

REVITALIZING LAW AND GOVERNANCE COLLABORATION WITH CHINA

JAMIE P. HORSLEY

EXECUTIVE SUMMARY

Strengthening official U.S.-China legal cooperation to support China's efforts to establish rule of law and good governance, which has atrophied under the Trump administration, serves U.S. interests in protecting national security, developing economy and trade, and furthering rule of law and human rights both in China and globally. U.S. official legal engagement with China delivered concrete results over the years in multiple areas that further U.S. interests, including greater substantive and procedural predictability for U.S. businesses and the Chinese people. Rule of law dialogues also provided platforms to address human rights concerns in the more technical language of law and regulation and the political space for complementary private American initiatives with Chinese counterparts. While continuing to firmly address China's violations of U.S., international and its own law, the next administration should inventory, evaluate, and support pertinent U.S.-China legal cooperation programs at both the senior and staff levels. The goal of these programs should be to support China's ongoing efforts to modernize laws and legal institutions in order to better address its own, bilateral, and international challenges and to establish a level playing field in both countries for businesses. The U.S. government should strengthen its expertise on the evolving Chinese legal system to more effectively address disputes, ensure that bilateral agreements are enforceable under Chinese law, and cooperate on updating and setting global standards.

THE PROBLEM

The United States has a substantial interest in promoting good governance in China through increased legal protections and procedural regularity to help stabilize China domestically, facilitate its economic development, support a more

transparent and law-based business environment, and contribute to more rules-conscious behavior by Chinese state and private actors globally.¹ Better governance benefits both the Chinese people and U.S. companies, organizations, and individuals operating in or dealing with China. Yet, constructive U.S.-China legal cooperation and exchange has atrophied in recent years as the result of disinterest from the Trump Administration amid a narrative that U.S. engagement with China has failed and a growing perception that China's authoritarian political system affords no realistic prospect for developing rule of law.

Given the importance of China to the American economy and to solving serious global security and governance issues, the U.S. has no option but to work with China. The United States should cooperate, rather than merely deliver ultimatums, on specific legal topics of direct impact in the bilateral relationship and more generally to assist China's legal modernization and improve the capacity of and implementation by its governance institutions. To do so effectively, the U.S. and China need to better understand the domestic policy concerns and priorities of each other and how those are reflected in and implemented through each country's legal systems. Past U.S.-China rule of law collaborations have in fact had a positive impact on China's law and governance, which is more complex and sophisticated than is widely appreciated. While the Chinese Communist Party (CCP) is asserting more comprehensive leadership over all aspects of Chinese life, including law and the legal system,² China's leaders still view the U.S. and other foreign experience as a source of ideas and mechanisms to inform³ the modernization of its governance capacity and increasingly mature legal system.⁴

To be sure, the party-state at times flouts international law⁵ and its World Trade Organization (WTO) commitments,⁶ ignores its own legal

procedures and laws,⁷ adopts illiberal laws,⁸ and deploys law as an instrument of repression⁹ in pursuing its interests. The CCP's resort to extra-legal means to deal with perceived enemies in so-called "sensitive cases"¹⁰ creates uncertainty over the reliability of the party-state's legal commitments both at home and abroad.

Nonetheless, China's legal system is largely devoted to managing millions of ordinary civil, commercial, criminal, and administrative matters every day. U.S.-China engagement has enriched the development of that "normal" legal system¹¹ and helped foster a culture of law among the Chinese public.¹² Such cooperation promoted more professional and accessible courts¹³ and specialized intellectual property tribunals¹⁴ in which foreign plaintiffs are winning a majority of their patent infringement cases.¹⁵ Court reform has produced an increase in administrative litigation against the government, bankruptcy filings, intellectual property cases and other lawsuits, reaching nearly 32 million in 2019.

While the Xi Jinping administration has tightened the reins on NGO activities amidst a shrinking space for policy debate, social activism, rights lawyering, and investigative reporting, it also passed China's first Charity Law, which removes the requirement for a government sponsor for many NGOs and eases fundraising restrictions. In a still challenging environment,¹⁶ Chinese NGOs — which numbered nearly 867,000 at the end of 2019, up 76% since the end of 2012¹⁷ — are innovating new activism¹⁸ and hybrid fundraising methods.¹⁹ Environmental, LGBTQ, and other groups seek out targets of opportunity, as witnessed during China's COVID-19 epidemic,²⁰ even sharing their successful strategies with NGOs abroad.²¹ Environmental NGOs are afforded more space than others to collaborate with foreign NGOs like the U.S. Environmental Law Institute on legal exchanges and capacity building.²² National law now authorizes them to bring public interest environmental lawsuits, and a prominent local government recently codified support for such efforts with a special fund to help reduce NGO litigation costs.²³

The U.S. has shared concepts and mechanisms with Chinese officials, lawyers, NGOs, and other advocates concerning China's access to government information statute and its use,²⁴ advocacy for same-sex marriage in the national legislative

process,²⁵ using protective orders in domestic violence cases,²⁶ and successfully²⁷ proving gender discrimination in employment.²⁸ Criminal law and procedure reforms, while largely driven as are other reforms by domestic pressures,²⁹ have been influenced by U.S. and international advocacy and exchanges.³⁰ Improvements have included returning death penalty decision-making authority to the top court, which drove a significant drop in executions,³¹ using the suspended death penalty in all but the most serious cases; and reducing the number of capital offenses in the Criminal Law.³² More recent reforms make trials central to the criminal process, encourage witnesses to testify in court, and make unlawfully obtained evidence (like forced confessions) inadmissible at trial.³³

