

Course Syllabus for Comparative U.S./China Environmental Law Vermont Law School Summer 2020

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Class meets online on Mondays through Thursdays

July 20-23 and July 27-30 from 11am to 12 noon and 1pm-3pm

This course provides a comparative overview of how the legal systems of China and the United States are addressing significant environmental problems. After an introduction to the history of environmental problems in China and the U.S., the course examines how Chinese law seeks to control pollution and to protect the environment, enormous challenges in a rapidly developing country of 1.4 billion people. The course will compare and contrast approaches to regulation used in China with those employed by the U.S. The environmental policies of these countries are particularly important because they are the two countries with the greatest impact on the world's environment. Yet their legal systems are very different. Environmental law is relatively mature in the United States with most of the major federal regulatory statutes having been enacted more than four decades ago. While China has a considerable body of mature environmental legislation, the country lacks both an independent judiciary and a tradition of respect for the rule of law.

Among the topics that the course will consider are: the history and structure of environmental law in China and the U.S., comparative environmental federalism, the role of civil society in environmental governance, air pollution control measures, enforcement of environmental law, climate change and energy policies, management of hazardous wastes and remediation of contaminated sites, protected areas and protection of migratory bird species, transparency initiatives and efforts to promote transnational environmental accountability.

In the past, following the completion of the classroom component of this course, students were able to participate in an additional, one-credit field trip to China. This trip enabled students to experience directly environmental conditions in China and to meet leading Chinese environmental scholars and activists. However, due to international travel restrictions and the COVID-19 pandemic, this trip will not be possible this year. Instead we will have guest speakers from China participate in some class sessions.

Learning Objectives

Students in this course should (1) learn the basics of how the Chinese and US legal systems operate through the lens of environmental law and the role of government agencies, NGOs and business enterprises in addressing environmental problems, (2) gain an understanding of comparative environmental law and insights from application of this discipline to Chinese and US environmental law, (3) Acquire important insights for how environmental law and policy can be improved by comparing lessons learned from experience with US and Chinese environmental law.

Course Materials

In light of rapid developments in Chinese environmental law, the course materials for this class have been revised comprehensively. They now will consist entirely of papers and documents posted in the Content section of the course Blackboard website. We are particularly fortunate that Professor Yuhong Zhao from the Chinese University of Hong Kong has given us permission to use a pre-publication copy of her forthcoming book *Chinese Environmental Law* as our principal textbook in this course. Professor Zhao's book will be published next year by Cambridge University Press. You will be able to download a digital copy of this book from the Blackboard website. However, you MUST promise that you will not share this book with anyone else because Professor Zhao's permission for us to use the book for free only extends to the professors and students in this class.

The professors assume that students have some basic knowledge of U.S. environmental law. As a reference and refresher Professor Percival will make available to students portions of his casebook on U.S. environmental law, *Environmental Regulation: Law, Science & Policy* (Wolters Kluwer 7th ed. 2014). This is not required reading, but it can be helpful to provide comparative background information on some of the subjects we will be discussing in class, as indicated on the syllabus for each class session.

Online Sessions, Class Participation and the Discussion Board

Most of the material to be covered in this course is well-suited to the lecture and discussion method of teaching. Lectures generally will not be designed to repeat the material in the assigned readings, but rather to provide additional perspectives on it. During the online sessions students are asked to keep their video on so that we all can see each other. Class discussion of the material is important. Students may volunteers to speak during the online sessions by clicking the "Raise Hand" function on the computer screen or by actually raising your hand.

To provide a focal point for class discussion, the professors will frame a question for each class session that will be posted on the course website in the Discussion Board section. Students will be asked to post a response to the question on the course website by 10:30am on the day of class. This will enable the professors to get a better idea of how you are grasping the assigned reading and it will facilitate class discussion. The responses to these questions can be consolidated into your final paper, which should be submitted electronically to the professors by 1pm on Sunday, August 2.

Grading Policy

Thirty percent (30%) of your grade in this course will be based on the quality of your participation during the online class sessions. Seventy percent (70%) of your grade will be based on a short paper that is due on Saturday August 1. The paper may consolidate the responses that you make to the questions on the Discussion Board.

Blackboard Course Website

This course relies heavily on the course website. The course website contains all the information that you will need for this class. In addition to this syllabus, the website contains links

to webpages that will provide additional information about the subjects covered in this course. After you have completed the assigned reading for each class, you are asked to post a response to the question that will be posted on the Discussion Board section of this website.

Class Schedule and List of Assignments

COURSE OUTLINE AND LIST OF READING ASSIGNMENTS

Class #1: Monday July 20: Introduction to the Course, the History of Environmental Problems and the Structure of Environmental Governance in China and the

U.S. ASSIGNMENT: (1) View the film "Under the Dome - Investigating China's Smog" online at: <https://www.youtube.com/watch?v=T6X2uw1QGQM> , and read: (2) pp. 1-15, 17-22, 26-28 & 33-36 in Chapter 1 and pp.11-17 in Chapter 2 of Yuhong Zhao, *Chinese Environmental Law* textbook, (3) Zhao, Young, Qi & Guttman, *Back to the future: Can Chinese doubling down and American muddling through fulfill 21st century needs for environmental governance?*, Feb. 2020, and (4) Post a response to the question on the Discussion Board. GUEST SPEAKER: DAN GUTTMAN (former Clinton administration official who had lived and taught in China for 15 years prior to the pandemic). Reference Material on U.S. Law (not required reading): Percival, *Environmental Regulation: Law, Science & Policy* (7th ed. 2014), pp. 89-100.

