly published laws and administrative guidance materials every week. China has very recently enacted a new bankruptcy law, antitrust law, and even a private property law. Enactment of a private property law is especially unusual for a country like China. As a communist country, ideologically China does not support the concept of private property ownership; instead, it emphasizes societal communal rights rather than individual rights.

The successful modernization of China requires reliable legal systems and procedures that (1) facilitate the consistent application of laws and regulations and (2) assure due process in the enforcement of contracts and the settlement of disputes. Although the current court system was only created in the 1980s, and there are not enough trained judges (who must be members of the Communist Party) and lawyers to handle the flow of more than 8 million cases yearly, China’s courts have made progress in handling these cases and solving commercial and personal disputes.

The country is tolerating more open debate on problems and possible solutions. A recent PBS program on “The People’s Court” highlights the progress that has been made in the development of legal concepts and procedures, the training of lawyers (over 400 new law schools have been established) and increasing the credibility of the courts (see sidebar box on page 29). Interestingly, one-third of local judges are women, which is a higher percentage than in the United States. Despite the continued use of secret pretrial adjudication that allows local party officials to intervene in politically sensitive cases, it seems that, in general, ordinary Chinese people have some degree of faith that the court system is going to work for them.

There is also progress being made in trademark protection and the prosecution of counterfeit goods. For many years, there has been pressure on the Chinese government from the United States and other developed countries to more effectively police the manufacture of counterfeit items (such as CDs, DVDs, and automobile parts) and the abuse of trademark and other intellectual property. Progress has been slow because of insufficient resources, local interests, and corruption. Fully 40 percent of U.S. companies in China believe, in fact, counterfeiting has increased. Recent statistics indicate that last year, surprisingly, the majority of trademark infringement cases were brought not by foreigners against Chinese, but by Chinese against other Chinese. This is a welcome sign that the Chinese are using their court system and have some faith that they will be treated fairly. Enforcement of judgments, however, is still a problem in China; less than one half of all judgments are actually enforced.

Q: How have multinational companies, including U.S. companies, established themselves in China? How have they fared in China?

Young: No country in history has sustained such a tremendous rate of growth over 30 years as China. Its economy has grown an average of almost 10 percent a year since 1978. China is currently the fourth largest economy in the world. In 2008, it will likely overtake Germany as the world’s largest exporter and, by 2020 (if its current rates of growth of 10 percent to 11 percent are sustained), China is anticipated to become the world’s second largest or perhaps largest economy, overtaking the United States. Part of the reason for the initial growth was foreign direct investment (FDI) in China, and U.S. companies have been part of that growth, although to a lesser extent than multinational companies based in Europe and Asia. In the 1980s, China was very cautious in allowing investment, restricting the types of industries in which foreign companies could invest, the percentage of ownership, and the sale and distribution of foreign products within China. As the result of its accession to World Trade Organization membership in 2001, China has had to gradually open its markets and eliminate laws and procedures that discriminate against foreign companies. U.S. companies have been investing in China as both a source of manufactured goods and as a huge potential market for goods, technology, and services.

In the past, however, many industry sectors were closed to foreign investment or extremely restricted in ownership to minority interests or joint ventures rather than wholly owned investments, and start-up costs were extremely high.

continued on page 28
Since the establishment of the People's Republic of China in 1949, its Communist Party leadership has repressed dissent political views and organized political opposition. But today's China is not the China of Mao Zedong (1949–1976), when people were persecuted and imprisoned not only for what they said, but for who they were. In the early 1950s, Mao launched a campaign against landlords and entrepreneurs, whom he called the remnants of feudalism and capitalism. In 1957, he persecuted China's intellectuals because he did not trust them and accused them of being members of the bourgeoisie. In the late 1950s, he launched a massive campaign in the countryside, called the Great Leap Forward, in an effort to transform China into a true Communist state in his lifetime. Because the campaign exploited the countryside to enrich the cities, it led to a great famine and, ultimately, the death of thirty million Chinese peasants. And in 1966–76, Mao launched the Cultural Revolution against his own Communist Party and any person in authority, whom he believed was conspiring against him.

In the process, he catapulted China into anarchy and chaos.

After Mao's death in 1976, China was led by Mao's Long March colleague, Deng Xiaoping, who moved China to a market economy and into the international arena, resulting in the growth of China's economy of 9 percent to 10 percent a year for almost thirty years.

Though China continued to be a one-party state led by the Communist Party, it moved from a totalitarian to an authoritarian political system. The Communist Party continued to rule, but China's economic reforms made it possible for individuals to support themselves without the state's imprimatur, which allowed for more freedom in the personal, artistic, and intellectual lives of the Chinese people. In this freer atmosphere, it was possible for individuals and groups to try to assert their political rights.

Such efforts began in the late 1970s, led by former Red Guards, the educated youth, whom Mao had mobilized to rebel against authority during the Cultural Revolution. They caused so much havoc that Mao then sent them to the countryside to learn from the peasants. In the countryside, far away from teachers and families, they began to form their own groups, think for themselves, and question authority. Consequently, when they returned to the cities after Mao's death in 1976, the youth started a movement in Beijing, called the Democracy Wall movement, that used the methods of putting up wall posters, engaging in political debates, and printing pamphlets that they had learned in the Cultural Revolution. This time, however, they called for democratic as well as economic reforms. Deng Xiaoping allowed the Democracy Wall movement, which spread to virtually every major Chinese city, to continue for several months because it buttressed his campaign against the Maoists still in government. But once the Maoists had been purged, he then crushed the Democracy Wall movement and imprisoned its leaders.

The next movement for political reform in China began with the 1989 student demonstrations in Tiananmen Square in Beijing. On April 15, thousands of students marched from their campuses in the Haidian section of Beijing to the Square demanding political reforms as well as calling for an end to corruption and rising inflation. When urban workers tried to join the movement, the students initially tried to block their participation because they knew that the greatest fear of the Chinese leadership was a Solidarity-like movement, such as what occurred in Poland in 1980 that spelled the beginning of the end of the Soviet Union and the communist states of Eastern Europe. The students, however, could not control continued on page 17
A recent news story (March 9, 2008) reported that Chinese lawyer and human rights activist Teng Biao was released from police custody in Beijing after more than 40 hours of forcible arrest, detention, and questioning. Over the past year, Mr. Teng has written public letters, essays, and articles critical of the Chinese Communist Party and its human rights record. This common story reflects the ambivalence of the Chinese government toward political freedoms associated with democratic societies. On the one hand, the government arrested a lawyer without cause, yet the government quickly released the individual without apparent physical harm. Actual or anticipated complaints from the international community about individual arrests sometimes, but not always, lead to the release of political prisoners today. China desires to be viewed as a responsible and influential member of the international community.

