



*U.S. Supreme Court Justice Stephen Breyer (center) and Center Director Paul Gewirtz (left) meet with Chinese Minister Yang Jingyu in the Great Hall of the People following a Center workshop; (opposite) Center Deputy Director Jonathan Hecht, Director Professor Paul Gewirtz, and Associate Director Jamie Horsley.*

The  
Law School  
Engages  
China

# The China Law Center

耶魯大學  
中國法律中心

Photographs courtesy of The China Law Center



*Tremendous legal changes are underway in China. These will affect every aspect of the Chinese legal system, and touch the lives of China's citizens in ways large and small. Few developments in the world of law have ever had the potential significance this one does, both for those immediately involved and for the peoples of other nations as well.*

*The Yale Law School's China Law Center is playing an important part in this process. The Center is actively engaged in key law reform projects in China, carries out significant research, and hosts distinguished Chinese scholars, administrators, and judges eager to acquaint themselves with the workings of our own legal system. Under Paul Gewirtz's imaginative and committed direction, the Center has become the most important program of its kind at any law school in America. It has also added significantly to the intellectual and curricular life of the Yale Law School, which takes pride in its efforts and is committed to its future success.*

— Dean Anthony T. Kronman

Although Yale University has a long tradition of involvement with China, Yale Law School historically did not. That changed in 1999 with the establishment of The China Law Center, a vibrant institution that is making Yale Law School a leading force in engaging China and Chinese law.

The Center took form after Paul Gewirtz, the Potter Stewart Professor of Constitutional Law, returned to the Law School from a post in the State Department as Special Representative for the Presidential Rule of Law Initiative, the aim of which was to advance legal reforms in other countries. As part of his work, he conceived and led the U.S.-China legal cooperation initiative agreed to by then-U.S. President Bill Clinton '73 and Chinese President Jiang Zemin at their 1997-98 Summit Meetings. After returning to Yale, he set about establishing The China Law Center.

The Center has two important missions: first, to increase understanding of China's legal system outside of China; second, to support the legal reform process within China. To these ends the Center carries out research and teaching, promotes academic exchanges with China, and undertakes a variety of cooperative projects with legal experts in China on important legal reform issues in the areas of judicial reform, criminal law, administrative law, regulatory reform, and legal education. In combining practical on-the-ground law reform projects with research and education in a mutually reinforcing way, The China Law Center is unique; there is simply no other institution like it in the world.

Since China's reform and opening up began in 1978, there have been enormous changes in China's legal system. After a long period of devaluing law, Chinese leaders have come to place considerable emphasis on the role of the legal system in their country's development. The deficiencies in the





*President of the Supreme People's Court Xiao Yang, Renmin University Law School Dean Zeng Xianyi, and Professor Gewirtz; (right) Workshop on criminal procedure and evidence at Yale Law School.*



Chinese legal system remain great, but if the legal reform process can be sustained and further developed, there are likely to be substantial long-term benefits for China's economic, social, and political development, for human rights, and for China's interactions with the international community.

While China's legal reforms will be determined by the Chinese themselves, Chinese legal experts are increasingly eager to undertake collaborative work with U.S. experts to strengthen their own research and legal reform efforts with ideas, expertise, and comparative experience. Since its establishment, The China Law Center has built strong relationships in China with an extraordinary group of law professors and law schools, with the two most important law drafting bodies in the central government, and with courts and other government bodies at both the national and local level. When invited by the Chinese side to undertake a project, the Center usually forms a team of leading U.S. experts in the field to work with the Chinese counterparts in depth over an extended period of time. The expert groups have involved academics (including Yale Law School faculty), judges (including Supreme Court Justices Stephen Breyer and Anthony Kennedy), and practicing lawyers.

One Center effort, for example, addresses issues of Chinese criminal procedure and evidence law. Although some reforms were implemented in the 1990s, China's criminal processes remain seriously flawed. Reformers in both law schools and the government are currently pushing for further changes through new legislation addressing the collection and use of evidence in criminal cases, reforms that could fundamentally affect police conduct,

the fairness of trials, and the role of courts in China. Issues being debated include the establishment of a right to silence during police interrogation of suspects; rules for the courts' handling of illegally seized evidence; the wider use of witnesses at trial; and the adoption of more adversarial processes in criminal cases, with a greater role for defense counsel and new roles for judges.

The China Law Center has two parallel projects underway addressing these sensitive issues—one with an academic group and the other with a government agency. The first project is with a group of academics under the auspices of China University of Politics and Law. Led by

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China's leading criminal procedure scholar, and drawing in leading scholars from other Chinese law schools, this group is writing a "scholars' draft" of the criminal evidence law to try to influence the legislative deliberations and is also preparing an academic book. They have asked The China Law Center to assist it in these efforts. A parallel project has developed directly with the Legislative Affairs Commission of the Standing Committee of the National People's Congress (NPC), which is preparing the actual draft law.