Class #2: Tuesday July 21: Federalism and the Structure of Environmental Law in China and the U.S. and the Role of Civil Society in Environmental Governance. ASSIGNMENT:

Read (1) Zhao Huiyu & Robert Percival, "Comparative Environmental Federalism: Subsidiarity and Central Regulation in the United States and China," 6 *Transnational Environmental Law* 531 (Nov. 2017), (2) Robert Percival & Zhao Huiyu, "The Role of Civil Society in Environmental Governance in the U.S. and China," 24 *Duke Environmental Law & Policy Forum* 142 (2014), (3) Zhang Jingjing, "Litigation with Chinese Characteristics," *Environmental Forum*, March/April 2016 at 39 (4) pp. 31-32 in Chapter 1 and pp.1-11, and 49-56 in Chapter 2 of Yuhong Zhao, *Chinese Environmental Law* textbook and (5) post a response to the question on the Discussion Board. GUEST SPEAKER: PROFESSOR HUIYU ZHAO, KoGuan School of Law, Shanghai Jiaotong University. Reference Material on U.S. Law (not required reading): Percival, *Environmental Regulation: Law, Science & Policy*, pp. 159-180.

Class #3: Wednesday July 22: Air Pollution Control. Read (1) Percival, *Against All Odds: How America's Century-Old Quest for Clean Air May Spur a New Era of Global Environmental Cooperation* (2016), (2) pp. 1-45 of Chapter 5 in Yuhong Zhao, *Chinese Environmental Law*, and (3) Post a response to the question on the Discussion Board. Reference Material on U.S. Law (not required reading): Percival, *Environmental Regulation: Law, Science & Policy*, pp. 499-768.

Class #4: Thursday July 23: Environmental Courts and Enforcement ASSIGNMENT: Read (1) Erin Ryan, *The Elaborate Paper Tiger: Environmental Enforcement and the Rule of Law in*

China, 24 Duke Environmental Law and Policy Forum 184 (2014), (2) Erin Ryan, The Paper Tiger Gets Teeth: Developments in Chinese Environmental Law, Huffington Post, June 30, 2014 (http://www.huffingtonpost.com/erin-ryan/chinese-environmental-law_b_5234210.html), (3) Amy Pickering and Yanmei Lin, A Perfect Storm: How China's *Taizhou* Case Marks the Beginning of a New Era of Environmental Enforcement, in *The Impact of Environmental Law: Stories of the World We Want* 154 (Eisma-Osorio, Kirk & Albin, eds. 2020), (4) *Taizhou Environmental Federation of Jiangsu Province v. Taixing Jinhui Chemical Company* (Supreme People's Court 2015), (5) pp. 27-33 in Chapter 2 of Yuhong Zhao, *Chinese Environmental Law*, and (6) Post a response to the question on the Discussion Board.

Reference Material on U.S. Law (not required reading): Percival, *Environmental Regulation: Law, Science & Policy*, pp. 1011-1116.

Class #5: Monday July 27: Climate Change and Energy Policy ASSIGNMENT: Read (1) Robert Percival, "The Climate Crisis and Constitutional Democracies," in *Constitutional Democracies in Crisis* (M. Graber, S. Levinson & M. Tushnet, eds., Oxford Univ. Press 2018), (2) Jun Bi, et al., Same Dream, Different Beds: Can America and China Learn How to Solve the Climate Problem?, (3) U.S.-China Joint Announcement on Climate Change, available online at: <https://www.whitehouse.gov/the-press-office/2014/11/11/us-china-joint-announcement-climate-change>, (4) Statement by President Trump on the Paris Climate Accord, June 1, 2017, <https://www.whitehouse.gov/briefings-statements/statement-president-trump-paris-climate-accord/> and (5) Post a response to the question on the Discussion Board.

Class #6: Tuesday July 28: Waste Management, Remediation of Environmental Contamination & Regulation of Chemical Products ASSIGNMENT: Read (1) Percival et al., CERCLA in a Global Context, 41 *Southwestern Univ. L. Rev.* 727 (2012), (2) He Guangwei, China's Dirty Pollution Secret: The Boom Poisoned Its Soil and Crops - three-part series, and (3) Post a response to the question on the Discussion Board, (3) Read pp. 1-23 of Chapter 7 and pp. 1-20 and 24-40 in Chapter 8 of Yuhong Zhao, *Chinese Environmental Law*, and Reference Material on U.S. Law (not required reading): Percival, *Environmental Regulation: Law, Science & Policy*, pp. 333-456.

Class #7: Wednesday July 29: Protected Areas and Protection of Migratory Birds ASSIGNMENT: Read (1) He & Cliquet, "Challenges for Protected Areas Management in China" (article forthcoming in *Sustainability*), (2) Zhao Huiyu and Robert Percival, "Species Protection in Asia and North America: The Case of Migratory Birds," and (3) Post a response to the question on the Discussion Board. GUEST SPEAKER: ZHENXI ZHONG, Roots and Shoots, Shanghai.

Reference Material on U.S. Law (not required reading): Percival, *Environmental Regulation: Law, Science & Policy*, pp. 984-993.

Class #8: Thursday July 30: Transparency Initiatives to Improve Corporate Environmental Performance and Transnational Liability Litigation ASSIGNMENT: (1) Read Percival, Global Law and the Environment, 86 *Wash. L. Rev.* 579 (2011), (2) Robert Percival and Jingjing Zhang, Transnational Environmental Accountability, 35 *Natural Resources & Environment* (forthcoming Fall 2020), and (3) Post a response to the question on the Discussion

Board. GUEST SPEAKER: JINGJING ZHANG, Transnational Environmental Accountability Project, University of Maryland Carey School of Law.

Sunday August 2 at 1pm: Papers, which may consolidate your Discussion Board responses, are due.