Legal exchange and cooperation have been part of the official U.S.-China relationship from its earliest days and have achieved concrete results. Numerous federal agencies have regularly exchanged information and held discussions over the years regarding the laws and procedures of both countries to better understand each other's systems, resolve disputes, and promote significant legislative and procedural advancements. U.S. Department of Commerce programs date back to 1979, when the U.S. Patent and Trademark Office hosted its first Chinese delegation and explained the American patent system to officials working on China's first laws governing intellectual property (IP).³⁴ U.S.-China IP law exchanges helped promote the establishment of specialized IP courts, introduced the practice of *amicus* briefs in IP proceedings, and supported China's development of a form of case precedent to enhance uniformity of court judgments.³⁵ All of these developments were informed by U.S. law and practice and are contributing to a procedurally and substantively fairer system of IP law in China.³⁶ Following years of advocacy, and spurred by imposed tariffs and a dispute filed in the WTO, China eliminated in March 2019 the most onerous provisions on foreign company technology transfers³⁷ and is taking a number of steps to better protect trade secrets.³⁸

Commerce legal interaction has taken place through government-to-government dialogues like the Commercial Law Working Group under the Joint Commission on Commerce and Trade,³⁹ the 27th session of which took place in November 2016.⁴⁰ Commerce collaborations with its Chinese

counterpart and other agencies have sought to promote a legal framework for businesses to operate through transparent and clear rules that are administered in a predictable and fair manner,⁴¹ including private sector representatives on occasion under the U.S.-China Legal Exchange.⁴² Such dialogues achieved suspension of restrictive regulations on several occasions⁴³ and furthered a variety of legal reforms. As the United States Trade Representative (USTR) pressed China over many years to meet its WTO transparency commitments, including to provide a reasonable period of time for public comment before implementing trade-related measures,⁴⁴ Commerce and the private sector shared with Chinese counterparts the U.S. experience with participatory rulemaking and hearings. China gradually instituted notice-and-comment rulemaking and lawmaking procedures to enable public input into draft laws⁴⁵ and regulations⁴⁶ that are published online. U.S. agencies, trade associations, companies and scholars have utilized these comment channels, which are now codified in binding legislation.⁴⁷

The U.S. Department of Justice joined with Commerce in 2016⁴⁸ to hold the first high-level U.S.-China Judicial Dialogue, which brought officials and judges from both countries to discuss case management, alternative dispute resolution, precedent, and evidence in civil and commercial cases.⁴⁹ Justice also employs the U.S. Embassy Beijing-based Resident Legal Advisor, who works with U.S. and Chinese officials on criminal justice sector reform initiatives in China, while facilitating bilateral cooperation on issues like money laundering, drug trafficking, and terrorist financing.⁵⁰ Ongoing Environmental Protection Agency engagement⁵¹ has impacted substantive air, water, and soil pollution, hazardous waste and other environmental legislation in China,⁵² as well as China's development and codification of governance mechanisms including environmental information disclosure, public participation in environmental decision-making and public interest lawsuits.⁵³ The U.S. Department of Labor conducted dialogues with Chinese counterparts on specific issues including worker rights, workplace safety, collective bargaining, and labor law enforcement until 2016.

Official US-China legal cooperation has also provided a conducive bilateral political environment

within which American lawyers, legal scholars, companies, and NGOs have interacted effectively with Chinese counterparts. Unofficial endeavors complement and supplement U.S. government engagement on legal and governance issues. Some, like the U.S.-Asia Partnerships for Environmental Law at the University of Vermont⁵⁴ and other rule of law initiatives carried out by universities, law schools, the American Bar Association,⁵⁵ and NGOs like the Asia Foundation, have been supported in part with U.S. government funding.⁵⁶ Many private sector projects frequently involved experienced U.S. federal, state, and local officials and judges with relevant expertise. In one example, former U.S. government lawyers shared their experience⁵⁷ with Chinese officials piloting a new government lawyer system to improve legal awareness and compliance within government agencies and CCP organizations.⁵⁸

Private initiatives have included criminal law and procedure projects often involving collaboration with and sometimes among Chinese police, procurators, judges, lawyers, academics, and social workers,⁵⁹ assisting development of a more active and professional defense bar,⁶⁰ juvenile justice, and ensuring that every criminal defendant has legal representation,⁶¹ as well as advancing mandatory reporting and child protection systems⁶² under China's 2015 Domestic Violence Law.⁶³ Private U.S.-China legal cooperation has also helped promote government,⁶⁴ judicial,⁶⁵ and charitable transparency,⁶⁶ legal reasoning⁶⁷ and case guidance⁶⁸ programs with Chinese courts; the development and enforcement of disability⁶⁹ and mental health⁷⁰ law in China; clinical legal education and the development of activist legal centers in Chinese law schools;⁷¹ and rights protection trainings for Chinese officials, judges, and lawyers,⁷² a profession now including over 473,000 practitioners.⁷³

Restrictions imposed by China in 2017⁷⁴ that severely restrict the ability of foreign NGOs to operate in China curtailed the channels for and subject matter of private legal cooperation, other than through U.S. universities, business associations, and in areas such as the environment⁷⁵ that the party-state deems less sensitive. Moreover, the increasingly antagonistic actions against and rhetoric concerning China adopted by the Trump administration⁷⁶ combined with disapprobation

of China's crackdown on civic and labor activists, religious leaders, lawyers, journalists, and ethnic and religious minorities, most blatantly in Xinjiang and Tibet, made federal officials more reluctant to participate in privately sponsored legal projects with China.

