China’s Top-Down Sources of Law
Introductory Essay to Issue 1 of the China Law and Society Review

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The China Law and Society Review seeks to provide a state-of-the-art understanding about the development and functioning of law and legal institutions in China. Four decades into its legal reforms, Chinese law and legal institutions now form complex practices with great variation both over time and place. There is a rich body of work on Chinese law and society, both in law and socio-legal studies, but certainly also in political science, sociology, criminology, management science, economics, psychology, and anthropology. The field has witnessed intense specialization, to such extent that for most China law scholars it is virtually impossible to stay abreast of existing knowledge about Chinese law and society outside of their own particular area of interest. And for the growing body of practitioners in public and private practice whose work forces them to understand Chinese law and society, academic research is very hard to access, either because of the paywalls that restrict non-academic usage, or because of the jargon and complex methodology studies use.

The China Law and Society Review aims to provide accessible overviews of what we know and do not know about how law and legal institutions function in everyday practice. As a journal of law and society, our focus on law in practice requires an interdisciplinary perspective and attention to different methodologies and data sources. The law and society perspective is fundamentally about how people experience law, how law functions in society alongside other institutions, norms, and discourses. Issues will therefore center on the institutional lay of the land, including courts, the legal profession, legislators, prosecutors, the media, the Chinese Communist Party, and civil society organizations. Other issues will look in more depth at the development and functioning of substantive areas of law, including tort, labor, environment, intellectual
property, criminal, and corporate law. In each issue, cross-cutting themes will emerge that are likely to include legal consciousness, access to justice, rule of law, enforcement and compliance, regulatory strategies, law and development, ethics and corruption, judicial independence, central-local relations, and formal and informal institutions. When appropriate, articles position the literature on China in a broader comparative context, in order to analyze China’s special characteristics as well as draw out theoretical significance.

These overviews are in part reviews of the existing academic work, trying to show what scholars, both in China and outside, can tell us about particular aspects of the Chinese legal system and society’s engagement with it. However, these will not be specialist reviews as are common in other academic journals, they also try to introduce and educate, and thus to make the body of knowledge accessible also to the non-academic and the non-specialist.

All papers published in this journal are commissioned. Authors who are leading specialists in a particular area have been approached to write articles that introduce and review the state of the field on a particular topic of Chinese Law and Society. In the course of its publication the journal will establish a comprehensive and authoritative account of Law and Society in China. By updating the electronically published articles on set intervals, the timeliness of the reviews will be ensured.

The study of law and society in China can only be successful if we understand its sources of law. To understand how legal institutions function, or how citizens and business respond to law, we must recognize what such law is, and thus have a basic grasp of what types of norms are considered legal or not. Given that the law and society tradition is founded on the study of legal systems in developed democracies, its application to China requires a careful mapping of differences and similarities. This first issue of the China Law and Society Review thus starts with two basic sources of law: legislation and case law. Whereas legislation will be a source of law in most national legal systems the position of case law is much more complex. It is often assumed that in civil law countries, legal norms from court cases are not a source of law. However, there is wide variation even within civil law countries. For example, in the Netherlands, cases play a vital role as sources of legal norms. In China, the role of case law has changed over time as top-down legislation as main source of law created its own problems.

In China, as we can read in William Jing Guo’s contribution, in the communist legal system cases were originally not seen as a source of law. The Supreme People’s Court has been allowed to make official Judicial Interpretations (sifa