

Legends of the Legal Academy

Jerome Alan Cohen

Alison W. Conner

How It All Began

Now China is on everyone's radar and Chinese legal issues appear daily in the news. But long before interest in China was so common, American law schools were already teaching Chinese law—in large part the legacy of a true legend of the academy, Professor Jerome A. Cohen. During his career, Jerry Cohen has been active in every area of Chinese law, including teaching, research, policy-making, and practice, and in all of them he has been a pioneer. Now that Jerry has reached his eightieth birthday—and marked fifty years in this field—his contribution to Chinese legal studies has been celebrated by Chinese law experts around the world. Though no short essay could do justice to Jerry Cohen's multifaceted career, his contributions deserve to be even more widely known in the law school world.

Jerry's involvement in Chinese law began in 1960, hardly an auspicious time: The U.S. had no diplomatic relations with the People's Republic of China ("Red China"), and most Americans were deeply anti-Communist. Jerry had served as editor-in-chief of the *Yale Law Journal*, had clerked for two years at the Supreme Court, for Justice Felix Frankfurter and Chief Justice Earl Warren, and then worked at Covington & Burling in Washington. As he started his first teaching job at U.C. Berkeley, Jerry seemed destined for a conventional career teaching constitutional and perhaps international law. But when the Rockefeller Foundation decided to fund training for a new generation in Chinese studies, including law, Jerry's Berkeley dean looked for a faculty member willing to pursue the opportunity. Understandably, no one seemed interested—until Jerry took up the challenge. His friends wondered why he was throwing away a promising career on a country he couldn't even visit (it was illegal). "Isn't that going to be a very narrow area?" one colleague asked him. Despite a few misgivings about starting the language so late, Jerry

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remembered what Confucius said in the *Analects*: “at thirty I stood firm” (*sanshi er li*), and in 1960 he began his study of the Chinese language. The fourth year of his fellowship (1963–64) he spent doing research in Hong Kong, the closest he could get to mainland China. When he and his family returned to the U.S. in 1964, he joined Harvard Law School, drawn by the university’s great strength in Asian, especially Chinese, studies. The rest, as Jerry likes to say, is history.¹

Pioneering Scholarship

With this early start, Jerry helped to pioneer Chinese law research in the U.S., along with a few other scholars, such as Stanley Lubman and David Buxbaum. His 1968 book, *The Criminal Process in the People’s Republic of China, 1949–63*,² for example, was based on the interviews he conducted with refugees in Hong Kong, and *China’s Practice of International Law: Some Case Studies*³ reflected his involvement in foreign policy issues, including his work towards normalization of relations with China. Nowadays, no one person could stay abreast of all developments in Chinese law, but Jerry has covered a remarkable range of topics in the many books, articles, and essays he has published during his career. He has written on traditional law, Chinese criminal justice, foreign policy, and international law and, after he went into practice, about many aspects of Chinese business law, including joint ventures, contracts, and arbitration. More recently he has returned to the study of criminal justice issues in Taiwan and mainland China. Regardless of the subject, a constant theme in his work has been the importance of the rule of law—and of legal reform to achieve it. A frequent speaker at conferences and meetings, he retains a rare ability to comment across any topic, and to connect the dots for everyone. Jerry is still concerned with the fundamental question of how we learn about and teach Chinese law. He has long believed in the value of legal history (what can China learn from the past?),⁴ and he still favors a comparative approach—how is Taiwan’s experience relevant to legal changes on the Chinese mainland, for example, and what can the experience of Japan and Korea tell us?

1. For more on Professor Cohen’s remarkable career and his long involvement in Asian issues, see the article by Pamela Kruger, *China’s Legal Lion*, in *The Law School* (2009), published by New York University School of Law, available at NYU’s U.S.-Asia Law Institute website, www.usasialaw.org. You can see Professor Cohen discuss his experiences in Asia in a series of videos entitled “Law, Life and Asia.” These highly entertaining videos also feature comments by his wife, art historian and photographer Joan Lebold Cohen. They are all available on www.youtube.com as well as on the NYU website given above.
2. Jerome Alan Cohen, *The Criminal Process in the People’s Republic of China, 1949–63: An Introduction* (Harvard Univ. Press 1968).
3. Edited by Jerome Alan Cohen (Harvard Univ. Press 1972).
4. He co-edited *Essays on China’s Legal Tradition* with Fu-mei Chang Chen and R. Randle Edwards (Princeton Univ. Press 1980), for example.