OBJECTIVES

China should evolve into a stable, transparent, rules-based, and accountable partner. This can include working with the U.S. on issues of mutual concern and on global challenges including combating climate change, strengthening global health collaboration, and establishing rules-based frameworks to address emerging issues like cybersecurity, data flows, AI and autonomous weapons, climate change, technical standards (including for technology and sustainable infrastructure projects globally), outer space,⁷⁷ and timely sharing of epidemic information. China should also afford due process in its criminal justice system, eliminating extra-judicial detention without access to lawyers of one's choice,⁷⁸ as evidenced most alarmingly in the mass incarceration of possibly millions of ethnic Uighurs in Xinjiang under the pretext of anti-terrorism. Arbitrary detention is also deployed against foreigners,⁷⁹ including U.S. citizens,⁸⁰ raising concerns about business and other travel to China.⁸¹

China should provide a level playing field for U.S. business competitiveness, including U.S. job-supporting exports to China of U.S. commodities and services. Top priorities for U.S. companies continue to include fairness in competing with both state-owned and private companies, business and product licensing, IP protection and enforcement, data flows and cybersecurity policies, relaxing remaining market access restrictions, influence in technical standards setting,⁸² and enhanced overall transparency, predictability, and fairness of China's regulatory environment.⁸³ Improved U.S.-China relations may help alleviate, although not resolve entirely, some of these impediments.⁸⁴

Official U.S.-China law and governance dialogues and programs should be revived. These engagements will help achieve U.S. interests and provide a more enabling bilateral political environment for complementary private American rule of law and governance efforts. Rule of law

dialogues also provide platforms to address sensitive human rights concerns in the more technical language of law and regulation. Renewed legal cooperation might even facilitate an eventual relaxation of current foreign (and domestic) NGO restrictions, permitting China's vibrant but beleaguered civil society to develop more fully.

RECOMMENDATIONS

Inventory, evaluate, and restart federal government-led legal cooperation programs that have demonstrated positive impact over time. At the same time, it will be important to avoid over-committing to dialogues that may permit Chinese counterparts to "buy time" without agreeing to desired concessions.⁸⁵ High-level dialogues among leaders from both sides, used judiciously, help establish the political cover for effective collaboration and convey important messages about bilateral legal issues. Both formal and informal staff interactions should be encouraged. Built on shared professional experiences and needs, these engagements are the true lifeblood of a successful partnership among U.S. and Chinese officials on which mutual understanding can be built. Proactively use such engagements to open space for, and help fund where appropriate, private sector law and governance programs with Chinese counterparts.

Seek China's "buy-in" to ensure productive cooperation. Dialogues must include matters the Chinese side cares about, not just what the U.S. wants China to do. They should also involve relevant Chinese decisionmakers and may require the participation of relevant high-level CCP representatives.⁸⁶

Restart the Bilateral Investment Treaty (BIT) negotiations. A mutually beneficial and high-standard U.S.-China BIT is desired generally by the U.S. business community to set the "rules-of-the-road" for reciprocal investment.⁸⁷ Negotiations would afford another platform for engaging China in areas of continued law-related disagreement bilaterally and internationally, including market access, fair competition, national security screening, subsidies and preferential treatment of state-owned enterprises, standards, and transparency.⁸⁸

Join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and encourage China to do so. Mutual accession efforts, building on Chinese Premier Li Keqiang’s May 2020 remarks indicating that China “has a positive and open attitude” toward joining the CPTPP,⁸⁹ would afford another opportunity to engage with China on thorny legal issues regarding state-owned enterprises, data flows, labor obligations, and subsidies, as well as bring benefits to both countries.

Develop and utilize expertise on Chinese law and how the legal and regulatory systems work. Better understanding will facilitate more effective resolution of bilateral disagreements and help ensure that bilateral agreements are enforceable under Chinese law. Misunderstanding concerning the binding force of various Chinese documents,⁹⁰ for example, has led the USTR to chastise China for failing to publish “as required by WTO” certain opinions and notices mischaracterized as “binding legal measures”⁹¹ and has not acknowledged in its reporting to Congress that China did codify an agreed 30-day comment period for both lawmaking (2015)⁹² and government rulemaking (2018).⁹³ Deeper understanding of Chinese law could help U.S. authorities avoid adopting policies⁹⁴ and targeting⁹⁵ issues⁹⁶ that are based on misapprehension, for example, China’s application of national security laws to companies,⁹⁷ and its evolving social credit system.⁹⁸

Approach bilateral legal cooperation with a constructive attitude. The U.S. knows from its own experience the complexity and difficulty of getting law “right” and implementing it well. Chinese counterparts are open to learning from foreign experience, both positive and negative, as they seek to improve and supplement the country’s legal system and institutions. Moreover, China has been quite innovative in some areas. It was the first country⁹⁹ to establish Internet courts,¹⁰⁰ innovating related technology-enabled experiments such as blockchain-authenticated evidence¹⁰¹ and garnering experience that should be of interest to U.S. courts conducting online adjudication for the first time in the COVID-19 era.¹⁰² China’s courts frequently broadcast trials online¹⁰³ and boast the largest open and searchable database of over 100 million court decisions.¹⁰⁴ The U.S. might learn from China on these¹⁰⁵ and other matters in the course of cooperating on China’s legal modernization.

