

# Culture, Politics, and Human Rights in China

A Lesson Plan Prepared by  
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## Lesson Plan Focus:

Chinese Legal Reforms and the Rule of Law

## Time Frame:

Two class periods

## Academic Level:

This lesson plan will be used in an AP Comparative Government and Politics course composed of high school seniors. The impact of marketization on the Chinese political system and culture since 1979 will have been previously introduced at length. This lesson will examine specific legal system changes since 1979, investigate the Asian Values thesis, and consider the connections between culture and legal values.

## Format:

Directed readings, overview lecture, student presentation, and class discussion

## Objectives:

1. Students will understand the relationship between cultural norms (values) and legal codes.
2. Students will analyze underlying values in the American concept of the rule of law by analyzing and comparing the concept of Asian values behind Chinese legal reforms.
3. Students should be able to list social and economic rights and distinguish from civil and political rights.
4. Students should be able to analyze the impact of economic modernization and marketization on cultural values and concepts of legal authority.

## Preparatory Assignment:

1. Read *China's Legal System: A Bum Rap?*, by Randall Peerenboom (Handout #1)
2. Research one major reform in the Chinese legal system undertaken since 1979. Write a half-page synopsis of the reform including its purpose, the physical changes undertaken, and some assessment of its degree of success.

## Class Plan:

### Day 1:

#### Opening:

1. Ask students to list characteristics of American concepts of human rights and the rule of law. List on the board.
2. Ask students what, if any, of those values do we consider to be universal?

**Lecture:**

Deliver overview of the concept of “Asian Values” a thesis first advanced in the 1990’s alleging that Asian cultures place greater emphasis on community and therefore tolerate greater restrictions on individual freedom than would be tolerated under “Western” concepts of human rights.

**Discussion questions:**

1. To what degree are social and economic rights valued above civil and political rights in China? What historical, economic, political, or cultural forces are responsible for this priority?
2. Do recent legal reforms indicate that the notion of “Asian values” is changing in China? If so, how? If not, why not?

**Follow up Assignment:**

Read *Whose Asian Values*, Boston Globe, November 20, 2005 (Handout #2)

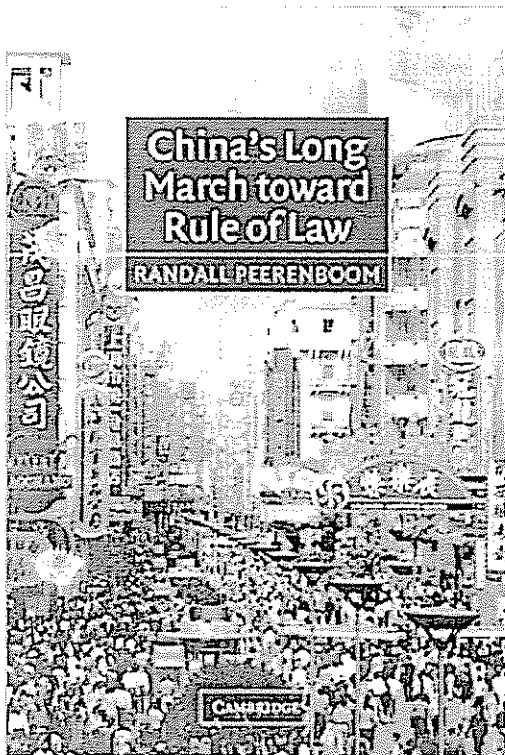
Read *NPC to make all draft laws public*, China Daily, April 21, 2008 (Handout #3)

**Day 2:**

Students will make presentations regarding the reforms they researched prior to day one by analyzing the forces behind the reforms. In other words, students will describe the reform in question and explain WHY it was undertaken. The class discussion will draw conclusions regarding the power of cultural norms, the impact of economic and political change on those norms, and the prospects for future concepts of human right in China.


**Assessment:**

I will assess the students’ grasp of the concepts in their presentations and responses to follow up questions I will pose. I will subsequently expect them to use the concepts effectively to analyze Chinese legal reforms in written form in response to an essay prompt.