In addition to his scholarly publications, Jerry has also sought a wider audience for Chinese law issues and has made immeasurable contributions towards popularizing the study of foreign and comparative law. As a result, he has showed his students by example as well as by precept that a clear, readable style is not “just journalism” but is actually the best kind of writing, however hard to achieve. Whatever the subject, Jerry’s work is also informed by a deep understanding of Chinese culture and society as well as of law, which he owes in large measure to his wife, Joan Lebold Cohen, an expert on Chinese art. When they co-authored *China Today and Her Ancient Treasures*,⁵ the book was a great success, though Jerry modestly warned us “don’t let it fall on your feet” and then told me “you can always wait to see the movie.”

And Teaching

Since 1990, Jerry has taught at New York University, where he also co-directs the U.S.-China Law Institute. But many of his students know him from the Chinese law courses he introduced at Harvard, where he taught from 1964 to 1979 full-time and as a short-term visitor thereafter. When I started law school in 1970, Professor Kingsfield was alive and well, and most law schools—especially schools like Harvard—were very different from the kinder, gentler institutions we know today. But Jerry was an entirely different, and highly accessible, law professor, and I doubt he could have behaved any other way. At a law school event we both attended, Jerry once suggested to several colleagues that they would know me because I was taking their courses. When one of them laughed in response and the other, in whose much smaller class I had actually spoken, replied “Oh, I never look at them [i.e., the students],” Jerry seemed genuinely puzzled. He recognized everyone in his classes and could usually recount the date and place of meeting or recruiting his students (“I first met you in Tokyo in 1972...”).

Perhaps Jerry played “hide the ball” in his earliest teaching, but in the Harvard courses I took, about China’s legal tradition and Chinese attitudes towards international law, he never taught that way. Although he made it clear when he disagreed with you or believed you hadn’t thought something through, he was always open to other views and he treated students with respect. Jerry’s teaching style was informal, and he enjoyed real discussion (“how do I know what I think until I hear what I say?” was a typical comment). He still jokingly ends his talks with “Comrades, give me your criticisms!” but he genuinely welcomes questions and comments and always leaves time for them. Jerry would sometimes declare that “I learn from you” (*wo xiang ni xuexi*), but in fact one of his highest compliments was that he had learned something from a paper you wrote—a revelation to his American as well as his Asian students (a teacher could learn from a student!).⁶ Long before grade inflation, he was generous in his assessment of students, and he still frets that the grading curve

5. Originally published in 1974, the 3rd edition (Harry N. Abrams) appeared in 1986.

6. And if Jerry thought you had worked hard he might also tell you, “You are a *laodong mofan* (model laborer)!”

does not allow him to recognize all the excellent work his students produce. Small wonder that Jerry attracted so many students then or that his NYU courses, now that we can actually do business in China, are often standing room only.

Not surprisingly, Jerry has inspired many of his students to pursue academic careers, and it is surely no accident that American law schools, well before China's rise, offered so many Chinese law courses. He used to joke that the "silver-coated bullets of the bourgeoisie" lured people into practice, but he has always respected the various career goals of his students and he does not devalue other paths—indeed, in his own career he has demonstrated how they might be combined. What he has emphasized to all of us (and showed by example) is the importance of finding meaningful work and speaking out for what you believe in. With Jerry's support and encouragement, therefore, his students have gone on to distinguish themselves in practice, government service, NGOs, diplomacy, and business as well as in academic life.

"One Day A Teacher . . ."

Jerry's pioneering courses and scholarship alone would have earned him a place among law school greats, but his influence today reaches far beyond his own teaching and writing. Although he jokes that Justice Frankfurter taught him early on the value of developing a clique of followers, his mentoring of generations of scholars is deservedly legendary. Jerry has demonstrated such kind interest in the many eager young people who asked about careers in Asia that he couldn't help attracting students from around the world. It seems that he can always find the time to encourage someone interested in Asian law ("don't leave town without talking with me"), and I was an early beneficiary of this approach. In 1969, then a Cornell graduate student in Chinese history, I sought Jerry's advice about studying Chinese law. It was still the height of the Cultural Revolution and China had no discernible legal system. But Jerry, ever the optimist, was enthusiastic: of course I must study Chinese law, what a great idea! I should also complete law school and get a degree, not just apply as a one-year special student, which was what I had planned. "You'll want to stay," he told me, and fortunately for me I listened. I am especially grateful because—though my women students now might find this hard to believe—in the 1960s, your career depended on whether specialists in your chosen field accepted women students, which quite a few did not.⁷