Improve rule of law principles and practices at home. The U.S. will more effectively elicit cooperation and desired change in China by strengthening rule of law at home, including government transparency, accountability and due process, equal rights and treatment for all, and law enforcement based on clear principles and evidence rather than nationality¹⁰⁶ or imprecise definitions of national security,¹⁰⁷ and by employing negotiation and sound legal tools such as anti-dumping investigations and bringing WTO cases in response to illegal Chinese behaviors. The U.S. should lead by example to also abide by international law and treaty obligations, as it asks China to do.

CONCLUSIONS

U.S.-China legal and governance cooperation has not been, and should not be, premised on a belief that the U.S. can change China or its one-party state led by the CCP. America should confront China on its unacceptable behaviors, working with other like-minded countries when possible, and be clear-eyed about where interests do diverge on issues of law, governance, and human rights. However, U.S. legal engagement with China has positively impacted law, procedure, and enforcement in service of the “normal” legal system that provides effective governance to the majority of the Chinese people on a daily basis and is gradually improving the business environment for U.S. companies to compete more effectively and help sustain jobs at home.¹⁰⁸ Moreover, better mutual understanding of the respective legal regimes — basic principles and implementing experience and practices — of each country can help strengthen the foundations of the overall bilateral relationship.

REFERENCES

- 1 Paul Gewirtz, “The U.S.-China Rule of Law Initiative,” *William and Mary Bill of Rights Journal* 11 no. 603 (2003), <https://scholarship.law.wm.edu/wmborj/vol11/iss2/5>.
- 2 Jamie P. Horsley, “Party Leadership and Rule of Law in the Xi Jinping Era.” (Washington, D.C., The Brookings Institution, September 30, 2019), www.brookings.edu/research/party-leadership-and-rule-of-law-in-the-xi-jinping-era/.
- 3 “中国制度面对面⑤：治国安邦倚重器 — 中国特色社会主义法治体系如何保证公平正义? [Face to face with the Chinese system ⑤: Relying on important tools to govern the country and stability – How does the socialist legal system with Chinese characteristics ensure fairness and justice?]” *People’s Daily*, August 5, 2020, <http://www.12371.cn/2020/08/05/ARTI1596583199443353.shtml>.
- 4 Hualing Fu, “Touching the Proverbial Elephant: The Multiple Shades of Chinese Law,” *China perspectives*, 2019, <https://journals.openedition.org/chinaperspectives/8629>.
- 5 Helen Davidson, “Hong Kong Security Law ‘May Break International Laws’,” *The Guardian*, September 4, 2020, <https://www.theguardian.com/world/2020/sep/04/hong-kong-security-law-may-break-international-laws-china-human-rights-un>; Jane Perlez, “Tribunal Rejects Beijing’s Claims in South China Sea,” *The New York Times*, July 12, 2016, <https://www.nytimes.com/2016/07/13/world/asia/south-china-sea-hague-ruling-philippines.html>.
- 6 “2018 Report to Congress On China’s WTO Compliance,” United States Trade Representative, February 2019, <https://ustr.gov/sites/default/files/2018-USTR-Report-to-Congress-on-China%27s-WTO-Compliance.pdf>.
- 7 Chi Yin and Jerome A. Cohen, “The Misuse of China’s Mental Hospitals,” *The Diplomat*, August 13, 2020, <https://thediplomat.com/2020/08/the-misuse-of-chinas-mental-hospitals/>.
- 8 Edward Wong, “Clampdown in China Restricts 7,000 Foreign Organizations,” *The New York Times*, April 28, 2016, <https://www.nytimes.com/2016/04/29/world/asia/china-foreign-ngo-law.html>.
- 9 Lindsay Maizland, “China’s Repression of Uighurs in Xinjiang,” Council on Foreign Relations, June 30, 2020, <https://www.cfr.org/backgrounders/chinas-repression-uighurs-xinjiang>; “New Law Aims to Justify Xinjiang Camps,” *China Digital Times*, October 10, 2018, <https://chinadigitaltimes.net/2018/10/china-establishes-legal-basis-for-xinjiang-camps-amid-rising-u-s-concerns/>.
- 10 Austin Ramzy, “Chinese Human Rights Lawyer Released From Prison.” *The New York Times*, April 5, 2020, <https://www.nytimes.com/2020/04/05/world/asia/china-human-rights-lawyer.html>.
- 11 Hualing Fu, “Editorial - Duality and China’s Struggle for Legal Autonomy,” French Centre for Research on Contemporary China, <https://www.cefc.com.hk/article/editorial-duality-and-chinas-struggle-for-legal-autonomy/>.
- 12 Li Fan, “It’s True That Democracy in China Is in Retreat, But Don’t Give up on It Now,” *ChinaFile*, July 2, 2020, <https://www.chinafile.com/reporting-opinion/viewpoint/its-true-democracy-china-retreat-dont-give-it-now>.
- 13 “China’s New Judicial Reforms on Case Law & Other Guidance,” *Supreme People’s Court Monitor*, June 22, 2019, <https://supremepeoplescourtmonitor.com/2019/06/22/chinas-new-judicial-reforms-on-case-law-other-guidance/>.
- 14 Mark Cohen, “A Federal Circuit with Chinese Characteristics? – The Launch of China’s New National Appellate IP Court 中国特色的联邦巡回上诉法院?” *China IPR*, January 10, 2019, <https://chinaipr.com/2019/01/04/a-federal-circuit-with-chinese-characteristics-the-launch-of-chinas-new-national-appellate-ip-court-%E4%B8%AD%E5%9B%BD%E7%89%B9%E8-%E8%9%B2%E7%9A%84%E8%81%94%E9%82%A6%E5%B7%A1/>.
- 15 “Xi Jinping Is Trying to Remake the Chinese Economy,” *The Economist*, October 15, 2020, <https://www.economist.com/>