In this article, I will describe some of the criticisms of China’s human rights record in several areas—freedom of speech and press, religious freedom, and the rule of law—drawing upon current reports from such sources as Human Rights Watch, Amnesty International, the U.S. State Department, and the United States Commission on International Religious Freedom (see sidebar box on page 16 for more information about these organizations). These sources portray, at best, a mixed picture of human rights progress in China.

Freedom of Speech & Press
Not all arrests of political and human rights critics end as “happily” as the case of Teng Biao, who was subjected to mere intimidation. Amnesty International reports that harassment, constant surveillance, house arrest, and/or detention are the common fate of many human rights defenders in China. For example, Gao Zhisheng, an outspoken human rights lawyer, was detained and held incommunicado, tried, and convicted in 2006, and his law practice was suspended.

The Internet poses a special challenge for China. Potentially, a whole world of information, ideas, opinions, and images are available to every Chinese citizen. In fact, the government uses filters to block the distribution or discussion of politically sensitive ideas. Human Rights Watch reports that the government closed down more than 700 online forums and blogs in the first six months of 2006. Multinational corporations, such as Google, Yahoo, and Microsoft, contribute to this censorship through their preemptive use of filters and releasing the identity of private users to the government.

Religious Freedom
Approximately 50 percent to 60 percent of Chinese are Buddhists, and another 30 percent are Taoists, numbers relatively unchanged from the beginnings of Chinese Communist Party rule in 1949. Recently, however, minority religions have grown in numbers, diversity, and public voice—including Christian, Muslim, Hindu, and controversial religious “sects” such as the Falun Gong. This increasingly diverse religious landscape in China has led to more conflict between the government and believers and their clerical leaders.

China’s constitution states that citizens enjoy the freedom of religious belief, as well as the freedom not to believe in any religion. But the government’s practices fall far short of this universal ideal. Indeed, the United States Commission on International Religious Freedom (USCIRF) places China on its short list of “Countries of Particular Concern,” defined as countries with “ongoing, egregious violations of religious freedom.”
The Chinese government officially recognizes five religions: Buddhism, Taoism, Islam, Catholicism, and Protestantism. In addition, the Russian Orthodox Church has status in some regions of the country. Members and religious leaders of these faiths often can worship and practice in relative freedom. But churches, temples, and mosques must seek government permits to build places of worship, register with the government, and accept the imposition of limitations in the selection of their leaders, the printing of materials, and even the teaching about some theological doctrines.

The most egregious violations of religious freedom in China occur as a result of the practices of unregistered groups, which—according to the USCIRF—accounts for the majority of religious practice in China. Here, there are frequent reports of arrests, detention, imprisonment, and violence against leaders and followers alike. The current U.S. State Department report on religious freedom in China, for example, lists six single-spaced pages of incidents and complaints, mostly involving unregistered groups (often called “house churches”). Members of one house church were attacked as they left an Easter service in March 2007 in Henan Province. The year before, in Zhejiang Province, government officials demolished a large house church under construction. House church leaders are often jailed, sometimes for months or years. Chinese officials regularly persecute leaders and members of the Falun Gong, a spiritual movement of more than two million members that the government views to be a dangerous religious cult; treatment of the Falun Gong has been a source of international consternation. Finally, there are serious ongoing violations of religious freedom in the autonomous regions of Tibet, where Buddhist monks and nuns are required to attend “patriotic education” sessions, young children are not allowed to receive religious education, and violence erupts periodically, as well as Uighur, where the government uses the pretext of the war on terror to tightly control and restrict the religious practices of Muslims.

The Rule of Law

There has been a sharp increase in the number of laws passed by the National People’s Congress in recent years. Ching Kwan Lee (page 11) observes that the number of lawyers has also grown dramatically, and some lawyers work on the front lines of representing controversial clients or politically sensitive causes. The story of Teng Biao is but one among many examples of retaliation against lawyers working to redress human rights and everyday injustices.

The independence of the judiciary is a critical component of the rule of law. But as Randall Peerenboom (page 8) points out, China’s courts and judges lack the requisite authority and independence. Lower-level judges are particularly subservient to the will of local Communist Party officials. And at the national level, the death penalty remains an international blot on China’s human rights record. Amnesty International reports that at least 1,000 people were executed in 2006, another 2,790 were sentenced to death, and the total numbers may actually be much higher. Even worse, Human Rights Watch reports that executions are “the major source of organs used in transplant surgery in China.”

Conclusion

China has reached an important fork in the road. Its economy has grown by leaps and bounds, providing many of its people with a much higher standard of living. China’s legal system has also expanded, partly in response to this economic growth. When the Summer Olympics arrive in Beijing, the world will be watching—not just at the glitter of its economy and infrastructure, but at the way the Chinese government treats its own people and visitors. These recent successes create new and higher expectations that China should routinely conform to the human rights standards that most of the world tries to live by. Each crude incident of detention, violence, “re-education” or intimidation brings calls for rebuke. Cumulatively, these many incidents suggest a government not quite ready to join the international community of responsible nations, which are tested every day of the week in their commitment to human rights. It is now China’s turn to choose which path to follow.

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Resources

Amnesty International (a membership-based organization founded in 1961 to campaign against human rights abuses): www.amnesty.org/

Human Rights Watch (an independent NGO dedicated to protecting human rights around the world): www.hrw.org/


Despite the violent crackdown on the 1989 demonstrators, another new political development occurred in its aftermath. With the continuing dynamic growth of China’s economy, a rising new entrepreneurial class began to develop in the 1990s. Members of this class were not a bourgeoisie in the Western sense of an independent entrepreneurial class, because in order to start and sustain their economic endeavors they had to have connections with local party officials. In fact, the most successful entrepreneurs were party members or inducted into the party. Nevertheless, there were other members of this rising middle class, such as defense lawyers, journalists, and public intellectuals, who attempted to assert their political rights. Even though they might lose their jobs and be persecuted, journalists wrote about peasant protests against local officials’ confiscation of their land for modernization projects. Defense lawyers defended these journalists and others who criticized the political system. And public intellectuals wrote articles and engaged in debates calling for political reforms. They were sometimes detained and arrested but still continued to publicly criticize the party’s policies and call for political rights. Most important, for the first time in the communist period, intellectuals joined with ordinary people in efforts to achieve political and economic rights.

