China’s legal system was practically non-existent in the years of the Cultural Revolution. Now, with the nation’s economy developing into a global leader, emerging laws, regulations, and jurisprudence struggle to keep pace.

Two deafening explosions broke the silence of a winter day. Then thick clouds of toxic smoke rose from the burning chemical factory into the cold, clear blue sky.

Five factory workers were killed. Seventy were wounded. To avoid further injuries, officials in the northeast China city of Jilin removed 10,000 people from the area.

But the disaster was just beginning. One hundred tons of carcinogenic benzene compounds poured from the chemical plant into the nearby Songhua River. The resulting toxic plume eventually became ninety miles long, contaminating a river that was the source of drinking water for millions of people.
Yet no public warning came from the managers of the chemical plant, owned by a subsidiary of the China National Petroleum Corporation. Local and provincial government officials, too, remained mum. For nine days after the explosion of November 13, 2005, officials claimed nothing was wrong, allowing the contaminated water to drift downstream and be consumed by hundreds of thousands of people living in small towns and villages along the upper Songhua.

As the spill approached Harbin, a city of 3.8 million people, provincial authorities shut off its water supply from the river, claiming that they were performing routine repair and inspection work. Residents however, didn't believe the government would undertake such work during the first days of winter. Rumors quickly spread that the water system had been shut down because an earthquake was imminent. Harbin descended into chaos, as thousands of people fled the city.

Officials in Beijing concluded that the cover-up could not continue. The next day, Chinese media began reporting that the chemical plant explosion could have contaminated the Songhua. On November 23, officials finally told the public that the river contained dangerously high levels of benzene and other chemicals. The news spread across the globe: It was widely reported that this incident was China's worst environmental disaster in years.

Not surprisingly, many in China were outraged by the government's handling of this incident. There were, however, two unusual responses. The country's state-controlled media issued harsh criticisms of local and provincial authorities for their actions; and the central government, which had for many years been indifferent to environmental issues, quickly began looking for ways to strengthen its response to environmental disasters.

China turned to the world's leading environmental experts for help, including Robert Percival, Robert E. Stanton Professor of Law at the School of Law and the Director of the school's Environmental Law Program. He traveled to China in December, just one month after the Songhua spill: "I was asked to talk to [a government advisory panel] about how China could improve its laws to respond better to environmental emergencies."

And even before this advisory group presented its final recommendations to Premier Wen Jiabao in fall 2006, some of the recommendations were adopted by the Chinese government—including a requirement that all environmentally dangerous spills be immediately reported to the central government. Percival says, "[These recommendations] will enable China to prevent spills in the future and to respond more quickly when they do happen."

But the environment is not the only legal arena experiencing upheaval; such swift and significant shifts have been occurring in many areas of Chinese law. As the country has moved toward a market economy, China has made big changes in its laws, its courts, and even its lawyers.

"China is undergoing a massive transformation economically, politically, culturally, socially, and even legally," says Michael Van Alstine, associate dean and director of the School of Law's International and Comparative Law Program.

The law school has instituted a new exchange program with one of China's top educational institutions, the Central University of Finance and Economics (CUFE) in Beijing. Starting this semester, four Maryland law students will study...
international and comparative business law in China, and four Chinese students will visit Maryland the following spring. "This exciting new exchange program... furthers our commitment to preparing Maryland law students for the demands of an increasingly cross-cultural and global practice," says Dean Karen Rothenberg.

They will be seeing firsthand what has been "a tremendous blossoming of a legal system," says Mitchell Silk ('86), an alumnus of the University of Maryland School of Law who now heads the China group in the New York office of Allen & Overy.

Silk notes that China's legal system has come a long way in a very short time, promising greater rights and a brighter future for the country's citizens. But China's legal system is still in transition, and for many Chinese the ideal of equal justice under law remains unrealized.

**From Revolution to Regulation**

The nadir of the legal system came in 1976. By the time the Cultural Revolution had ended, the country's legal infrastructure was in a sorry state. For starters, there were hardly any statutes on the books. "No civil law, no contract law—virtually very, very few statutory laws," says Silk. "China is a civil law country, so there must be statutes in place for there to be any enforceable rights. People couldn't rely on the courts for help. Indeed, there were relatively few courts, and the tribunals in place were run by ex-military officers, who had no legal training or experience. But that didn't matter much, since the courts were effectively an arm of the ruling Communist Party. "It was basically telephone justice," says Percival. "The party would call up judges and tell them how to decide cases."

Even if there had been good laws and judges, people would still have found it difficult to vindicate their rights, because the country's lawyers had been practically wiped out. "All intellectuals, including lawyers, were basically sent to the countryside to work in communes or farms," says Silk. "There were very, very few trained lawyers left, and they had little experience."