- [briefing/2020/08/15/xi-jinping-is-trying-to-remake-the-chinese-economy.](#)
- 16 Shawn Shieh, “Civil Society Protects Workers in China During the Pandemic,” Rights CoLab, May 13, 2020, <https://rightscolab.org/civil-society-protects-workers-in-china-during-the-pandemic/>.
 - 17 “社会服务业统计季报 [Quarterly Report on Social Services Statistics],” Ministry of Civil Affairs of the People’s Republic of China, Winter 2012, <http://files2.mca.gov.cn/cws/201301/20130128174655179.htm>.
 - 18 Christopher Marquis et al., “The Emergence of Subversive Charities in China,” *Stanford Social Innovation Review*, Winter 2016, https://ssir.org/articles/entry/the_emergence_of_subversive_charities_in_china.
 - 19 Shawn Shih-hung Shieh, “Is China the Future for Hybrid CSO Funding Models?” OpenGlobalRights, May 11, 2020, <https://www.openglobalrights.org/is-china-the-future-for-hybrid-cso-funding-models/?lang=English>.
 - 20 Vivian Wang and Javier C. Hernández, “Coronavirus Crisis Awakens a Sleeping Giant: China’s Youth,” *The New York Times*, March 28, 2020, <https://www.nytimes.com/2020/03/28/world/asia/coronavirus-china-youth.html>.
 - 21 Phoebe Zhang, “Wuhan Volunteers Reach across the World to Share Coronavirus Lessons,” *South China Morning Post*, May 29, 2020, <https://www.scmp.com/news/china/society/article/3086684/wuhan-volunteers-reach-out-across-world-advise-care-groups>; and “China-US non-governmental cooperation in response to COVID-19: Current conditions, challenges and prospects,” Center for China and Globalization, July 2020, <http://www.ccg.org.cn/wp-content/uploads/2020/07/%E3%80%90CCG-Report%E3%80%91China-US-non-governmental-cooperation-in-response-to-COVID-19-Current-conditions-challenges-and-prospects.pdf>.
 - 22 Zhuoshi Liu, “Helping NGOs Use Environmental Law to Combat Pollution: ELI Launches Environmental Public Interest Litigation Capacity-Building Project in China,” Environmental Law Institute, July 9, 2018, <https://www.eli.org/vibrant-environment-blog/helping-ngos-use-environmental-law-combat-pollution-eli-launches-environmental-public-interest>.
 - 23 Li You, “New Policy in Shenzhen Empowers Environmental Nonprofits,” Sixth Tone, September 30, 2020, <https://www.sixthtone.com/news/1006246/new-policy-in-shenzhen-empowers-environmental-nonprofits>.
 - 24 “Discussing China’s Regulations on Open Government,” Department of Justice, April 23, 2014, <https://www.justice.gov/oip/blog/discussing-china-s-regulations-open-government>.
 - 25 Yuyang Liu, “Could Same-Sex Marriage Advocacy in China Be Poised for a Breakthrough?” *ChinaFile*, September 17, 2020, <https://www.chinafile.com/reporting-opinion/viewpoint/could-same-sex-marriage-advocacy-china-be-poised-breakthrough>.
 - 26 Su Lin Han, “China Has a New Domestic Violence Law. So Why Are Victims Still Often Unsafe?” *ChinaFile*, June 5, 2017, <https://www.chinafile.com/reporting-opinion/viewpoint/china-has-new-domestic-violence-law-so-why-are-victims-still-often>.
 - 27 “A Chinese Trans Woman Wins a Surprising Legal Victory,” *The Economist*, August 1, 2020, <https://www.economist.com/china/2020/08/01/a-chinese-trans-woman-wins-a-surprising-legal-victory>.
 - 28 “Tsai Center Holds Gender Discrimination and Sexual Harassment Litigation Workshops in China,” Yale Law School, October 4, 2019, <https://law.yale.edu/yls-today/news/tsai-center-holds-gender-discrimination-and-sexual-harassment-litigation-workshops-china>.
 - 29 Susan Trevaskes, “Death Penalty Reform,” *The China Story*, April 30, 2018, <https://www.thechinastory.org/yearbooks/yearbook-2017/forum-those-less-fortunate/death-penalty-reform/>.