Perhaps Jerry's mentoring style is really an Asian one, with all that entails ("one day a teacher, forever a parent"). Of course he dispensed plenty of excellent advice, both general (*linghuo anpai*—"be flexible in your arrangements") and specific (always pitch your talk to your audience), but he did so much more. Over the years he has made thousands of introductions

7. When I entered law school in 1970, Harvard still had no full-time women faculty members and not many women students (about 8 percent in my class), although the practice of "Ladies' Day" had, happily, already ended. (In some courses, even in the 1960s, Ladies' Day was the only time women were called on or encouraged to speak.)

("You really must meet...") and written countless letters of recommendation for his students and colleagues. Once, after Jerry had spent a sabbatical at Harvard instead of going away, the dean asked him what he had written. "I'm thinking of bringing out a slim volume of recommendation letters," Jerry replied—but had he done so it would have been a tome. For many of us, he arranged interviews for jobs, fellowships, internships, and stipends. He has also found jobs for spouses, intervened in visa problems, helped with admissions, provided temporary housing, and when necessary even medical referrals—all without making anyone feel like the object of charity. In all his years of teaching, one former student wrote, "I have hardly ever felt able to devote to a single student the time and energy that Jerry devoted to me."

How could only one person do all of this? Jerry has always been efficient and he does not waste time. A classmate once praised his "skill in getting someone out of his office quickly and having them feel good about it," and I can attest to its truth. Jerry was usually so accessible it was easy to forget he was a very busy and important man: In my first few weeks at law school, for example, I asked to make an appointment with him and assured him it would only take half an hour. "Half an hour?" he exclaimed. "I can give you five minutes!" But Jerry's ability to get something done with a phone call or resolve a problem in just a few minutes remains unrivalled. His students soon learned to be creative in arranging opportunities to consult with him: during a break between meetings, on an elevator ride, or even on a cab ride to Kai Tak airport (only he got on the plane).

Without Jerry's support and encouragement, many of us would have led very different lives ("Jerry arranged everything except my marriage," or simply "he changed my fate"). But Jerry modestly downplays the extraordinary amount of help he has given to so many people over the years. "I should testify that 'helping' students who have become outstanding life-long friends, teachers and scholars, is one of life's greatest satisfactions," he once wrote me. For their part, his students say that, "of all his qualities I have tried to emulate, his support and loyalty to his former students is probably the attribute I value most," and many still declare that they are "first and always his student."

Of course, as Jerry often says, "there's no such thing as a free lunch." This means that he can call on you for assistance at any time, and he often does ("Could you please..." or "I gave your name to..."). When I was teaching in Hong Kong and he was in practice there, for example, he sometimes phoned me up to ask for materials from our library or made similar requests. Once he called to inquire about a short article I was supposed to be writing: Had I finished it and if so where was his copy? "You haven't forgotten that I work for Hong Kong U and not Paul Weiss?" I asked him. But he couldn't really understand this point.

EALS and Beyond

During Jerry's years at Harvard, the East Asian Legal Studies (EALS) Program that he founded was the base for many of his Asia-related activities. Early on, Jerry had become interested in Korea, Japan, and Vietnam, on the theory that if you studied China you should also study other systems within its cultural sphere of influence. At the same time, he viewed those countries as important in their own right and he always wanted EALS to do comparative work, an approach often neglected then but of benefit to us all. Jerry saw right away the "value of having wonderful students coming from overseas," and he recognized the contributions they could make to comparative law study. It was also Jerry who raised the money from the Mitsubishi companies to fund a Japanese law chair at Harvard. The early recipients were visiting law professors from Japan, which his Harvard colleagues would only agree to if Jerry co-taught the classes. So Jerry co-taught Japanese law in addition to handling the administrative arrangements for six years ("no good deed goes unpunished," but also "I learned a lot").

EALS frequently hosted brown-bag lunch talks and seminars by American and international professors, research scholars and visitors, all chaired by Jerry in inimitable fashion. No matter how dry or narrow a talk might initially seem, he always had insightful comments to draw out the speaker. In one form or another he also asked the most important questions: What does it all mean? What can we learn from this? Indeed, promotion of scholarship was an integral part of the program, and Jerry encouraged and supported many research projects there over the years. At EALS he brought together not only students from many disciplines but also visiting scholars, visiting professors, and research fellows at different stages of their careers, all working on a broad range of projects, including legal history. An excellent editor, Jerry was always willing to read and comment on anything that friends and students were writing—often more than once. Some years ago, after he had read and carefully commented on a dissertation written by a scholar from Taiwan, his brand-new secretary sent the marked-up manuscript not to the Republic of China (i.e., Taiwan) but to the *People's* Republic of China, where it disappeared without a trace. Jerry started over on another copy and did it all again.