In June 1998, another new political phenomenon occurred—an effort to establish an opposition political party, called the China Democracy Party. It was led by the leaders of the Democracy Wall and 1989 demonstrations. They first registered the China Democracy Party as an NGO in the city of Wuhan. This procedure of registering the China Democracy Party as an NGO spread to the coastal cities and then to the northeast and western China. Despite government censorship and filtering, with the help of the Internet and cell phones, they were able to coordinate their actions; in just six months, the China Democracy Party had become a nationwide political party. This effort was different from other attempts to establish an alternative political group; in this instance, its members were not just intellectuals but also included workers, farmers, and small entrepreneurs. The China Democracy Party existed for almost six months until the Communist Party sharply cracked down and imprisoned its leaders in late 1998. Nevertheless, despite its suppression, a precedent had been set for the establishment of an opposition party.

The makeup of the China Democracy Party’s leadership also revealed another important difference in the post-Mao era. A number of its leaders, veterans of past political movements, had been released from prison due to pressure from the international community. Whereas it had little impact on Mao, international pressure does influence the decisions of China’s post-Mao leaders. They want to be accepted as respected members of the international community. Especially as China approaches the Olympics in Beijing in August 2008, its leaders do not want to do anything to hurt China’s image. Thus, when international pressure is brought on China’s leaders to release political prisoners, they sometimes respond. Also due to international pressure, China signed the UN Covenant on Social and Economic Rights in 1997 and the International Covenant on Civil and Political Rights in 1998. The Covenant on Social and Economic Rights has been ratified by the National People’s Congress; the Covenant on Political Rights has not yet been passed. Nevertheless, like the dissidents in the former Soviet Union, China’s human rights activists point to the latter covenant as justification for demanding political rights.

Thus, though China has an authoritarian government that continues to imprison and abuse those demanding human rights, there have been changes in the post-Mao era, making it possible to launch efforts to achieve such rights. Despite repeated government crackdowns on any unauthorized political activities, individuals and small groups continue to seek political rights. And for the first time in the People’s Republic, intellectuals are joining together with ordinary people in such endeavors. So far, they have not been successful, but neither have they been defeated.

Merle Goldman is professor emerita of Boston University and an associate of the Fairbank Center for Chinese Studies at Harvard University. Her most recent book is From Comrade to Citizen: The Struggle for Political Rights in China (Harvard, 2005). She is also the author of a booklet, published by the Association of Asian Studies in 2007, “Political Rights in Post-Mao China,” designed to be used by high school teachers and students and undergraduates.
One of the best-kept secrets in study-abroad programs is the proliferation of summer study programs in China for high school students. As recently as ten years ago, there were few such programs. Today, there are dozens, if not hundreds, of organizations offering study programs of all kinds for high school students from the United States and other countries. Opportunities for enrichment abound throughout China. In this article, I will describe some of the different programs—their focuses, locations, living arrangements, costs, and other important details. (A sidebar box provides a representative sample of organizations sponsoring such programs. This list is not exhaustive; it should not be construed as an endorsement of any particular program. Interested parents, teachers, and students should consult Web sites, schools, personal references, and other reliable information sources).

**Program Focus**

There are several different kinds of summer study programs available. Language immersion programs (for Mandarin Chinese) are one of the most common. These two-to-four-week programs typically offer intensive language study for four hours or more every day. Students also engage in cultural activities such as martial arts, calligraphy and the like, and they travel to cultural attractions on the weekends. Students live in campus housing; alternatively, they may stay with a host family, an experience that offers additional opportunity for cultural enrichment and the reinforcement of language skills. Programs are offered in Beijing, Shanghai, Kunming, and elsewhere in China. LanguBridge offers programs for students aged 14 and older, and China Institute offers programs for students as well as for teachers.

Cultural exploration programs emphasize learning about Chinese culture. Language instruction is provided in these programs, too, but there is a greater emphasis on immersion into Chinese culture. Lectures, workshops, sightseeing tours of the large cities, introductions to Chinese films and opera, and extensive travel to the Great Wall, the Silk Road, and historically important cities such as Xi’an form the basis of these programs, offered by such organizations as China Quest or Explorica Summer Academy. One of the important issues to consider is the language in which the program will be (primarily) conducted; some programs are mostly English-speaking, while language immersion programs expect a significant language proficiency to be gained during the time abroad.

Volunteer and community service programs are also available to high school students. These programs, which are often located in the smaller cities and provinces of China, typically involve a mix of lectures and workshops, tourist activities, and volunteer service. In one program, students work on community development projects, conservation programs, and museum education. These programs are usually reserved for older, more mature students, aged 15 or 16 and above. Programs are...
available from Intrax Study Abroad and i-to-i Meaningful Travel among others.

Special focus programs, on such subjects as medicine, journalism, and law, offer high school students the opportunity to test early career interests. Projects Abroad, for example, places students in a private law firm in Shanghai, where they attend briefings on the Chinese legal system and follow lawyers in their practices with Chinese and multinational clients. Still other programs offer high school students the opportunity to take for-credit college classes in such subjects as history and government in an international setting, while also taking part in cultural explorations and excursions. The American Institute for Foreign Study offers one such program.

Program Details
These summer study programs in China vary in duration, location, living arrangements, and cost. Some may last one or two weeks, others two to four weeks, and a few may involve a stay of four to six weeks or more. Many of the programs are located in Beijing or Shanghai but also involve some travel to cultural landmarks, while other programs are located in smaller towns and rural areas. Some programs house students on college campuses or adjacent apartments, others on high school campuses, and still others with host families.

Most programs include housing, meals, and local travel within the total cost. Costs vary considerably, but many programs cost approximately $1,500—2,000 for a two-week stay; this does not include airfare—perhaps an additional $1,500 (based on projected airfares for summer 2008). Nevertheless, the total cost for a two-week program to China, while expensive, might actually cost little more than some four-week summer sports camps or camps in the woods that youngsters may attend in their elementary or middle school years. Quite important to note, some study abroad programs offer a limited number of scholarships based on merit or need. Admission to all kinds of programs typically requires a written application and letters of reference; some programs require a transcript and an interview (usually, by phone).

Conclusion
Now that China has opened its doors to the world, a wonderful range of learning opportunities are available—not just for college students, but also for high school students as young as 14 or 15 years of age. Many domestic and international organizations provide the opportunity for high school students from the United States and around the world to experience and learn from China through some combination of language development, cultural exploration, volunteer and service programs, and/or special-focus programs. Consider and investigate the many opportunities.

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Learning Gateways

Splitting the Motherland? The Debate over Tibetan Independence


Objectives

Students will:
- Read a map showing the changing borders of Tibet; use a KWL chart to expand their knowledge.
- Learn about China’s objections to President Bush’s proposed meeting with the Dalai Lama by reading and discussing the article “China Warns U.S. on Dalai Lama Trip.”
- Use a time line to discuss the issues surrounding Tibet’s struggle for independence since China’s invasion in 1950 and write dialogues expressing both points of view.
- Investigate questions from the KWL chart and note how new information affects their dialogues.

