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WHY CHINA? A startling transformation

By Nicholas C. Howson

Assistant Professor Nicholas C. Howson has lived and worked extensively in the People's Republic of China (PRC), reads and writes Chinese fluently, and has been involved with some of the most significant corporate and securities legal issues stemming from China's "opening to the outside world." He has acted as a consultant to the Ford Foundation, the United Nations Development Program and the Chinese Academy of Social Sciences, and various Chinese government ministries and administrative departments in the drafting of the PRC Securities Law (1998) and the amended PRC Company Law (2005). He is a designated foreign arbitrator for the China International Economic and Trade Arbitration Commission and a former chair of the Asian Affairs Committee of the Association of the Bar of the City of New York. Prior to studying law, he spent two years (1983-85) as a graduate fellow at Fudan University in Shanghai, China, doing course work and writing on late Qing Dynasty-early modern Chinese literature; after law school, he was awarded a Ford Foundation/Committee for Legal Education Exchange with China fellowship to complete research in Qing Dynasty penal law, during which time he was resident at Beijing University (and working with scholars at People's University and the China University of Politics and Law) for the latter part of 1988. His expertise in Chinese law, politics, and economic reform takes center stage in courses like China: International Engagement/Domestic Legal Reform and Chinese Investment, and enriches other courses he teaches in Banking and Finance, Corporate Law and Practice, and International and Comparative Law.



With China's growing economic and political power dominating world headlines, the People's Republic of China's (PRC) sudden influence over the ever-globalizing world economy, and that nation's direct effect on every aspect of our lives, it often seems the exasperated question should be "Is there anything *but* China?"

Yet this points to only one half of the story, the impact of China and its extraordinary path of development over the past two decades *on the outside world and the United States*. Another vantage point—the *view from inside China*—reveals a process of transformation even more startling and far-reaching than the external manifestations of China's rise. That is a set of transformations which includes: rapid modernization and industrialization; the attendant huge internal migrations of a formerly peasant population and accelerating inequalities; an "opening to the outside world" capped by the PRC's accession to the World Trade

Organization (WTO); marketization of the economy and semi-privatization of large sectors of industry; internal governance reform; the tentative development of civil society; explicitly directed and spontaneously-generated political reform; and, most importantly for Michigan Law, an impossibly ambitious, once in a generation, all-encompassing program of "legal construction."

In the late 1970s, leaving behind the serial trauma of the Anti-Rightist Campaign, the Great Leap Forward, and the Great Proletarian Cultural Revolution, China's post-Mao leadership committed the nation to a policy of "Reform and Opening to the Outside World." A new legal order, newly promulgated substantive law, revived legal institutions, trained judges and lawyers, and a Chinese-style "rule of law" consciousness were all understood to be critical components for the chosen economic development model, not to mention profitable interactions with the



outside world—from the attraction of foreign capital investment to reinvigorated international trade.

Thus, China's change over the past 20-plus years has been explicitly prodded, shaped, and protected by law, and yet notions of law and legal institutions which are specific to China's modern history and political culture. Perhaps most compelling, the introduction of rule of law ideas into China, originally designed to support internal economic development and external business and financial interactions, has had pronounced unintended consequences for the PRC—so that individuals properly seeking enforcement of contracts and protection of property rights in a new semi-market economy now strive for the protection of far more sensitive civil and political rights against the same superior forces which directed legal reform in the first place.

This is why the Michigan Law School is so intent on becoming a center for the study of China's legal transformation—not just because China's growing economic and political power affects every aspect of our daily lives, but because its internal process of legal reform is unprecedented in the history of the world.

And China has much to teach us: for only by observation and understanding of the legal system changes sought, frustrated and accomplished inside the most populous nation in the world, are we sure to harvest a more profound understanding of our own legal, economic, and political structures, and the underlying assumptions which continue to support them.