## China's Legal System: A Bum Rap?

*China's long march toward rule of law*

Randall Peerenboom 

Even in the eyes of its harshest critics, China's legal system has come a long way in just over twenty years. Two decades of reform have produced remarkable changes in institutions, laws, and practices. To mention just a few of the more significant developments: The Ministry of Justice, dismantled in 1959, was reestablished in 1979. Law schools were reopened and have trained great numbers of professional lawyers. In 1981, all of China had a mere 5,500 lawyers; in 1998, it had over 110,000. Between 1976 and 1998, the National People's Congress adopted more than 337 laws and local people's congresses and governments issued 6,000 regulations. In contrast, only 134 laws were passed between 1949 and 1978. While litigation was virtually nonexistent in 1979, the total number of cases of first instance reached five million by 1996. And, perhaps most importantly, law is increasingly important in everyday life in China. Whereas during the Mao period the country was governed mainly on the basis of Party policy and administrative regulations (often passed internally and not made available to the general public), today the country is increasingly governed on the basis of publicly promulgated laws. Increasingly, citizens are willing to take on the government through administrative reconsideration and litigation. More important, they are often successful. In fact, the plaintiff prevails in whole or in part in some 40 percent of the administrative litigation cases, a rate three times higher than in the U.S.

Such changes as these are unmistakable to anyone practicing law in China. Yet, despite this progress, in the West the portrait of China's legal system continues to be overwhelmingly and exceedingly negative. Why is this so?

Responsibility for unbalanced views of China's legal system can be laid at many doorsteps. Perhaps most culpable is the media. The Western media's coverage of China's legal system (and China more generally) is overwhelmingly negative. The focus tends to be on violations of human rights and the plight of dissidents and victims of torture and other injustices. In their reporting, Western journalists often impose their own values, and are quick to assume that actions not in accord with their values are tantamount of violations of international human rights law. Although violations of international human rights law and China's own domestic laws are occurring with troubling frequency, international human rights law is much less definitive on many important issues than is generally assumed by non-lawyers. Needless to say, there is a crying need to report violations of human rights and other injustices whether or not they constitute a violation of international law. Yet we should not be blind to other important -- and positive -- developments. Furthermore, for the people in China, violations of civil and political rights are probably less important issues than whether courts will protect their

property rights or grant them a divorce over the objections of their spouse.

Of course, the media tend to report what is "newsworthy," which in practice too often means the unusual or sensational. While we cannot expect much reporting on what is routine and usual, we can keep in mind that one news report, or even a fistful of reports, does not necessarily tell the whole story of China's legal system. Most Americans realize that, for instance, the O. J. Simpson murder trial was not typical or representative of the American legal system, nor was it a microcosm of the entire American legal system. By the same token, we should realize that sensational cases in China are only that: sensational, perhaps exceptional, cases, which do not tell the entire story of China's legal system.

The foreign business community has also played an important role in shaping the negative image of China's legal system. Foreign business executives and their trusty sidekicks, expatriate lawyers, tend to focus on immediate, practical issues primarily concerning concrete operational questions and obstacles to turning a profit. While they will usually acknowledge that China's legal system has made considerable progress in the last twenty years, the dominant theme for many is that the system remains so riddled with problems that it is questionable whether it makes sense to even speak of the system in terms of rule of law. Furthermore, business people and lawyers are likely to turn to the media to complain when the system fails to function as they expect it to, or at least hope it would. Conversely, when all goes smoothly, they are likely to take it for granted. Furthermore, the views of lawyers are likely to reflect their own experiences. The billing rates of lawyers working in major international firms is very high. Given this fact, companies are not likely to seek the advice of outside counsel except on cutting edge projects or complicated issues where the law is unclear or there are other obstacles involved. Thus, lawyers are likely to encounter on a daily basis the tough cases rather than the easy ones.

Finally, the academic world too is responsible for a generally unbalanced view of China's legal system. Political scientists on the whole have paid little attention to legal reforms. Much of the political science literature is devoted to high-level Party maneuvering, elite politics, and geopolitical issues. Nor have sociologists, anthropologists, or economists devoted much energy to exploring developments in the legal system, even when they are directly relevant to their research topics.

In part China specialists in fields other than law may simply be following the lead of legal scholars. After all, if specialists on Chinese law dismiss the importance of legal reforms or the role of law, surely non-specialists can be excused for doing the same. Why have legal specialists been so critical and suspicious of China's efforts to reform the legal system? The impact of Tiananmen may be one factor. Before 1989, many foreign legal scholars were relatively optimistic about the path of legal reforms. The brutal crackdown of June 1989 led to considerable soul-searching as legal specialists sought to explain why they did not see the repression coming. Having been burned once, some appear to have swung to the other side and adopted a pessimistic perspective. Whatever the reason, there is a tendency to impute the worst motives to any development and to interpret phenomena in their worst possible light, often by suggesting that the real reason behind some problematic feature of the legal system is the Communist Party and its unbridled lust for power and domination.