Resources & Materials

- Copies of a map showing the changing borders of Tibet over the past century, such as the one found online at www.tibetmap.com/TARbr.html (one per pair).
- Copies of the article “China Warns U.S. on Dalai Lama Trip,” found online at www.nytimes.com/learning/teachers/featured_articles/20071017wednesday.html (one per student).
- A time line reviewing Tibet-China relations since 1950, such as portions of the PBS time line found online at www.pbs.org/wgbh/pages/frontline/shows/tibet/etc/cron.html.

Target Group: Students in Grades 6–12

This activity and accompanying resources are suitable for middle school and high school students in current events, geography, global history, language arts, and interdisciplinary courses.

Procedures

1. Prior to class, make copies of a map showing the changing borders of Tibet over the past century, such as the one found online at www.tibetmap.com/TARbr.html. Have students work in pairs to understand the map and complete a KWL chart of what they already know about Tibet and questions they have about the country. (A KWL chart is a structure that students use before, during, and after engaging with a topic. In the “K” column they fill in what they already know or think they know about a topic; in the “W” column they fill in what they want to know, often by making a list of questions they have about the topic; and in the “L” column, they take notes as they are learning. Because the chart can be added to continuously by an individual student, a small group, or a whole class, it is a flexible way to help structure inquiry into a large topic.) Provide a few minutes for students to complete this task and then compile their answers into one KWL chart for the class.

2. As a class, read and discuss the article “China Warns U.S. on Dalai Lama Trip” (www.nytimes.com/learning/teachers/featured_articles/20071017wednesday.html), focusing on the following questions:
- Why are Chinese officials opposed to the Dalai Lama’s visit with President Bush?
- What steps is the White House taking to respect China’s opinion on the
matter of the Dalai Lama receiving the Congressional Gold Medal and why?

- What does it mean to respect Chinese sovereignty over Tibet?
- What is the Dalai Lama’s political and spiritual platform on Tibet and why is he in exile?
- Why do you think the Communist Party boss of Tibet, Zhang Qingli, made statements against the Dalai Lama’s efforts toward Tibetan independence?
- In your opinion, should China’s threats be taken more seriously by the United States?

3. Review a time line of significant events involving Tibet and China since 1949 when Mao Zedong and his People’s Liberation Army assumed political leadership of China and established the People’s Republic of China. Include the invasion of Tibet in 1950 by Chinese military forces, which ended Tibetan independence. Discuss China’s suppression of religion freedoms and human rights prior to and during the Cultural Revolution and how that resulted in the political exile of the Dalai Lama. Provide an overview of the efforts of the Tibetan people and the Dalai Lama to regain Tibetan sovereignty between 1987 and 1997 and the status of Tibet today. A time line of Tibetan history is available at PBS’s Web site, found online at www.pbs.org/wgbh/pages/frontline/shows/tibet/etc/cron.html. As this source is very detailed, you may wish to focus on the years 1949, 1950, 1959, 1965, 1976, 1988, 1990, and 1997. Stop periodically during the discussion of the time line to allow the class to add facts and questions to the KWL chart. Note instances where the Chinese government and the Dalai Lama have had differing opinions.

4. Divide the class into small groups. Have groups number off as ones or twos. Explain that the ones will be acting from the point of view of the Chinese government and the twos will be taking the point of view of the Dalai Lama and his supporters. Have groups discuss their points of view and write simple statements describing the wants and beliefs of their respective sides on the debate over Tibetan sovereignty. Students may use the article, the timeline of Tibetan history, and the KWL chart to help write statements. You may wish to use the following guiding questions to encourage groups to go into greater depth:

- What are the benefits of declaring Tibet a sovereign nation? What are the drawbacks of denying Tibetan sovereignty?
- What are the political motives of each side?
- What role would you like the United States to play in the current debate over Tibetan sovereignty?
- What impact would Tibetan sovereignty have on the United States’ current relationship with China and the hopes for China’s cooperation on a global scale?
- Is a compromise on this issue possible? What might be the terms of reconciliation?

5. Once small groups have written position statements, have each student pair up with a partner from one of the groups with the opposite point of view. Have each pair then work together to write a dialogue between the Chinese government and the Dalai Lama on the issue of Tibetan sovereignty. Encourage students to use the position statement their groups produced to strengthen the dialogue, but remind them that a dialogue should be a sensible, flowing conversation between two parties.

6. Before the end of class, revisit the KWL chart. Have students write down one question from the chart in their journals for the homework assignment.

Wrap-Up & Homework
Individually, students investigate one of the questions on the KWL chart and respond to the following question: “What did you learn about your question? How might what you have discovered change or inform your dialogue?” In a future class period, have students adjust dialogues as necessary and then present their work.

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Resources on China & Tibet
For additional resources and information about the struggles between China and Tibet in historical perspective, including perspectives on why China has made sovereignty claims over Tibet, visit these Web sites:

Tibet Education Network: www.globalsourcenetwork.org/
BBC News: http://news.bbc.co.uk/2/hi/south_asia/3015840.stm
—Editor
Beijing, June 29. The Chinese legislature passed a law Friday to provide more protection to the millions of farm youths who leave home and become cheap labor in the factories and construction sites that have mushroomed in China’s booming economy.

The Standing Committee of the Chinese People’s Congress, in approving the law, presented it as a bulwark against widespread abuses of the often-uneducated migrant workers, such as forced labor, withholding of pay and unwarranted dismissal. The country was alarmed two weeks ago, for example, by the discovery that hundreds of Chinese were forced to work in conditions resembling slavery at dozens of brick kilns in Shanxi province while local Communist Party officials did nothing to stop it.

In reaction, lawmakers at the last minute added a provision to the long-discussed labor code to mandate punishment for officials who are shown to be negligent or corrupt in allowing entrepreneurs to abuse workers. This and the unusual public rollout of the new law seemed designed to show the Chinese public that the central government of President Hu Jintao is determined to crack down on corrupt officials and protect those left behind by the swift economic growth of the past 25 years.

“The law is meant to protect the workers and their rights,” Xin Chunying, who heads the Standing Committee’s labor committee, said at a news conference. The Standing Committee is a permanent body of the Chinese People’s Congress, a legislature whose hundreds of provincial delegates meet once a year to voice approval for government policies.