Things began to change in 1977, when Deng Xiaoping became China's leader. Rejecting the hard-line communist policies of his predecessor, Mao Zedong, Deng pushed the government to ease restrictions on business and to gradually adopt pro-market policies. As new high-rise buildings began to appear in commercial centers like Shanghai, and China's economy began to soar, the government responded by further expanding the opportunities for private businesses.

This business activity, however, required China to revitalize its legal system. "With more types of economic transactions, there is a need for more legal regulations," says Silk. Overseas investors, domestic businesses, and foreign governments all pushed for reforms to protect commercial and private property rights. Silk notes that, "There is a great demand for securitized transactions, derivatives transactions and non-performing loans in the financial sector. However, the development of products in this area has been hampered by the lack of adequate laws governing securitizations, trust law, derivatives and non-performing loans. Laws and regulations in these areas are appearing ... but legal developments are not keeping up with market forces and demand, and this is leading to inefficiencies in the market."

As Daniel J. Mitterhoff, an American-trained lawyer who teaches business law at CUFE in Beijing and helped create Maryland's exchange program there, puts it, "China's leadership has come to see laws as crucial to facilitating China's development and engagement in the international economy."

**Stability at Stake**

China's economic boom has had its benefits, but primarily for urban workers, particularly those with good educations and powerful connections. As a result, the country that once prided itself on the economic equality of all its citizens now has huge economic disparities between the top and the bottom of the income ladder.

This growing disparity, along with the other dislocations caused by China's move towards a free market economy, has created huge social and political pressures. This, too, has been another powerful motive for the government to strengthen the legal system, says School of Law Professor Emeritus Hungdah Chiu, a former teacher at National Taiwan University and at National Chengchi University in the Republic of China who founded Maryland's East Asian Legal Studies Program.

"In light of the growing level of sophistication among China's citizens, it is evident that the general public is yearning for adequate and effective adjudication in resolving various societal disputes, be they handled administratively, judicially, or through other alternative means," says Chiu.

China's legal system has come a long way in thirty years. The country's top
legislative body—the National People’s Congress, a unicameral body whose 2,989 deputies represent China’s 30 provinces, autonomous regions, directly administered cities and the military—has enacted a large number of important statutes, including environmental laws, corporate laws, and even a 2007 law recognizing the right to private property. “China now has statutes in all major commercial areas,” notes Silk, “even in some relatively sophisticated areas, such as trust law and derivatives.”

To enforce those laws, the number of trial and appellate courts has skyrocketed, and specialized tribunals have been set up with the foreign party, the easier the deal will go.”

Chinese people have traditionally been averse to litigation. But the number of civil lawsuits has shot up dramatically in recent years. “Once, culturally and politically, people would not think of bringing lawsuits,” says Silk. “Now, people sue big corporations and the government, which are actions that were unheard of.”

These suits are giving many in China a powerful new way to protect their interests. For instance, peasants and workers have had some modest success in imposing liability on polluting industrial plants. “A

Thus, the courts are now showing a certain amount of independence from the party and the government.

The Fight for Rights

China’s legal system is still evolving, and many legal rights exist only on paper. In 1996, for instance, China overhauled its criminal procedure code, incorporating many provisions for a U.S.-style adversarial system of justice. Nevertheless, defense lawyers are often prevented from doing much for their clients. “Only the bravest Chinese attorneys take on high profile criminal cases,” says Mitterhoff. “There have been criminal defense and civil rights cases where the lawyer has ended up in jail.”

So far, the government has refused to relax its grip on the criminal justice system, and Mitterhoff says officials are continuing to use this system to achieve political objectives. If the government wants someone convicted as proof that the government is cracking down on crime, for instance, the accused will be convicted. Only 20 percent of defendants have lawyers; the criminal offense conviction rate is 99 percent.

Chiu says that China’s legal system provides its best results for large businesses and for financially set, well-connected urbanites, leaving the poor rural farmers—the vast majority—struggling for rights.

But the revolution in China’s legal system is far from over: Many experts see signs of increasing strength in the system, and the resulting increase in rights for people throughout China.

“[Top government officials] have invested so heavily in the market economy, it is inevitable they will strengthen the independence of the legal system, in order to strengthen investor confidence,” Percival notes. “The legal system will continue to grow as an independent entity, not just a political force.”

“Some look to law as a surrogate for freer political and civic institutions. They hope to be able to express through law interests that are still difficult to advance directly via politics,” says Chiu. “One of the unintended consequences of the legal reforms may be a greater awareness of civil rights among ordinary Chinese citizens,” adds Chiu. “It is this bottom-up force that will force the legal system to continue to change.”

New Jersey attorney Steve Seidenberg has been a legal journalist for close to twenty years.