

Book Review: China's Legal System

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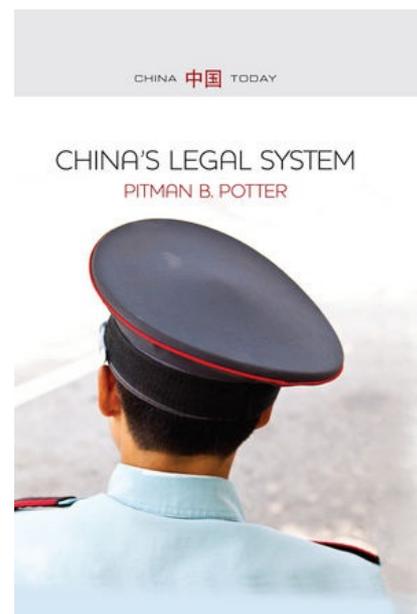
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*China's struggle for the rule of law is at a critical juncture. As a key element of governance in the PRC today, China's legal system affects not only domestic affairs but also China's engagement with the world. But can a credible legal system emerge which protects the rights of citizens and international partners without undermining the power of the Party State? And is the Chinese Communist Party willing to embark on judicial reforms that may jeopardize its very survival? **China's Legal System** is ultimately a thought-provoking discussion of the role of law in a dynamic and changing society, writes **Stephen Minas**.*



China's Legal System. Pitman B. Potter. Polity. October 2013.

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By the time the Jinan Intermediate People's Court took to the Internet to announce the guilty verdict of fallen political leader Bo Xilai, the [court's microblog account](#) had attracted over half a million followers. Updates from the account had been reported in news media around the world.

The trial of Bo, a former member of the Chinese Communist Party's powerful Politburo, underscored the scrutiny that China's legal system faces as governments, markets, and media track developments in the world's second largest economy. From the bankruptcy proceedings of one-time solar giant [Suntech](#) to the judicial reform reportedly flagged at the Communist Party's recent [third plenum](#), China's legal institutions have become a familiar sight in both the general and the business press.

China's Legal System, by [Pitman B. Potter](#), examines the structures and issues that lie behind these headlines. Potter is a professor of law at the University of British Columbia who has written widely on different aspects of Chinese law, as well as a lawyer who practices in corporate law and arbitration matters involving China. The text is intended as a 'research and learning guide' for university students with general knowledge of China. Each chapter concludes with a set of 'discussion questions' and 'suggestions for further reading'. (The book is part of Polity Press' 'China Today' series and follows the excellent [China's Environmental Challenges](#).)

Potter's analysis of the legal system of the People's Republic of China (PRC) is distinguished by two features. First, he places the development of Chinese laws and legal institutions in their historical, political and economic contexts. This approach is particularly apt to reform-era China, which has pursued economic development in the wake of tumultuous periods of conflict and revolution. At the same time, particular legal issues are often deeply intertwined with China's elite politics or political economy. Second, the book focuses on how law operates in practice, including an informative section on China's courts and legal profession. While important laws and regulations are summarised, Potter goes beyond these to examine issues of enforcement, for example, concerning intellectual property rights.

China's Legal System begins with an account of the 'Development of the Socialist Legal System' in China. This chapter begins with a brief but valuable introduction to contemporary China's legal heritage. This includes Confucian 'relational justice', the flurry of law reform in the last years of imperial China, the laws of the Republic of China (which replaced the last dynasty) and legal practices in Communist-controlled base and border areas prior to the establishment of the PRC in 1949. Potter sees legal development in the years immediately following 1949 'influenced by contradictions between continuing revolution and institution-building' and by conflicting beliefs about the value of formal law. The first PRC constitution was enacted in 1954; its drafting committee chaired by Deng Xiaoping. 'I participated in the formulation of the Constitution', Mao Zedong later recalled. 'Even I can't remember [it]'. Lawyers, judges and the law itself were repeatedly targeted by political campaigns, culminating in the disastrous Cultural Revolution.

Potter goes on to explain how the post-1978 leadership, centred on Deng, used law reform to restore order and facilitate economic development (with a joint-venture law among the first items of legislation). As China's leadership pursued this instrumentalist approach, 'the role of law has been focused on supporting substantive dimensions of economic development rather than building institutions and procedures that constrain the power of the Party/State'.



A man holds up documents describing his legal case as he sits in an underpass, in which he currently lives, in Beijing. Credit: [Sunny](#)
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The remainder of *China's Legal System* is organised thematically, with Potter examining how law has been applied to three 'challenges that confront the PRC today': 'Political Stability', 'Economic Prosperity' and 'Social Development'. While the book's premise, that 'law in the PRC today serves primarily as an instrument of rule for the Communist Party', may itself be uncontroversial, its implications in the thematic areas identified can be intriguing. For example, Potter sees law's 'emergence ... as a fully legitimate mechanism for governance' (in the Chinese context) as having 'opened new avenues for participation by an ever-widening proportion of society'.

A final chapter, on 'International Engagement', considers China's participation in international regimes and foreign business relations. The PRC's approach to international law has changed dramatically from the Cultural Revolution critique of 'imposed policy preferences of bourgeois imperialism'. Today, argues Potter, the PRC participates in international regimes to further 'its interests through the international system rather than in opposition to it'. Laws facilitating international trade and foreign investment are an example. Potter traces the expansion of foreign business relations from the predominance of the joint-venture model in the 1980s (a dynamic often characterised by the Chinese phrase 'sleeping in the same bed but having different dreams') to the many changes brought by accession to the World Trade Organization in 2001. By 2012, China had ratified over 90 bilateral investment agreements and Chinese official finance was playing a major role in China's own overseas investment.

Potter is right to caution that 'China should not be viewed as a passive recipient of international standards' in this process of deepening international engagement. As Potter notes, senior Chinese officials have recently occupied key positions in international institutions such as the World Bank, the Asian Development Bank, and the International Court of Justice. The extent to which Chinese practices and policy preferences will influence international legal norms in the near to medium term is an open question. Transnational economic law and the international climate change regime are a couple of areas worth watching in this respect.

China's Legal System is a thought-provoking discussion of the role of law in a dynamic and changing society. The text covers broad terrain and is necessarily concise, but there is something on most of the pages to prompt further reading or further research: China's healthcare laws, approaches to media and the Internet and the interpretation of Hong Kong's Basic Law are just a few examples.

Potter's book would be of value both to China-watchers who are not specialists in law, and to lawyers and law students who are not (yet) focused on China. The issues canvassed by Potter may matter most to China's 1.3 billion people and 200,000 lawyers, but they are also of increasingly international significance.

Stephen Minas is a research associate with the Foreign Policy Centre, London and an honorary fellow of the Centre for International Mental Health, University of Melbourne. Stephen was previously an adviser in the Office of the Premier of the Australian state of Victoria and has also worked as a journalist and as a staffer for members of the Australian Parliament. Stephen holds an MSc in International Relations from the LSE, where he studied on a Graduate Merit Award, and Honours degrees in Law and History from the University of Melbourne. He tweets [@StephenMinas](#). [Read more reviews by Stephen.](#)