Hu and his premier, Wen Jiabao, repeatedly have ordered crackdowns on negligent and corrupt local officials based on existing law, most recently after the kiln workers were discovered. Laws and regulations have long been in place to protect workers. But as is frequently the case in China, the enforcement of the rules has often been frustrated by collusion between local entrepreneurs and party officials eager to promote economic development and supplement their own bank accounts.

China forbids independent labor unions. The official All China Federation of Trade Unions, tied to the same party bureaucrats, functions as an arm of the government—and thus of economic development—more than as a watchdog for workers.

Legislators said one feature of the new law that might help workers is reinforcement of the requirement for detailed contracts spelling out what workers are entitled to in return for their time on the job. Construction workers in particular have found that frequently, after six months or a year on the job, their employers refuse to give them their pay, arguing that development companies ran out of cash and did not provide money to the construction companies.

Migrant workers—as many as 900 million have left farms to find jobs—typically get dormitory-style housing and basic food as part of their benefits. They often work without pay until just before the Chinese New Year, when they are supposed to receive their back pay to enable them to return home and shower their families with gifts.

In the Classroom

Use the following discussion questions in your classroom.

1. Has the Chinese government provided adequate legal protection to its migrant workers?
2. Why do you think China prohibits independent labor unions?
3. Are labor law reforms that alter the relationship between employees and employers a necessary condition for the advancement of political democracy in China?
permitted to join the party, official government surveys showed that 20 percent of private entrepreneurs were already party members. In other words, private sector development had already changed the composition of the party from within, so the Theory of the Three Represents essentially justified a political process that already had been occurring.

The incorporation of entrepreneurs into the CCP paved the way for additional reforms that would protect the economic interests of private capital. In 2004, the state constitution of the People’s Republic of China was amended to protect private property rights and the Theory of the Three Represents was adopted as part of the state’s official ideology alongside “Marxism, Leninism, Mao Zedong Thought and the Theories of Deng Xiaoping.” Then in 2007, the fifth session of the Tenth National People’s Congress passed the Enterprise Income Tax law, which unified taxes for foreign and domestic private enterprises at a flat rate of 25 percent. The passage of this law meant that foreign businesses would no longer enjoy substantial tax advantages relative to domestic ones. Later that year, General Secretary Hu Jintao emphasized at the 17th Party Congress that public and private enterprises would be subject to equal treatment and equal protection under law.

Conclusion: A Story of Communist Resilience

During the early reform years, private entrepreneurs were socially and politically marginalized. They operated in a policy environment that systematically discriminated against them in terms of access to capital, land, and legal protection. Although there are still major gaps between formal policies and their actual implementation at the local level, it is far less troublesome to operate private businesses today than it was even one decade ago. As such, the private sector represents the primary engine of growth in the Chinese economy.

The current government’s emphasis on building a “harmonious society” that stresses income equality and environmental sustainability may be seen as a political effort to ensure social stability by redressing some negative effects of rapid marketization. Yet China’s communist leaders are well aware of the fact that they cannot finance these developmental goals without continued growth. Under these circumstances, it is not surprising that official government slogans emphasize policies that will benefit disadvantaged sectors of the population, while conditions continue to improve for capitalist development.

The remarkable part about the emergence of this implicit pact between communism and capitalism is that private entrepreneurs themselves never lobbied the government directly for legalization of larger businesses, admission to the CCP, or constitutional protection of private property rights. Instead, party-state officials at both the central and local levels have proven to be increasingly responsive to the needs of private capital. Private sector development has had an influence on Chinese politics, but not through formal participatory channels. The unlikely marriage of communism and capitalism in contemporary China grew out of a politics and pragmatism that neither communist cadres nor private entrepreneurs intended to orchestrate. But this implicit pact of capitalism for continued communism is likely to endure for the foreseeable future because both partners agree that introducing liberal democracy into the current system would jeopardize their mutual interests. At present, China’s model of “market socialism with Chinese characteristics” is basically communism with capitalist characteristics.

Who were “red hat” entrepreneurs in China? Why were they called that?
What are two or three of the most important economic reforms that have taken place in the post-Mao period?
Is China really a socialist (or communist) state, given the introduction and rapid growth of capitalism? Why or why not?

For Further Reading


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Is China really a socialist (or communist) state, given the introduction and rapid growth of capitalism? Why or why not?

FOR DISCUSSION
The Asia Division of the American Bar Association Rule of Law Initiative (ABA-Asia) has been working to promote good governance and increase public interest advocacy in China since the late 1990s. ABA-Asia’s projects have fallen under the two broad and complementary categories of governance and citizen advocacy. We have focused on three thematic areas: (1) improving public participation and access to information, (2) supporting reform to the criminal justice system, and (3) developing the capacity of civil society—including the legal profession—to advocate for greater protection of citizen rights. In implementing these programs, ABA-Asia has partnered with a diverse range of local partners, including the All China Lawyers’ Association (ACLA), the Supreme People’s Court (SPC) and provincial high courts, government departments, and nongovernmental organizations (NGOs).

The environment is a major and growing concern in China. In early 2002, ABA-Asia began to implement a series of environmental governance programs in China in partnership with China’s State Environmental Protection Agency (SEPA). ABA-Asia and SEPA convened a series of training workshops for city and provincial Environmental Protection Bureaus (EPBs) and environmental stakeholders, emphasizing such rule of law themes as access to information, governmental transparency, public participation, official accountability, and the role of nongovernmental organizations in civil society. ABA-Asia then supported a number of pilot projects developed by workshop participants. In one pilot project, the Shenyang City EPB undertook, for the first time in China, a transparent public process for soliciting and responding to public comments on the language of the public participation measures themselves. These Shenyang measures—still cited by Chinese officials as the first and best example of local government regulations on implementing environmental public participation rights—became municipal law in December 2005.

In the summer of 2007, China’s State Council issued new regulations on disclosure of government information, which will become effective on May 1, 2008. These regulations are the first national-level regulations in China requiring the government to provide systematic access to information held by the government. ABA-Asia has been supporting this landmark change by working with local partners to create training materials for civil servants and research best practices for implementing access to information requirements.

In the area of criminal justice reform, ABA-Asia has supported policy reforms and provided training to increase fairness in criminal proceedings. In 2002-2004, ABA-Asia hosted two high-profile forums in partnership with ACLA, Renmin University of China, and New York University (NYU) Law School to draw policy-makers’ attention to the problems preventing defense lawyers from fulfilling their proper role in the criminal justice system. Since 2005, in collaboration with ABA’s Death Penalty Representation Project and NYU, ABA-Asia has supported a series of workshops and research to promote fundamental reforms initiated by the Supreme People’s Court regarding trials and appeals for capital cases. ABA-Asia is also providing ongoing assistance to the criminal defense bar to develop guidelines to improve the quality of representation in death penalty cases.