- 30 Michelle Miao, “International Anti-Death Penalty Advocacy and China’s Recent Capital Punishment Reform,” *International Affairs Forum*, August 2015, <https://www.ia-forum.org/Content/ViewInternalDocument.cfm?ContentID=8399>.
- 31 “Dui Hua Estimates 4,000 Executions in China, Welcomes Open Dialogue,” Dui Hua Foundation, December 12, 2011, <https://sna.etapestry.com/prod/viewEmailAsPage.do?databaseId=DuiHuaFoundation&jobRef=2967.0.31681565&key>.
- 32 Jeremy Daum, “It’s a Crime, I Tell Ya: Major Changes in China’s Criminal Law,” *China Law Translate*, September 27, 2015, <https://www.chinalawtranslate.com/en/its-a-crime-i-tell-ya-major-changes-in-chinas-criminal-law-amendment-9/>.
- 33 Trevaskes, “Death Penalty Reform.”
- 34 Kelly Welsh, “Remarks of Dept. of Commerce General Counsel at Beijing American Center,” (speech, Beijing American Center, January 13, 2015), <https://china.usembassy-china.org.cn/remarks-dept-commerce-general-counsel-beijing-american-center/>.
- 35 “First-Ever ‘U.S.-China Judicial Dialogue’ Supports an Exchange of Views on Judicial Reform,” Department of Justice, August 19, 2016, <https://www.justice.gov/archives/opa/blog/first-ever-us-china-judicial-dialogue-supports-exchange-views-judicial-reform>.
- 36 Max Goldberg, “Enclave of Ingenuity: The Plan and Promise of the Beijing Intellectual Property Court,” Student Work, May 19, 2017, http://elischolar.library.yale.edu/ceas_student_work/4.
- 37 “The TIER Is Revised,” China IPR, March 18, 2019, <https://chinaipr.com/2019/03/18/the-tier-is-revised/>.
- 38 “SAMR Releases Draft Trade Secret Rules for Public Comment,” China IPR, September 12, 2020, <https://chinaipr.com/2020/09/12/samr-releases-draft-trade-secret-rules-for-public-comment/>; “The Changing Legislative Landscape of Trade Secret Protection in China,” China IPR, April 27, 2020, <https://chinaipr.com/2019/04/27/the-changing-legislative-landscape-of-trade-secret-protection-in-china/>.
- 39 “General Counsel Kelly Welsh Travels to Beijing and Wuhan, China,” Department of Commerce, January 28, 2015, <https://ogc.commerce.gov/news/blog/2015/01/general-counsel-kelly-welsh-travels-beijing-and-wuhan-china>.
- 40 “U.S. Fact Sheet for the 27th U.S.-China Joint Commission on Commerce and Trade,” United States Trade Representative, November 2016, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2016/november/us-fact-sheet-27th-us-china-joint>.
- 41 Kelly Welsh, “Remarks of Dept. of Commerce General Counsel.”
- 42 “Commerce leads exchange on bankruptcy to address excess capacity in China,” Department of Commerce, January 3, 2017, <https://ogc.commerce.gov/news/blog/2017/01/commerce-leads-exchange-bankruptcy-address-excess-capacity-china>.
- 43 “The U.S.-China Joint Commission on Commerce and Trade (JCCT) Fact Sheet,” Department of Commerce, December 11, 2007, https://2001-2009.commerce.gov/NewsRoom/PressReleases_FactSheets/PROD01_004907.html.
- 44 “2018 Report to Congress On China’s WTO Compliance.”
- 45 “法律草案征求意见 [Comment on draft law],” National People’s Congress, <http://www.npc.gov.cn/flcaw/>.
- 46 “公开征求意见系统 [Public Comment System],” Ministry of Justice of the People’s Republic of China, <http://zqyj.chinalaw.gov.cn/index>.
- 47 Jamie Horsley, “Open Government Developments in China: Implications for US Businesses,” *China Business Review*, July 1, 2019, <https://www.chinabusinessreview.com/open-government-developments-in-china-implications-for-us-businesses/>.

- 48 “First-Ever ‘U.S.-China Judicial Dialogue.’” Chinese Government Lawyers,” Mondaq, February 14, 2017, <https://www.mondaq.com/unitedstates/Law-Department-Performance/568322/Proskauer39s-Michael-Cardozo-Visits-With-Chinese-Government-Lawyers>.
- 49 “Commerce, Justice to lead first U.S.-China Judicial Dialogue: In Support of Economic Growth and Reform,” Department of Commerce, July 19, 2016, <https://ogc.commerce.gov/news/blog/2016/07/commerce-justice-lead-first-us-china-judicial-dialogue-support-economic-growth-and>.
- 50 “Attorney Advisor (International) / Resident Legal Advisor, China,” Department of Justice, <https://www.justice.gov/legal-careers/job/attorney-advisor-international-resident-legal-advisor-china>. See also “A Personal History of U.S.-China Law Enforcement Cooperation,” Columbia Law School, October 12, 2015, <https://www.law.columbia.edu/news/archive/personal-history-us-china-law-enforcement-cooperation>.
- 51 David LaRoss, “Despite EPA Rollbacks, Trump Seeks Stricter Chinese Environment Laws,” InsideEPA.com, August 6, 2019, <https://insideepa.com/share/220894>.
- 52 “China Declares War on Pollution,” *The Environmental Forum* 32 no. 5 (September-October 2015), 36-47.
- 53 Wanlin Wang and Dimitri De Boer, “China’s Prosecutors Are Litigating Government Agencies for Being Soft on Pollution,” China Dialogue, February 22, 2019, <https://chinadialogue.net/en/pollution/11095-china-s-prosecutors-are-litigating-government-agencies-for-being-soft-on-pollution/>.
- 54 “The China Project,” Vermont Law School, <https://www.vermontlaw.edu/blog/natural-resources/environmental-policy-china-project>.
- 55 “China Background,” American Bar Association, https://www.americanbar.org/advocacy/rule_of_law/where_we_work/asia/china/background/.
- 56 “China Justice Under Rule of Law in Society,” United States Agency for International Development, March 21, 2014, <https://www.usaid.gov/asia-regional/fact-sheets/china-justice-under-rule-law-society>.
- 57 Michael Cardozo, “United States: Proskauer’s Michael Cardozo Visits With Chinese Government Lawyers,” Mondaq, February 14, 2017, <https://www.mondaq.com/unitedstates/Law-Department-Performance/568322/Proskauer39s-Michael-Cardozo-Visits-With-Chinese-Government-Lawyers>.
- 58 “More Lawyers Sought as Government Advisers,” *China Daily*, June 23, 2014, http://www.china.org.cn/china/2014-06/23/content_32742039.htm.
- 59 “Jeremy Daum Holds Events on Juvenile Diversion,” Yale Law School, March 21, 2014, <https://law.yale.edu/yls-today/news/jeremy-daum-holds-events-juvenile-diversion>.
- 60 “Duty Lawyers in China,” U.S.-Asia Law Institute, <https://usali.org/events/on-duty-lawyers-in-china>.
- 61 “Notice on Expanding the Scope of Pilot Projects on Having Defense Counsel in All Criminal Cases,” *China Law Translate*, January 22, 2019, <https://www.chinalawtranslate.com/en/notice-on-expanding-the-scope-of-pilot-projects-on-having-defense-counsel-in-all-criminal-cases/>.
- 62 Jeremy Daum, “Mandatory Reporting Overview,” *China Law Translate*, June 5, 2020, <https://www.chinalawtranslate.com/en/mandatory-reporting-overview/>.
- 63 “Domestic Violence Law 2015,” *China Law Translate*, December 27, 2015, <https://www.chinalawtranslate.com/en/Domestic-Violence-Law-2015/>.
- 64 “China to Promote Nationwide Standardization of Transparency in Primary-Level Government Affairs,” Xinhua, December 18, 2019, http://www.xinhuanet.com/english/2019-12/18/c_138641069.htm.
- 65 Mila Versteeg, “Making Chinese Court Filings Public? Some Not-So-Foreign American Insights,” *Harvard Law Review*, March 10, 2020, <https://harvardlawreview.org/2020/03/making-chinese-court-filings-public-some-not-so-foreign-american-insights/>.
- 66 “How China Is Using Tech to Make Charities Transparent,” *Forkast*, January 28, 2020,