In addition, and perhaps more importantly, foreign legal scholars tend to measure China's legal system against the standards of a liberal democratic rule of law, and indeed often an idealized version of liberal democratic rule of law that does not exist in reality anywhere. Some scholars have participated personally in legal reform projects and the training of Chinese judges and lawyers, apparently in the belief that the projects would bring about a legal system similar to ours and that those trained in our finest institutions would carry back our values and lead the charge to implement a liberal democratic rule of law. When legal reforms do not lead to a liberal democratic order and those who return to China busy themselves with making money rather than pressing for political reforms, the foreign legal scholars are disappointed, and may feel betrayed. However, it is premature to assume that the end of legal reforms is likely to be a liberal democratic rule of law. Nor does it seem reasonable to hold Chinese lawyers to some idealized version of what lawyers should be that is not even applicable to the legal profession in the U.S. or any country.

To develop a balanced, reasonable, and comprehensive understanding of China's legal system, we must recognize that there is no single path of development and that it is unreasonable to adopt a one-size-fits-all approach to rule of law, economic development, or political reform. Similarly, we should be attuned to differences with respect to the controversial issue of human rights. One does not have to be an apologist for Beijing to appreciate that many Chinese are likely to be offended by academics, scholars, and pundits who believe they know what is best for China even though they have never been there and remain blissfully ignorant of China's traditions, its current level of economic development, the state of its institutions, and the values of its citizens. As the Hong Kong based philosopher Joseph Chan has pointed out, Western rights advocates often denounce the appalling human rights records of some Asian countries as if their listeners were unaware of the violations in question or would want to defend them. They then quickly dismiss "Asian values" as an excuse for authoritarian regimes to commit atrocities. Chan rightly cautions against throwing the baby out with the bath water. There may be legitimate differences in values and opinions at stake, and reasonable people may reach different conclusions over some issues.

Notwithstanding the advance of global markets and the encroachment of a global culture, East Asians on the whole continue to draw a different balance than Western liberals when it comes to conflicts between individual autonomy and freedom versus social stability

and the interests of the majority. Even if we take with a grain of salt the claims of authoritarian governments who profess to speak for all citizens when they offer up Asian values as an alternative to liberal values, and recognizing that liberalism is hardly universally endorsed even in Western countries, there is ample evidence to support a difference in values.

In short, we do not all share the same values. We do not all have the same vision of the good life. Nor need we. A certain amount of diversity within the general framework of human rights is valuable in that it allows for social experimentation. The challenge is for Chinese is to draw on the diversity within China and elsewhere to fashion their own version of a just society that respects human rights and allows individuals to flourish and for Westerners to learn from Asian countries and incorporate what is useful in improving the lives of people in their countries.

China's long march toward rule of law is likely to proceed in much the same way as has the transition to a market economy. Despite opposition and the occasional setback, China's legal system will continue to converge toward some form of rule of law. To the extent possible, the ruling regime will rely on incremental changes, testing the waters first in a series of local experiments. While not ignoring the lessons to be drawn from the experiences of other countries, reformers will be driven primarily by domestic factors and considerations in determining the pace and content of reforms. We should not expect them to do otherwise.

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Professor Peerenboom teaches International Human Rights, Comparative Law: China, and Doing Business in China, the only transactional clinic of its kind in the United States.

Professor Peerenboom's books include *China's Long March Toward Rule of Law* (Cambridge, 2002); *Doing Business in China* (editor et al., 2000); *Lawyers in China: Obstacles to Independence and the Defense of Rights* (1998); and *Law and Morality in Ancient China: The Silk Manuscripts of Huang-Lao* (1993).

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## Whose Asian values?

On the question of human rights, so-called 'Asian values' aren't what they used to be

By Matt Steinglass | November 20, 2005

HANOI - As China's President Hu Jintao welcomes President Bush to Beijing this weekend, he's surely hoping to avoid another lecture on human rights like the one Bush delivered Wednesday in Kyoto, Japan. Urging China to "continue down the road of reform and openness," Bush held out a shining example of "a free and democratic Chinese society" - namely, Taiwan. China's leaders no doubt found this vision less than inspiring.