Legal Aid and Citizen Rights

ABA-Asia and ACLA jointly brought together high-level American and Chinese lawyers, government officials, judges, legal profession leaders, legal educators, and domestic and international assistance providers. Our purpose
was to help the legal profession better carry out its mission in public interest advocacy and legal aid, as well as to identify and examine obstacles to the protection of citizens’ rights through public interest litigation. In October 2005, ABA-Asia and ACLA co-sponsored a high-level “International Forum on Public Interest Litigation, Human Rights Protection, and Harmonious Society.” The executive leadership of ACLA and ABA and experienced American public interest litigators joined more than 100 Chinese lawyers committed to developing the field of public interest litigation, including China’s most prominent NGO and law school-based public interest lawyers, to frankly discuss the current state of public interest advocacy in China, how it is impacted by the current political environment, and its future development.

ABA-Asia’s program achieved significant success in western Shaanxi Province [located in central China] in providing legal aid using all four elements of the emerging mixed system—government, NGOs, law school clinics, and private attorneys—and in advising Shaanxi migrant workers about labor contracts and their right to receive free legal aid. In early 2004, ABA-Asia partnered with China’s National Legal Aid Center to conduct a capacity-building workshop in Xi’an. The workshop focused on the need to form linkages among governmental legal aid centers, NGOs, law school clinics, and private attorneys—and in advising Shaanxi migrant workers about labor contracts and their right to receive free legal aid. As a follow up, ABA-Asia helped the Shaanxi Legal Aid Center (LAC) to publish and distribute a “Know Your Rights” brochure. The text, which received substantial input and revision from the four NGO legal aid providers in Xi’an, was printed in 53,000 copies and distributed to fifteen community centers in rural areas throughout Shaanxi Province. In addition, the local Xi’an Evening News ran an interview with the director of the Shaanxi LAC and republished the list of all fifteen centers and their telephone numbers. Anecdotal evidence has indicated a substantial response: the four NGO legal aid centers report significant increases in the number of migrant workers seeking legal advice for infringement of their labor rights. One of the government centers received so many calls that it has converted that telephone number to a hotline. And the Xi’an Evening News has given to its staff copies of the brochure, so they may refer callers to the nearest legal aid center.

### Women and Children

ABA-Asia has also developed projects for the protection of women’s rights and children’s rights. We have supported the Sichuan Lawyers’ Association and the China Network for Combating Domestic Violence in their efforts to curb domestic violence and improve the use of public interest litigation in protecting the victims of domestic violence. A series of workshops were held to share specific legal issues surrounding women’s rights in China, and to introduce and explore the concept of public interest lawyering, both generally and as it relates to women’s rights protection. In January 2007, ABA-Asia assisted with the creation of a model workplace sexual harassment protection policy and a model judicial interpretation of China’s sexual harassment litigation rule.

In the area of children’s rights, ABA-Asia partnered with the Juvenile Rights Protection Committee of ACLA to promote lawyers’ participation in juvenile rights protection and to build support and consultation networks for increased pro bono representation. ABA-Asia programs also aimed to popularize the changing approaches to children’s protection and juvenile justice, help children’s lawyers improve their professional skills, and encourage bar associations at the national and provincial levels to provide increased financial support and personnel training for juvenile rights protection.

### The Future

ABA-Asia will continue to provide technical assistance to increase government accountability and citizens’ rights. We will also work with local partners to expand training opportunities for legal professionals, particularly those in western China and other remote areas. ABA-Asia is currently developing many new projects, such as support for a new environmental litigation training base, expanded use of distance training methodologies for criminal defense lawyers, and judicial training to address gender bias in the court system. Through all these programs, ABA-Asia seeks to help China’s lawyers and legal system work toward a full realization of the rule of law. 

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*ABA leads training workshops for criminal defense lawyers at China Renmin University in Xiamen, May 2007.*
of women working in private middle-class homes in the cities. Another NGO sued the American fast-food giant Kentucky Fried Chicken (KFC), which employed mostly dispatched workers from employment agencies and denied them severance payment when they were dismissed. This case became a cause celebre for Chinese NGOs when KFC yielded and stopped the practice of hiring subcontracted workers in all of its outlets in China.

The convergence of legal reform with the rise of the legal profession and the NGO sector helps channel aggrieved workers to the legal and labor arbitration systems. The volume of arbitrated labor disputes nationwide has increased rapidly from 33,000 cases in 1995 to 447,000 cases involving more than five million employees in 2006. Since 1992, the number of reported labor disputes handled by the courts has grown at an annual average of about 21 percent. Most of these cases are about wage nonpayment, dismissal, injury compensation, and severance payment.

**Workers’ Rights and the Law**

But how exactly do workers use and perceive the law? What are their conceptions of labor rights? There are different patterns of legal mobilization by different generations and sectors of Chinese workers, but they share the common characteristics of combining legal with extralegal activism. Both the labor dispute arbitration system and the courts are run by the local governments which, in the reform period, are more concerned about creating a favorable investment climate than protecting labor rights. While some workers see justice delivered by the arbitration committees and the local courts, many others accuse the system of pro-employer interventions.

Either out of frustration with judiciary bias or of strategic calculation, workers—especially in collective labor disputes—often find it necessary to appeal to the media, protest on the street, or even block traffic. Such acts of defiance or disruption can create public opinion pressure on the employers and local state agents. One extreme example of such protests are the recurrent threats by workers to commit collective suicide after climbing up high-rises or huge billboards (one group of seven construction workers in Shenyang actually attempted suicide a few years ago). Blocking rail and road traffic is another common means of workers trying to draw the attention of higher level governments and media sympathy to their plight. In these incidents, workers would make claims based on the law, hoisting banners and chanting slogans that demand “workers’ lawful rights.” Their legalistic rhetoric provides a legitimate shield for their collective action, which is often deemed “illegal” under the Chinese law. The central government is eager to promote a law-based government. When communism can no longer be invoked to legitimize its one-party rule, popular accusations of “illegal” behavior of employers and local government officials help to galvanize public pressure that often results in expedited court decisions or administrative remedies.

In short, the fledgling “labor rule of law,” despite all its shortcomings, is still very important for Chinese workers who lack the usual bases of bargaining power that workers elsewhere may have. Without the associational freedom to form their own unions, lacking skill-based bargaining power in a labor market that seems to have a bottomless supply of low-wage workers, the law is their only weapon. But because the courts and the labor administration are part of the local political establishment, rather than a neutral and independent institution, workers have to venture beyond the realm of the law into mass politics.