- <https://forkast.news/tech-is-making-chinese-charities-more-transparent/>.
- 67 “Paul Tsai China Center Holds Judicial Reform Workshops,” Yale Law School, May 31, 2016, <https://law.yale.edu/yls-today/news/paul-tsai-china-center-holds-judicial-reform-workshops>.
- 68 “China Guiding Cases Project,” Stanford Law School, <https://cgc.law.stanford.edu/>.
- 69 “Alford receives the Li Buyun Law Prize,” *Harvard Law Today*, March 5, 2019, <https://today.law.harvard.edu/alford-receives-the-li-buyun-law-prize/>.
- 70 Jeremy Daum, “Still Crazy After All These Years?” *China Law Translate*, May 20, 2013, <https://www.chinalawtranslate.com/en/still-crazy-after-all-these-years/>.
- 71 Pamela Phan, “Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice,” *Yale Human Rights and Development Journal* 8 no. 1 (2005), <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1049&context=yhrdlj>.
- 72 “China,” International Bridges to Justice, <https://www.ibj.org/programs/country-programs/china/>.
- 73 “2019 年度律师、基层法律服务工作统计分析 [Statistical Analysis of Lawyers and Grassroots Legal Services in 2019],” Ministry of Justice of the People’s Republic of China, June 22, 2020, http://www.moj.gov.cn/Department/content/2020-06/22/613_3251398.html.
- 74 “Fact Sheet on China’s Foreign NGO Law,” *ChinaFile*, November 1, 2017, <https://www.chinafile.com/ngo/latest/fact-sheet-chinas-foreign-ngo-law>.
- 75 Zhuoshi Liu, “Helping NGOs Use Environmental Law.”
- 76 Michael Pompeo, “Communist China and the Free World’s Future,” (speech, Richard Nixon Presidential Library and Museum, Yorba Linda, CA, July 23, 2020), <https://www.state.gov/communist-china-and-the-free-worlds-future/>.
- 77 Elliot Ji, Michael Cerny, and Raphael Piliero, “What Does China Think About NASA’s Artemis Accords?” *The Diplomat*, September 17, 2020, <https://thediplomat.com/2020/09/what-does-china-think-about-nasas-artemis-accords/>.
- 78 Jerome A. Cohen, “The Many Forms of Arbitrary Detention in China,” Jerome Cohen, December 11, 2019, <http://www.jeromecohen.net/jerrys-blog/2019/12/11/the-many-forms-of-arbitrary-detention-in-china>.
- 79 John Garrick, “China Has a New Way to Exert Political Pressure: Weaponising Its Courts against Foreigners,” *The Conversation*, June 29, 2020, <https://theconversation.com/china-has-a-new-way-to-exert-political-pressure-weaponising-its-courts-against-foreigners-141195>.
- 80 Amy Qin, “China Detains 2 Americans Amid Growing Scrutiny of Foreigners,” *The New York Times*, October 17, 2019, <https://www.nytimes.com/2019/10/17/world/asia/china-detains-us-english-teachers.html>.
- 81 Cohen, “The Many Forms of Arbitrary Detention in China.”
- 82 “2020 US-China Business Council Member Survey,” US-China Business Council, 2020, https://www.uschina.org/sites/default/files/uscbsc_member_survey_2020.pdf.
- 83 “2020 Business Climate Survey Released,” American Chamber of Commerce in China, March 10, 2020, <https://www.amchamchina.org/about/press-center/amcham-statement/2020-business-climate-survey-released>.
- 84 Ibid.
- 85 “Collaboration or Confrontation: Beyond the False Dichotomy in US-China IP Relations,” *China IPR*, July 17, 2019, <https://chinaipr.com/2019/07/17/collaboration-or-confrontation-beyond-the-false-dichotomy-in-us-china-ip-relations/>.
- 86 “First-Ever ‘U.S.-China Judicial Dialogue.’”