Earlier this month Hu paid a visit to a foreign capital where he didn't have to worry about such unpleasant comments: Hanoi. "Different civilizations and social systems of the world," Hu said in a Nov. 1 speech to Vietnam's National Assembly, "ought to pursue common development by seeking common points while reserving differences." In other words, the Americans should keep buying our sneakers and stop complaining about our political detainees.

These days, however, it's not only America or the international community that are pushing China and Vietnam towards greater respect for human rights. It's their own citizens. In Hong Kong in recent years, democracy rallies have drawn hundreds of thousands of marchers; on the mainland, mass protests over corruption and environmental degradation have proliferated. "What we have seen in China is the growth of a human rights consciousness," says John Kamm, founder of Dui Hua, a San Francisco-based NGO that pressures the Chinese government to release political prisoners. In Vietnam, meanwhile, the government's steady improvement on freedom of worship and property rights issues has as much to do with rising levels of religious belief and private land ownership among Vietnamese themselves as with any foreign pressure.

If Hu's implication that China's restrictions on human rights are a matter of cultural differences sounds familiar, that's because it's a version of the "Asian Values" thesis, first advanced in the early 1990s. Asian societies, so the thesis runs, legitimately place a greater emphasis on communal harmony and economic development than on Western-style individual rights. But if human rights are a Western import, they are one that has taken root in Japan, South Korea, Taiwan, and elsewhere in Asia.

Indeed, as Hu and his Vietnamese counterpart, Nong Duc Manh, entered the headquarters of the Vietnamese Communist Party on Oct. 31, a group of Vietnamese protesters stood a few hundred yards away, holding placards complaining of inadequate compensation for the government's seizure of their land. Such land rights protests, once unthinkable in Vietnam, are now routine. Private property rights, the freedom to assemble and to criticize the government, and the expectation that government is bound by the rule of law, are all gradually becoming "Asian values" - even in Hanoi.

In August, Vietnam's foreign ministry issued the government's first-ever white paper on human rights, something China has done yearly for over a decade. And in October, China came out with a white paper on democratization. The two documents seem to have been cribbed from the same playbook. Both argue that different definitions of human rights are appropriate to countries with different cultures, and both denounce any attempt by foreigners to impose standards.

Both papers do a clumsy job of defending their nations' records on political liberties. (The Chinese section on freedom of information simply cites the number of newspapers and television stations in the country.) But they do a better job on economic and social rights; both countries can justifiably boast of having lifted vast numbers of their citizens out of poverty in the last two decades. Indeed, the papers consider economic and social rights - "the rights to subsistence and development," as the Chinese government puts it, "the right to food, clothing, housing, education, and dignity," in the Vietnamese formulation - to be more fundamental than civil ones.

The 1948 UN Universal Declaration of Human Rights - signed by nearly all the original UN member states, including the US - does include these economic and social rights. But the United States Constitution doesn't, and most Americans don't really think of them as universal rights. Americans have an Enlightenment conception of rights, rooted in 17th-century philosopher John Locke's formula of life, liberty, and property (or the pursuit of happiness, as the more spiritual Thomas Jefferson would have it). For Americans, it is the "negative" rights - freedom to think and do as we please, without government interference - which are fundamental, not the "positive" social and economic ones.

In the early 1990s, a number of Asian intellectuals, notably Singapore's Kishore Mahbubani, and statesmen, including Singapore's Lee Kuan Yew and Malaysia's Mahathir Mohamad, argued that Asian civilizations based on communal ethics shouldn't be forced to accept Western norms of individual rights. These "Asian Values" proponents - from whom the current Sino-Vietnamese rhetoric on human rights is largely lifted - traced the divide back to the roots of Asian political philosophy, most often to the development of Confucianism in China from the 5th century BC onward.

Some philosophers agree that there are fundamental differences between the ethical traditions of East Asia and those of the West. "There is more emphasis, in the moral and political traditions of Asia, on providing material security and good order. And civil rights are not as assured," acknowledged Duke philosophy professor David Wong in a recent interview.

Wong is the co-editor of "Confucian Ethics," a collection of academic essays published last year by Cambridge University Press. He agrees that East Asian communitarianism is partly rooted in Confucianism, which from the 2d century BC on was the governing ideology of Imperial China (and of Vietnam from the 11th century on), informing everything from the school curriculum to civil service entrance exams to the relations between parents and children. Wong thinks that individual rights can be inferred in Confucianism to some extent, but "you have to tease them out; they're not there to start with."