The Center has held three in-depth workshops on these issues with its academic partners and two with the NPC, and members of both groups have spent periods at Yale

conducting research. At the most recent workshop, a first version of the “scholars’ draft” was discussed in detail. These projects exemplify how sustained interaction over time permits exchanges between U.S. and Chinese legal experts to go beyond generalities to provide the Chinese with experience and perspectives targeted to their very practical concerns. And they also demonstrate how work of this sort can provide U.S. scholars with unparalleled insights into China’s legal reform process and an invaluable foundation for published research.

The Center is now engaged in a rich array of other projects addressing key legal reform issues in China. By design, the Center’s projects emphasize legal institutions—the courts, administrative bureaucracies, and law schools. The premise is that improvements in institutions can have beneficial effects cutting across many different fields of substantive law.

### Judicial Reform

The Center has a number of cooperative projects underway on judicial reform, arguably the most pressing area of legal reform in China today. It is widely accepted in China that the courts must be reformed if they are to play their

essential role as China develops a market economy, experiences a growing consciousness of legal rights, and requires fair, efficient, and predictable judicial institutions to settle disputes and review bureaucratic decisions. Lack of indepen-

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dence, poor training, inefficient procedures, lack of transparency, and reliance on local governments for personnel and funding have often undermined the courts’ ability to handle cases fairly and efficiently and provided fertile ground for corruption.

The Center’s various projects in this area involve assisting Chinese counterparts in both the academic world and government as they: develop policy recommendations on judicial structures and judicial independence; design civil

*(below) U.S. Supreme Court Justice Anthony Kennedy at a Center workshop on judicial reform with the Chinese Academy of Social Sciences’ Institute of Law in Beijing; (below right) Center Deputy Director Jonathan Hecht leads a workshop for Yale Law School students.*



litigation reforms; propose replacing or fundamentally reforming the system of reeducation through labor (one of China's most serious human rights problems); draft China's first comprehensive tort law; and explore mechanisms for developing constitutional review in China. Professor Gewirtz's paper on "Judicial Independence and Accountability of Courts," written as part of a Center project, has recently been published in Chinese in one of China's leading law reviews, and his paper "Approaches to Constitutional Interpretation: Comparative Constitutionalism and Chinese Characteristics," has recently appeared in the *Hong Kong Law Journal*.

### Administrative Law and Regulatory Reform

A second major focus of the Center's activities is administrative law and regulatory reform. These fields address the role of China's vast and often capricious bureaucracies in their interactions with both ordinary citizens and business. As China moves away from a planned economy, important debates are underway about the appropriate substantive role of government in regulating social and economic activity as well as the procedures that government regulators use when taking administrative action. Reformers are seeking to transform the government role and to improve the predictability, openness and fairness of administrative action. (See sidebar on page 58 for an example of a China Law Center project in Administrative Law and Regulatory Reform.) The Center's various cooperative projects in this area include efforts to reform China's licensing system; strengthen the Administrative Litigation Law (which gives Chinese limited rights to sue government agencies); increase "social trust" in economic and social transactions through fair credit reporting systems and greater access to information; create more independent and self-regulating professional and business associations; and revise China's Company Law.

### Legal Education

A third area of focus of the Center's work is legal education. It is widely recognized in China that law schools there need to modernize the generally abstract and formalistic style of legal education that currently prevails with new approaches to legal education that emphasize critical and policy-oriented thinking, including new teaching methods and new types of course materials. The main focus of the Center's work thus far has been helping Chinese law schools develop clinical legal education programs. Jay Pottenger '75, Nathan Baker Clinical Professor of Law, has led the Center's efforts in this area.

In addition to Professor Gewirtz, a leading scholar well known in the legal communities of both the United States and China, the Center's leadership has the expertise and experience ideally suited to its various missions. The Center's co-founder and deputy director is Jonathan Hecht, one of the leading authorities on contemporary Chinese law and an important scholar of Chinese criminal procedure. Before coming to Yale, Hecht worked for four years on Chinese legal reform issues in the Beijing office of the Ford Foundation and taught Chinese law at Harvard Law School. Jamie P. Horsley, who joined the Center in April 2002 as associate director, is one of the most highly regarded U.S. lawyers whose practice has focused on China. She has been the managing partner of the China offices of Paul, Weiss, Rifkind, Wharton & Garrison; commercial attaché in the U.S. embassies in Beijing and Manila; vice president of Motorola International, Inc. in China; and a consultant to The Carter Center on village elections in China.



Supreme People's Court Senior Vice President Cao Jianming with Paul Gewirtz (left) and Jamie Horsley (right) in Washington, D.C.



Law students are also deeply involved in all aspects of the Center's work. They undertake research and planning on many Center projects, and are research assistants to visiting scholars from China. Each week, students participate in a Workshop on Chinese Legal Reform, at which a distinguished outside speaker presents a paper on a particular legal reform topic. This weekly workshop has fostered a vibrant community of students and faculty at Yale with common interests in Chinese legal reform.