- 87 “Bilateral Investment Treaty (BIT),” US-China Business Council, <https://www.uschina.org/advocacy/bilateral-investment-treaty>.
- 88 Nargiza Salidjanova, “Policy Considerations for Negotiating a U.S.-China Bilateral Investment Treaty,” U.S.-China Economic and Security Review Commission, August 1, 2016, <https://www.uscc.gov/research/policy-considerations-negotiating-us-china-bilateral-investment-treaty>.
- 89 “Premier Li Keqiang Meets the Press: Full Transcript of Questions and Answers,” *China Daily*, May 29, 2020, http://english.www.gov.cn/premier/news/202005/29/content_WS5ed058d2c6d0b3f0e9498f21.html.
- 90 Jamie P. Horsley, “A primer on how Chinese law might enforce a US-China trade deal,” (Washington, D.C., The Brookings Institution, May 15, 2019), <https://www.brookings.edu/blog/order-from-chaos/2019/05/15/a-primer-on-how-chinese-law-might-enforce-a-us-china-trade-deal/>.
- 91 “2019 Report to Congress On China’s WTO Compliance,” United States Trade Representative, March 2020, 164, https://ustr.gov/sites/default/files/2019_Report_on_China%E2%80%99s_WTO_Compliance.pdf.
- 92 “Legislation Law (2015 Revised Edition),” China Law Translate, March 16, 2015, <https://www.chinalawtranslate.com/2015lawlaw/?lang=en>.
- 93 Jamie P. Horsley, “China Implements More Participatory Rulemaking Under Communist Party,” *The Regulatory Review*, March 15, 2018, <https://www.theregreview.org/2018/03/15/horsley-china-implements-participatory-rulemaking/>.
- 94 U.S. Congress, House, Hong Kong Human Rights and Democracy Act of 2019, HR 3289, 116th Cong., 1st sess., introduced in House June 13, 2019, <https://www.congress.gov/bill/116th-congress/house-bill/3289/text>.
- 95 “2019 Report to Congress On China’s WTO Compliance.”
- 96 William P. Barr, “Remarks on China Policy at the Gerald R. Ford Presidential Museum,” (speech, Gerald R. Ford Presidential Museum, Grand Rapids, MI, July 16, 2020), <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-china-policy-gerald-r-ford-presidential>.
- 97 *Dangerous Partners: Big Tech and Beijing: Testimony before the Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism*, 116th Cong. 2 (2020) (statement of Samm Sacks, Yale Law School Senior Fellow), <https://www.judiciary.senate.gov/imo/media/doc/Sacks%20Testimony.pdf>.
- 98 Jamie Horsley, “China’s Orwellian Social Credit Score Isn’t Real,” *Foreign Policy*, November 16, 2018, <https://foreignpolicy.com/2018/11/16/chinas-orwellian-social-credit-score-isnt-real/>.
- 99 Yin Cao, “World’s First Internet Court Goes Online in Hangzhou.” *China Daily*, August 18, 2017, https://www.chinadaily.com.cn/china/2017-08/18/content_30770108.htm.
- 100 “China: Supreme Court Issues Rules on Internet Courts, Allowing for Blockchain Evidence,” *Global Legal Monitor*, September 21, 2018, <https://www.loc.gov/law/foreign-news/article/china-supreme-court-issues-rules-on-internet-courts-allowing-for-blockchain-evidence/#:~:text=In%20August%202017%2C%20China%20opened.a%20traditional%20offline%20hearing%20takes>.
- 101 Jason Tashea, “China’s All-Virtual Specialty Internet Courts Look Set to Expand into Other Areas of the Law,” *ABA Journal*, November 1, 2019, <https://www.abajournal.com/magazine/article/china-all-virtual-specialty-internet-courts>.
- 102 “Court Trial Goes Online in China amid Virus Outbreak,” Xinhua, February 4, 2020, http://www.xinhuanet.com/english/2020-02/04/c_138755155.htm.
- 103 “You Can Watch Trials in Chinese Courts on the Internet Now,” *China Justice Observer*, May 20, 2018, <https://www.chinajusticeobserver.com/a/you-can-watch-trials-in-chinese-courts-on-the-internet-now>.

- 104 “中国裁判文书网 [China Judgments Online],” The Supreme People’s Court of the People’s Republic of China, <https://wenshu.court.gov.cn/>.
- 105 Versteeg, “Making Chinese Court Filings Public?”
- 106 Margaret K. Lewis, “Criminalizing China,” *Journal of Criminal Law and Criminology* 111, no. 1 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3600580.
- 107 Samm Sacks, “Data Security and U.S.-China Tech Entanglement,” *Lawfare*, April 2, 2020, <https://www.lawfareblog.com/data-security-and-us-china-tech-entanglement>.
- 108 “US-China Trade Agenda,” US-China Business Council, <https://www.uschina.org/reports/us-china-trade-agenda>; see also “How Trade with China Benefits the United States,” US-China Business Council, <https://www.uschina.org/how-trade-china-benefits-united-states>.