**For Discussion**

- What kinds of labor disputes are most common in China?
- Why are Chinese workers so severely underpaid, when compared with workers in the United States or other parts of the world?
- What factors, in your opinion, have led many Chinese workers to view themselves not only as workers in a factory but also as citizens of a political community?
The resulting conceptions of legal rights among Chinese workers vary greatly, ranging from cynicism and disenchantment on the one hand, to empowerment and aspiration for more citizenship rights on the other. Some workers care only about recovering their wages and other immediate material interests, while others have come to see rights as not only material entitlements but also principles of fairness and of equal access to legal justice. Very rarely, though, do workers define rights as “power,”—for example, demanding the right to organize their own unions or the right to participate in law-making or government.

Conclusion: Looking to the Future
Finally, there is another challenge facing China’s workers and the legal system. A large number of workers are kept outside the parameter of the law, because they do not work with a contract or written agreement of any kind. Lacking a legal contract or written documentation of an employment relationship disqualifies these workers from even applying for labor dispute arbitration, let alone filing for a lawsuit. The exclusion of workers from the process of the law is giving rise to an increasingly precarious labor force, one that is extremely vulnerable to the ravages of the market economy. Reflecting a global tendency toward “casualization” (a worldwide trend toward the informalization of work—and, jobs of short-term duration and without stability, workplace safeguards, or benefits), China is also experiencing a large informalization of employment. Fully 36 percent of the *urban* Chinese workforce works without a contract, and another 10 percent are self-employed and, therefore, also outside the wage-labor regulation apparatus.

The long-term challenge for the Chinese government and the Chinese working class is that labor rights will not be adequate to ensure livelihood protection and social stability in an age of casualization. To seriously address these issues, there must be more comprehensive social rights or citizenship rights, not simply rights based on a legal contract that assume an individual rights-bearer, standing apart from a collectivity or community. The framework of citizenship rights acknowledges the social dimension of personhood and calls for rights that allow producers and nonproducers alike to have the capability, equality, and independence to be full-fledged members of a political community.

Learning Gateways
*continued from page 21*

**Further Questions for Discussion**
- What other countries, like Tibet, have faced a similar debate over sovereignty?
- What human rights and freedoms do you value?
- How would you feel if you were unable to practice your beliefs in your country or home?
- How might history have been different if Tibet had had greater military power?
- What might have happened if the United Nations had acted on behalf of Tibet in 1950?

**Evaluation & Assessment**
Evaluate students on participation in the initial exercise, participation in class discussions, creation of accurate dialogues, and investigation of questions for homework.

**More Classroom Resources**
The East Asia Resource Center of the University of Washington provides a wealth of resources for K–12 teachers, including workshops, summer institutes, and curricular materials. For links to a variety of resources, go to www.jsis.washington.edu/earc/.

PBS Teachers has several contemporary lessons on China for grades 9-12, including globalization, the economy and working conditions, and the rule of law. Go to www.pbs.org/teachers and then to “Social Studies” and search under “China.”
The New York Times Learning Network has additional lessons on China, including censorship and freedom of speech, China & Taiwan, and China’s political leadership. Go to www.nytimes.com/learning/
Talking About China, New Businesses, and the Law
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U.S. companies were not able to make a profit on their China ventures, or if they did, they found it difficult to get their profits out of China. With the changes in Chinese law and practices, and with a better understanding of China, U.S. companies have fared well. As they have gained more confidence in their ability to deal with the business and legal environment, and as restrictions on foreign operations have decreased, more U.S. companies now operate as wholly foreign-owned enterprises or foreign-invested enterprises (WFOEs or FIEs) instead of through joint ventures. On the whole, American brands such as McDonald’s, Kentucky Fried Chicken, Baskin-Robbins, Pepsi, Coca-Cola, Estee Lauder, General Motors, Hyatt Hotels, Starbucks, and Staples have established their names and can be seen in all the major cities of China.

Q: In which parts of China is economic and cultural change most evident today? Why?

Young: The economic winners in China, by far, have been the major cities and coastal towns. China currently has more than 661 cities with populations of over one million. The urban population in cities such as Shanghai, Beijing, Guangzhou, and Shenzhen have benefited from the explosion in export trade, domestic demand, access to transportation, and favorable tax laws in the economic trade zones. Americans who have not visited China may be surprised by the malls in Shanghai filled with Gucci, Prada, Chanel, Armani, and other name-brand stores and by the airports and subways, which are more modern than those in New York or Boston.

The interior and farming regions, however, which represent the much larger population of 900 million, have not fared as well as the 400 million urban dwellers. Ninety percent of rural residents are uninsured for health care, and the transient migrant workers have probably had the least economic benefits of all, with no health care or pension benefits whatsoever, no recourse for unpaid wages, and no job security. The potential for labor unrest as a result of the inequity is a concern to the Chinese government. The government is attempting to figure out ways to safeguard migrant workers and encourage investment in the less prosperous regions, in order to stem the flow to the cities and decrease income disparity, but efforts have been slow to yield results.

Q: What do you see as the biggest challenges facing China in the near future?

Young: The leadership of China has transitioned relatively smoothly in the past 30 years from Mao Zedong to Deng Xiaoping to Jiang Zemin to Hu Jintao (for brief biographies of these leaders, see the sidebar on page 6). China in the last 20 years has dramatically improved the economic welfare of its citizens, but it has many challenges ahead. Its rapid industrialization and urbanization have lifted hundreds of millions of people out of poverty. China’s lower-middle class—defined as having a household income of $3,000 to $6,000—is expected to grow to 41 percent of all households in 2008. Not everyone in China, however, is benefitting from China’s growth.

China’s biggest challenge is that it must feed and support a population of 1.3 billion people, more than 70 percent of whom live in relative poverty in rural areas. The growing discrepancy between the rich and the poor has caused unrest, especially by farmers and migrant workers. In the last 15 years, one in 15 people living in rural areas have migrated to cities, the largest migration of people in history. The large migrant worker population has a very limited social welfare and health safety net, and it is increasingly vocal in its discontent.

Another major challenge for China is its water and electricity shortages. The United Nations has designated China as among the lowest 13 countries in the world in water per capita, and current estimates are that 60 percent of China’s cities will run out of water unless stringent measures are taken. The building of the Three Gorges dam, redirection of major rivers in the south to the north, and other projects are a massive effort to address the problem, but the relocation of millions of people and the ecological effects are of continuing concern to China and the rest of the world.