Some of the authors in "Confucian Ethics" don't agree that teasing individual rights out of Confucianism would be a good idea. Henry Rosemont Jr., an emeritus professor at St. Mary's College in Maryland, argues that Confucianism does a better job than classical Western rights theory of grounding the positive social and economic rights. It is difficult, Rosemont feels, to get from the right to liberty (i.e. the Lockean right to be left alone) to the obligation to provide others with education and healthcare. Confucianism, with its focus on promoting communal harmony and well-being and on fulfilling one's social roles and obligations, has no such difficulty. "For myself," writes Rosemont, "the study of classical Confucianism has suggested that rights-oriented moral and political theories ... are flawed."

But other authors in "Confucian Ethics" dispute the contention that Confucianism is incompatible with Western rights-based ethics, or renders them unnecessary. Hong Kong University philosophy professor Chad Hansen sees a value in the Confucian preference for the private cultivation of virtue and the sense of shame over law enforcement.

"My favorite statement of this is the 'Analects', 2:3," said Hansen in an interview, citing a record of Confucius's conversations with his disciples that forms one of the doctrine's founding texts. "'Lead them by laws, and cultivate them by punishment, and you can make them good, but they will never develop the sense of shame. If you lead them with propriety, and cultivate virtue, they will be good of their own accord.'"

Hansen finds this philosophy not unrelated to East Asia's exceptionally low crime rates. But he sees no legitimacy in authoritarian regimes citing their Confucian heritage to justify ignoring individual rights or the rule of law.

Furthermore, Hansen points out, Confucianism is just one among many competing philosophical traditions within China, let alone the rest of Asia. Classical Confucianism, elaborated by Confucius, Mengzi, and Xunzi between the 5th and 3d centuries BC, faced fierce competition at the time from Moism, a sort of egalitarian utilitarianism, and from Legalism, which focused on law and punishment in place of Confucianism's responsibilities and virtues. When Legalism briefly became the official ideology under the Qin Dynasty (221-206 BC), Confucianism was almost wiped out, though it was revived under the subsequent Han Dynasty.

Buddhism and Taoism have also been hugely important in shaping Chinese culture and ethics. "Taoism is a philosophy of spontaneity, pluralism, tolerating difference," Hansen pointed out in an interview. "The fundamental orientation of Confucianism is that the goal of government is to get people to think the same way. Taoism says, 'What a boring idea - why would you want that?'"

What's more, for most of the Communist era, Confucianism was a dirty word in both China and Vietnam, a relic of feudalism whose goal of social harmony was antithetical to the Maoist doctrine of permanent class struggle. It is only now, with Communism having settled into complacent orthodoxy, that Hu Jintao can give the Party a new slogan with unmistakable Confucian overtones: "the Harmonious Society."

The Asian financial crisis of 1997 - when the currencies and economies of Indonesia, Thailand, the Philippines, and South Korea collapsed one after the other - dealt a severe blow to the Asian Values thesis. Though recent analyses have laid much of the blame on panic by Western investors and a lack of controls on capital outflows, the conventional wisdom at the time was that Asian governments and banks had concealed tremendous fiscal vulnerability due to cronyism, corruption, and lack of transparency. Western critics began reacting to claims of Asian cultural exceptionalism with exasperation, arguing that the crisis proved the need for the rule of law, freedom of information, and skepticism towards authority in modern economies.

In this context, even China began to realize it had less to gain by resisting claims of universal human rights than by acknowledging them.

"In principle, because they want to seek international friends and relationships, they admit the universality of human rights," said Bruce Van Voorhis of the Hong Kong-based Asian Human Rights Commission. "But they don't actually practice it."

Of course, today it is even harder for China to maintain that human rights concerns are being imposed from outside when so many of the rights advocates in China are Chinese.

"There is a much higher level of consciousness today on the part of the average citizen of what their rights are," says Dui

Hua's John Kamm. "They have been exercising their protest rights. It's quite astonishing, the level of local protest" - 74,000 in the last year alone. Kamm also cites China's announcement in October that all death penalties would be reviewed by the Supreme Court, which followed growing anti-death-penalty sentiment among the Chinese public touched off by an academic conference in Hunan last January. "That's a popular human rights reform. So it's not just imposed from the outside anymore."

Dui Hua compiles lists of some 400 political detainees known to be held by the Chinese government. Kamm estimates the full number at something like 10 times that. And while many of China's activists are university-educated intellectuals, many more are simply average people who have been exposed to democratic ideas through the village democracy initiatives introduced in the late 1980s.

