

THE EDUCATION UNIVERSITY OF HONG KONG

Course Outline

Part I

Programme Title	: All undergraduate programmes
Course Title	: Legal Reforms in Modern China
Course Code	: SSC2219
Department	: Social Sciences and Policy Studies
Credit Points	: 3
Contact Hours	: 39
Pre-requisite(s)	: Nil
Medium of Instruction	: English
Level	: 2

Part II

The University's Graduate Attributes and seven Generic Intended Learning Outcomes (GILOs) represent the attributes of ideal EdUHK graduates and their expected qualities respectively. Learning outcomes work coherently at the University (GILOs), programme (Programme Intended Learning Outcomes) and course (Course Intended Learning Outcomes) levels to achieve the goal of nurturing students with important graduate attributes.

In gist, the Graduate Attributes for Sub-degree, Undergraduate, Taught Postgraduate, Professional Doctorate and Research Postgraduate students consist of the following three domains (i.e. in short "PEER & I"):

- Professional Excellence;
- Ethical Responsibility; &
- Innovation.

The descriptors under these three domains are different for the three groups of students in order to reflect the respective level of Graduate Attributes.

The seven GILOs are:

1. Problem Solving Skills
2. Critical Thinking Skills

3. Creative Thinking Skills
- 4a. Oral Communication Skills
- 4b. Written Communication Skills
5. Social Interaction Skills
6. Ethical Decision Making
7. Global Perspectives

1. Course Synopsis

This course aims to enhance students' understanding of modern Chinese legal system by looking at its historical evolution. China has been consciously and extensively borrowing from Western legal models since the late Qing era. Using "legal transplantation" as the analytical framework, this course seeks to identify the motives and major driving forces behind the venture of importing and adapting foreign laws into the Chinese context. The first part of the course studies the legal reform efforts carried out by the Qing Court and the Kuomintang (KMT) Government. The second part of the course turns to investigate the post-1949 development. Particularly worth to note is the accelerated legal transplantation in various branches of law following the adoption of the "open-door policy" in late 1970s. Impressive results are achieved in terms of the large quantity of laws enacted and legal personnel trained, but it remains debatable whether China has embraced the fundamental legal concepts that characterize Western legal systems such as the rule of law, judicial independence, natural justice, etc. While the focus of this course is to highlight the historical interplay of indigenous and exogenous influences in the development of Chinese legal system, part of the analysis will be on substantive legal rules (e.g., criminal law, civil law, and commercial law) to provide examples for evaluating the effects of legal transplantation.

2. Course Intended Learning Outcomes (CILOs)

Upon completion of this course, students should be able to:

- CILO₁ appreciate the usefulness of the theory of legal transplantation in analyzing the diffusion of Western laws and legal thoughts in China.
- CILO₂ identify major events and personages in the legal history of Modern China.
- CILO₃ understand the origins and evolution of major Chinese legal institutions.

CILO₄ familiarize themselves with the literature and scholarly discussions on significant issues arising in the legal history of Modern China, e.g., the rule of law, constitutional democracy, judicial independence, capital punishment, private ownership, etc.

CILO₅ develop a historical-critical attitude in approaching legal problems and articulate persuasive arguments based on solid research.

3. Content, CILOs and Teaching & Learning Activities

Course Content	CILOs	Suggested Teaching & Learning Activities
Introduction: <ul style="list-style-type: none"> • Concept of legal transplantation. • Characteristics of traditional legal values and practices in Imperial China. 	<i>CILO</i> _{1,2,3,4,5}	<ul style="list-style-type: none"> • Lecture • Class discussion
Legal reform in late Qing China: <ul style="list-style-type: none"> • Political collapse and extra-territoriality. • Idea of “Chinese learning for essence, Western learning for application”. • Constitutional reform and promulgation of laws along the lines of western models. 	<i>CILO</i> _{1,2,3,4,5}	<ul style="list-style-type: none"> • Lecture • Class discussion • Analysis of historical documents
Legal reform in Republican China: <ul style="list-style-type: none"> • Westernization of legal system under the guidance of the “Three People’s Principles”. • Collection of the Six Laws, court system and the institutionalization of the legal profession. • Emergence of modern Chinese jurists. 	<i>CILO</i> _{1,2,3,4,5}	<ul style="list-style-type: none"> • Lecture • Class discussion • Analysis of historical documents
Legal reform in the People’s Republic of China: <ul style="list-style-type: none"> • Pre-1949 experience of communist justice. • The short-lived triumph of the Soviet model. • Open door policy – legal reform for utilitarian and instrumentalist purposes. • Globalization of Chinese law – form or substance? 	<i>CILO</i> _{1,2,3,4,5}	<ul style="list-style-type: none"> • Lecture • Class discussion • Analysis of historical documents

Legal transplantation in China: evaluation and prospect.	<i>CILO</i> _{1,2,3,4,5}	<ul style="list-style-type: none"> • Lecture • Class discussion • Class Presentation
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4. Assessment