Coupled with its water and electricity shortage are China’s energy needs. Improving lifestyles and greater production means more manufacturing, construction, cars, and energy consumption. China currently relies primarily on coal for its energy needs, which is costly and a major pollutant of its environment. Anyone who has visited Beijing can attest to its poor air quality. China also must cope with massive public systems’ weaknesses. The recent snowstorms just before the Lunar New Year, the biggest holiday celebration of the year, highlighted the inadequacies in the railroad systems, electrical power, heating, and even disaster relief personnel to shovel snow, clear electrical lines and manage...
the huge number of travelers who were stranded by the weather.

Additional challenges for China are reforming its banking sector, its state-owned enterprises (SOEs), and its pension and health-care systems. China must also deal with widespread concern, within and outside China, regarding tainted food and drugs, pandemics such as the avian flu, and natural disasters. It also must cope with 56 ethnic minorities, balancing national and local interests, and groups that seek greater freedom of religion and press. China, which now has over 210 million Internet users (the largest number of any country in the world), is trying to control the information flow of what it considers political content.

Another challenge for China is its aging population. Estimates are that by the year 2030, China’s aged will exceed 300 million, equivalent to the current population of the United States. In part because of the one-child policy, there will not be enough young people to support the seriously underfunded pension and health-care system, so there will be no safety net for the aging population. Moreover, as a result of the preference for male offspring, there are now 118 males for 100 females—i.e., 40 million more boys than girls born every year, creating the potential for sociological problems as they reach adulthood. Corruption is another major problem for China. Although there have been high-profile punishments of corrupt senior government officials (in the case of drug approval scandals, execution of the officials concerned), corruption remains an impediment to doing business in China. According to the most recent figures available (in 2004), only 3 percent of 170,000 Communist Party officials accused of corruption were actually prosecuted.

China is making efforts to be perceived as a friendly and unthreatening neighbor in Asia. One source of friction, however, is its relationship with Taiwan, under the “One China” policy. Hong Kong and Macau have been success stories for China under the “One China, two systems” approach. Taiwan’s economic future is tied to China’s, as currently 63 percent of Taiwan’s foreign investments are in China. Bilateral trade exceeded $100 billion in 2006, but the current president of Taiwan has advocated for independence from China. Presidential elections in March 2008 will determine Taiwan’s new leader and its policy toward China, and this will be closely watched by the rest of the world.

China also faces increasing friction with the United States over trade and ideology. We now have a $262 billion trade deficit with China; by comparison, over an 80-year span, we had only a $30 billion trade deficit with the Soviet Union. Some members of Congress have accused China of keeping its currency valuation artificially low and have advocated for China to raise its currency valuation to a more appropriate level to relieve this trade deficit. But such calls are unlikely to have much effect on the overall U.S. deficit, as long as we continue our tendency to spend on credit. Moreover, our U.S. domestic agenda to promote U.S. private sector participation in China’s economic growth, while at the same time expressing alarm about China’s investment in the United States, criticizing China on human rights issues, safeguarding Asian regional security, and checking China’s potential rise as a military power, are all factors increasing tension between the two countries.

Finally, the Olympics in the summer of 2008 present both an opportunity and a challenge for China to showcase to the rest of the world its culture, people, tourist sites, robust economy, and modern infrastructure. Hosting the Olympics was a major springboard for Japan in 1964 and Korea in 1988 in introducing their countries to the world, and China no doubt has the same intention. It has even allowed foreign journalists unrestricted travel throughout China from January 2007 through October 2008, another unprecedented move. It is clear that China is determined to improve its world standing and dispel negative images. At the 2008 Olympics, the rest of the world will be able to make its own assessment of China’s progress.

The People’s Court

In 2007, PBS/Wide Angle aired a one-hour documentary program, “The People’s Court,” an effort to explore justice-seeking by ordinary Chinese citizens. PBS was given unprecedented access to these Chinese courts throughout various regions of the country. The film includes segments on new law schools and the growth of the legal profession in China, migrant workers taking their claims of unpaid wages to court, and mobile courts and judges trying to bring justice in small disputes (e.g., between neighbors) to remote rural areas. The program offers glimpses of court sessions, interviews with lawyers and citizens, and a reminder of the continuing importance of mediation to Chinese justice. In a concluding interview, attorney Alice Young discusses a range of economic, legal, and political subjects. To view this program, selected features, or related resources, go to www.pbs.org/wnet/wideangle/shows/china2/index.html.
have found that “procedural justice,” including a sense of having had a say in the outcome, is more important to determining citizens’ perceptions of the legitimacy of the legal system than the actual outcome.

Fifth, greater attention must be paid to procedural justice in resolving disputes. Citizens must perceive dispute resolution mechanisms to be fair, regardless of the outcome in the particular case. This will require addressing corruption, local protectionism, and other factors that unfairly influence the outcome.

Sixth, the government, legal scholars, and public intellectuals should make greater efforts to explain the proper role and the limits of the legal system and rule of law. The legal system is not the proper venue for resolving all contentious issues. Some disputes should be resolved through the political system, including many of the socioeconomic cases arising from the transition to a market economy that are problematic because of the lack of an adequate social welfare system. The traditional emphasis on substantive justice leads to unrealistic expectations about the legal system. The unrealistic expectations undermine trust in the judiciary when the legal system fails to resolve each and every social problem, to ensure social justice, or to ensure a substantively just outcome in the eyes of all parties to a conflict.

Conclusion
Finally, debates in China will continue as to the proper order of economic, political, and legal reforms, as they will elsewhere. The East Asian model suggests that institutional development, including rule of law, ought to precede democratization. Clearly, democratization does not necessarily ensure judicial independence or lead to the elimination of judicial corruption and the better protection of civil and political rights, as the experiences of many third-wave democracies demonstrate. Empirical studies have shown that states that democratize at a low level of wealth are unstable, that democratization may lead to an increase in human rights violations in the short term, and that the real benefits for human rights occur only at the end of the democratization process—when democracy is consolidated.

Nevertheless, considerable progress is possible within the current authoritarian political structure of China, as evidenced by other successful East Asian states. This is particularly true in terms of institutional strengthening, increased professionalism, and the handling of cases that do not challenge the ruling regime. Ultimately, however, the experiences of other successful Asian states also demonstrate that realization of a thick, substantive democratic rule of law—and in particular, a more independent judiciary better able to protect civil and political rights—is likely to require democratization.

References

FOR DISCUSSION

How is a “procedural” or “thin” rule of law different from a “substantive” or “thick” rule of law? Which best characterizes China today? Why?

Why is the rule of law more fully developed in urban (rather than rural) areas of China?

What is the best basis for comparing China to other countries—geographic proximity, political system, wealth and income, population level, or other factors?
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–David Keller Trevaskis, Pennsylvania Bar Association Pro Bono Coordinator, LEAP-Kids

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