None of this implies that China or Vietnam is about to turn into a hotbed of liberal individualism. But after more than a century of galloping modernization, and decades of capitalism and rising political freedom, the political philosophies which took hold in the West during the Industrial Revolution have taken root here as well. Hu himself is a good example: the head of a political party based on ideas born in 19th-century Austria, now adjusting to the free-market doctrines that evolved in 20th-century Washington.

The traces of Confucian ethics in China and Vietnam are strong, in the altars for ancestor veneration in private homes, in the impressive strength of familial bonds, in the exaggerated deference accorded to superiors. But the ethics of individual rights, too, are here to stay. Indeed, they stand at the very core of the modern Asian state.

Vietnam officially dates its independence to Sept. 2, 1945, when Ho Chi Minh ascended a platform in Hanoi's Ba Dinh Square and proclaimed the country's freedom from France. "We hold the truth," Ho said then, cribbing from a rather different playbook than the recent white papers, "that all men are created equal, that they are endowed by their Creator with certain unalienable rights, among them life, liberty, and the pursuit of happiness."

It is not Americans but Asians themselves who are starting to hold their governments to such promises.

*Matt Steinglass lives in Hanoi, where he writes for the Globe and other publications. □*

**CHINA** / National

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## NPC to make all draft laws public

By Zhu Zhe (China Daily)  
Updated: 2008-04-21 06:40

The country's top legislature Sunday promised to make all draft laws public to give people more say in formulating legislation.

"In principle, all draft laws submitted to the National People's Congress (NPC) Standing Committee for review will be released in full text to solicit public opinions," the NPC Standing Committee announced.

"The draft laws will be published on our official website ([www.npc.gov.cn](http://www.npc.gov.cn)). If they're closely related to the interests of the people, the drafts will also be published on major newspapers," the Committee said.

True to form, the draft food safety law, aimed at raising standards and regulating supervision, was made public yesterday.

The law was tabled for first review at the NPC Standing Committee last December.

The public can either mail their comments and suggestions to the NPC Standing Committee or visit the official website to leave ideas before May 20, according to the Committee.

It is not the first time the NPC Standing Committee has publicized draft laws, but the move to make it a regular practice is a significant development.

In the past five years, the NPC Standing Committee has published full texts of the draft property, employment promotion and labor contract laws, as well as a draft amendment to the Law on Prevention and Control of Water Pollution to solicit opinions.

But during the same period, more than 70 laws were passed.

"To make such publication a regular practice grants the public a greater say in legislation," Shi en Chunyao, deputy director of the legislative affairs commission of the NPC Standing Committee, said.

"Open and transparent legislation can better ensure the public's right to know, participate, express and supervise," he said. "More importantly, people can have a better understanding of the new laws when they participate in legislation."

The latest decision by the NPC Standing Committee was also a response to a call by the NPC Standing Committee Chairman Wu Bangguo to "further expand the participation of ordinary citizens in legislative work".

Wu said in March during a report to the first full session of the 11th NPC that laws closely tied to the interests of the people must be made public, and public hearings and debates must be held to allow in-depth deliberation on highly technical or complicated laws.

Members of the public hailed the development, saying more transparent legislation will ensure new laws better express the people's common wishes.

"I did submit my opinion while the draft labor contract law was soliciting comments," Zhu Deming, a worker in Nanjing, said.

"I think publishing all draft laws is a good idea. If we don't agree with any stipulations, we

can ask for a change before they become law. Otherwise, we have to be forced to accept them."

NPC figures show that the people are eager to take part in the legislation process. The draft labor contract law elicited a record 191,849 suggestions in just 30 days.

Zhu said he hopes to receive feedback on his suggestions from legislators.

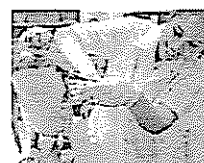
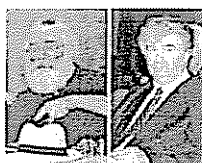
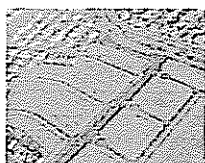
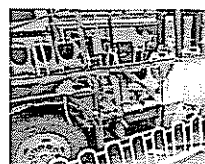
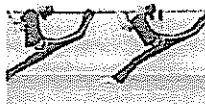
"If we don't have feedback or our calls for amendments always result in vain, we may not have the passion to continue," he said.

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