The Center also supports and supervises student research. Last summer, five Yale law students spent most

of their summers doing research in China, and publishable papers from this research are expected. In just a few short years, Yale Law School has become identified as a place where students can find a robust China-related program and strong institutional support.

The Center's work is establishing an important new channel between the United States and China that is positive in itself, that can continue to expand and deepen, and that can provide an encouraging example for the wider U.S.-China relationship. Exchanges with both scholars and government officials in China are candid and vigorously interactive, and levels of trust are being

## Limiting the State: A China Law Center Project

IN JULY 2001, in a conference room not far from the Great Hall of the People in Beijing, a small group of U.S. experts organized by The China Law Center assembled for a four-day seminar-style workshop with the State Council's Office of Legislative Affairs (OLA), which develops and drafts much of the Chinese central government's legislation and administrative law. The workshop represents one of the Center's cooperative projects—one that nicely illustrates how The China Law Center works.

The project developed after Premier Zhu Rongji tasked OLA to draft a License Law to reform China's pervasive licensing system, under which prior approvals are required for a vast array of economic and social activities. The goal of the reforms is to give greater scope to the market and to individual initiative by reducing the number of economic and social activities requiring government permission and increasing the predictability and transparency of licensing procedures. The minister and vice minister of OLA were both familiar with The China Law Center through prior contact with Professor Paul Gewirtz and Deputy Director Jonathan Hecht. Seeking to draw upon relevant foreign expertise and experience as it developed the legislation, OLA asked the Center to be one of its main sources of that expertise and experience. OLA emphasized that it viewed this project as valuable not only for what it could contribute to its immediate efforts to draft a License Law but also as a vehicle for examining



developed on both sides that are still unusual in U.S.-China interchanges. Under the umbrella of legal reform, the Center is able to be involved in wide-ranging social, economic, and political issues, including some quite sensitive ones.

No one should underestimate the difficulties of seeking to advance legal reform in China. Efforts aimed at improving the content and consistency of Chinese laws, achieving their impartial application, and nurturing a public culture that values them must necessarily be long-term efforts. But the Center's work is already bearing fruit in advancing the Center's main missions—creating genuine

opportunities to assist the legal reform process in China and to enhance understanding outside of China about developments there.

To make its work possible thus far, The China Law Center has received generous financial support from David A. Jones '60 and David A. Jones, Jr. '88, Lawrence J. Stupski '71, Yale parents Henry Fan, Robert Ng, and Christopher Cheng, the Yung Family Charitable Trust, the Smith Richardson Foundation, the Henry Luce Foundation, and the Ford Foundation.

For fuller information about the Center's activities and ongoing projects, visit its website at [www.yale.edu/chinalaw](http://www.yale.edu/chinalaw). **V**

broader issues about government regulation in a market economy. These are key subjects as China continues to move away from a planned economy and must decide what social and economic activities to regulate, who should have the authority to regulate, what regulatory tools to use (licensing being only one possible regulatory tool), and what administrative procedures are appropriate.

The project that developed has been in-depth and long-term. During the fall of 2000, The China Law Center hosted a six-week visit to Yale by a talented young OLA lawyer to research both U.S. licensing systems and the broader theory and practice of regulatory policy in the United States. In April 2001, Minister Yang Jingyu, the head of OLA, led a Chinese delegation that traveled to Yale for an initial workshop on these issues with the expert group assembled by the Center. In July 2001, after the issues were further refined, OLA and Yale's Center held a more extensive workshop in Beijing. More informal exchanges are ongoing.

The members of the U.S. working group for these workshops were an exceptional group of the leading U.S. experts in the field of regulatory policy and administrative law, including

Supreme Court Justice Stephen Breyer (who came to Yale for the April 2001 workshop and made his first trip to China for the July 2001 workshop), Brookings Institution Vice President (and former OMB Associate Director) Robert Litan '77, Yale Law School Professor Jerry Mashaw, and Columbia Law School Professor Peter Strauss '64, in addition

the licensing of particular types is appropriate, about how to allocate the power to license among different government entities, and about licensing procedures. The exchanges were informal and interactive. At the Beijing workshop, OLA asked the U.S. experts for their assessment of possible draft language for the License Law, and later sent the Center a

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to Paul Gewirtz and Jonathan Hecht. The participants from China are individuals of similar stature and authority from the OLA and the economic policy-making bodies of the State Council.

In the two workshops, the U.S. experts contributed new frameworks for thinking about regulatory reform for the Chinese side, in particular the concept of market failure and matching regulatory tools to particular types of market failure. In addition, they provided the Chinese law drafters with concrete advice about the circumstances under which

draft of the entire proposed License Law for further reactions.

In recent months, Premier Zhu Rongji and the Standing Committee of the State Council have approved OLA's final draft, and the State Council has forwarded its draft law to the National People's Congress (NPC) for its review. The China Law Center has recently been invited to continue working on these issues with the NPC Legislative Affairs Commission, with whom it has worked on other projects, as the NPC finalizes the draft of a License Law. **V**