Assessment Tasks	Weighting (%)	CILO
A Reflective Report	10%	<i>CILO</i> _{1,2,3,4,5}
Class Participation – which will consist of 2 parts: <ul style="list-style-type: none"> • Class presentation; and • Continuous assessment. 	40%	<i>CILO</i> _{1,2,3,4,5}
Individual Essay	50%	<i>CILO</i> _{1,2,3,4,5}

5. Required Text

NIL

6. Recommended Readings

- Ahl, B. (2021). *Chinese courts and criminal procedure: post-2013 reforms*. Cambridge: Cambridge University Press.
- Bernhardt, K and Huang, P. (1994). *Civil law in Qing and Republican China*. Stanford: Stanford University Press.
- Chen, A.H.Y. (2019). *An introduction to the legal system of the People's Republic of China*. (5th ed.). Hong Kong: LexisNexis.
- Delmas-Marty, M. and Will, P., eds. (2012). *China, democracy, and law: a historical and contemporary approach*. Leiden & Boston: Brill.
- Dikötter, F. (2003). *Crime, punishment and the prison in modern China*. Hong Kong: Hong Kong University Press.
- Garrick, J. and Bennett, Y.C. (2016). *China's socialist rule of law reforms under Xi Jinping*. Abingdon, Oxon; New York, N.Y.: Routledge.
- Gu, S. (2009). *Law and politics in modern China: under the law, the law, and above the law*. Amhesrt, N.Y.: Cambria Press.
- Head, J.W. (2009). *China's Legal Soul: The Modern Chinese Legal Identity in Historical Context*. Durham, North Carolina: Carolina Academic Press.

- Huang, P. (2001). *Code, custom, and legal practice in China: the Qing and the Republic compared*. Stanford: Stanford University Press.
- Lo, C. W.H. (1995). *China's Legal Awakening: Legal Theory and Criminal Justice in Deng's Era*. Hong Kong: Hong Kong University Press.
- Macauley, M. (1998). *Social power and legal culture: litigation masters in late imperial China*. Stanford: Stanford University Press.
- Minzner, C.F. (2011). China's Turn Against Law. *The American Journal of Comparative Law* 59 (4), 935-984.
- Ng, M. (2014). *Legal Transplantation in Early Twentieth-Century China: Practicing law in Republican Beijing (1910s-1930s)*. London & New York: Routledge.
- Peerenboom, R. (2002). *China's long march toward rule of law*. Cambridge: Cambridge University Press
- Potter, P. (2003). *From Leninist discipline to socialist legalism: Peng Zhen on law and political authority in the PRC*. Stanford: Stanford University Press.
- Watson, A. (1993). *Legal transplants: an approach to comparative law*. (2nd ed.) Athens, Georgia: The University of Georgia Press.
- Xu, X. (2008). *Trial of modernity: judicial reform in early twentieth-century China, 1901-1937*. Stanford: Stanford University Press.
- Zhang, T. and Ginsburg, T. (2019). China's Turn Toward Law. *Virginia Journal of International Law* 59 (2), 306-389.
- 曹全來 (2005)。《國際化與本土化: 中國近代法律體系的形成》。北京: 北京大學出版社。
- 侯強 (2005)。《社會轉型與近代中國法制現代化, 1840-1928》。北京: 中國社會科學出版社。
- 華友根 (2006)。《20世紀中國十大法學名家》。上海: 上海社會科學院出版社。
- 張希坡 (2013)。《馬錫五與馬錫五審判方式》。北京: 法律出版社。
- 張希坡, 韓延龍 (2007)。《中國革命法制史》。北京: 中國社會科學出版。
- 曾憲義 (2013)。《中國法制史》, 第三版。北京市: 北京大學出版社。

7. Related Web Resources

- Columbia Law School, the Hong Yen Chang Center for Chinese Legal Studies: <https://chinese-legal-studies.law.columbia.edu/>
- The International Society for Chinese Law and History (ISCLH): <http://chineselawandhistory.com/>
- 中華法律文化網:

<http://www.zgflwhw.com/index.html>

- 中央研究院歷史語言研究所制度與社會研究室:
<https://www1.ihp.sinica.edu.tw/Research/Centers/legal-history>

8. Related Journals

American Journal of Comparative Law.

China Information.

Columbia Journal of Asian Law.

Duke Journal of Comparative & International Law.

Hong Kong Law Journal.

Journal of Asian Studies.

Journal of Contemporary China.

Late Imperial China.

Modern China.

The China Quarterly.

Twentieth-Century China.

9. Academic Honesty

The University upholds the principles of honesty in all areas of academic work. We expect our students to carry out all academic activities honestly and in good faith. Please refer to the *Policy on Academic Honesty, Responsibility and Integrity* (<https://www.eduhk.hk/re/uploads/docs/00000000016336798924548BbN5>). Students should familiarize themselves with the Policy.

10. Others

NIL

December 2023