EALS visitors often included lawyers and other legal professionals, because Jerry was interested in the way legal systems actually worked, not simply the law on the books. In his view, practicing lawyers often knew much more about the system and one could learn a great deal from them too. Jerry also sheltered Asian scholars at EALS who could not return home to authoritarian regimes—or worked to free them when they were imprisoned for political crimes. Foreign policy and human rights issues were always high on his agenda: He was a frequent advocate for human rights and democracy in Asia, and always personally concerned with the victims of oppression. In the eloquent words of

a Korean former student, "Jerry was most elated when a prisoner of conscience was released, a death sentence commuted, and a life saved from being thrown into the sea by the state terrorists."⁸

By the time Jerry left Harvard in 1979 to practice law in Beijing, EALS occupied some thirteen rooms over two floors and included offices, common areas, and a kitchen; research scholars and visitors had offices, while law students had carrels. Its comfortable main rooms featured Asian art and antiques from the Cohens' own collection as well as from Harvard's Fogg Museum. The beautiful setting, along with Joan Cohen's expertise and warm friendship, also sparked our interest in Chinese art and Chinese film. And in that pre-cell-phone, pre-laptop, and pre-Starbucks era, the physical setting was far more important than it could ever be today: There was a phone where people could reach you! There was coffee and tea! It was a haven, it was a home. I still recall EALS and my carrel there with the greatest affection; in the years since I left it, I have worked happily all over the world, but never in a more congenial environment.

For EALS was, of course, a community as well as a place, composed of scholars, professionals and students, all in some way connected to Jerry. And thanks to Jerry, we realized we were part of a much larger network around the world, all joined in a great common enterprise: to understand and explain the legal systems of China and its Asian neighbors. Thanks also to the many social as well as professional occasions, we developed great camaraderie, and at EALS I met many of my oldest and closest friends. We all benefited from the personal hospitality shown us by both Jerry and Joan, and I fondly remember the many happy gatherings Joan organized at their Bryant Street home as well as at EALS (and later on in New York and Hong Kong).

Despite the great success of EALS and the "perfect life" Jerry says he led at Harvard, he eventually left it to practice law in China. When the U.S. and China finally established diplomatic relations in January 1979, for the first time it became possible for Americans to live and work in China. Jerry began his stay there by teaching a course on business law and dispute resolution to Chinese officials, after which he went into law practice in Beijing and opened one of the first foreign law offices in China. At first I was disappointed that he decided not to return to Harvard at the end of his leave, because it seemed clear Jerry belonged in academic life. But it was a historic moment, one he had been working towards for nearly twenty years, and it presented the ideal opportunity to see the system up close. In the event, Jerry simply began teaching and writing in another context: He continued to mentor lawyers and others in the field, and he began recruiting the first Chinese students to study law in the U.S. For many of us, EALS remains the most important connection, but as Jerry has moved, first to law practice at Coudert, then Paul Weiss, and eventually to NYU, he has continued to expand his network and has collected many more students and associates along the way. Wherever Jerry now goes in

8. He was referring to Kim Dae-Jung, who was nearly drowned by the KCIA in 1973; Jerry was instrumental in saving him.

the world, he can find his students, colleagues, and friends—and fortunately, through him, we can too. In the words of one former student, he is truly “the great bridge and architect of so many friendships around the world.”

Whatever the undertaking, Jerry has always been concerned with rule of law issues. Though law practice may have given him a different perspective, he has continued to emphasize the importance of human rights and legal reform. Jerry is usually quick to recognize progress but he is also frank about shortcomings and is never afraid to speak out on abuses. While he was still in law practice, for example, Jerry was one of the first to raise problems with arbitration as well as litigation in China and to suggest possible reforms. Most recently, he has written on such sensitive topics as the use of torture, the misuse of state secrets, badly needed criminal justice reform, and the harsh treatment of China’s *weiquan* (rights defender) lawyers, particularly Gao Zhisheng and the blind “barefoot lawyer” Chen Guangcheng.⁹

But Jerry is not sanctimonious, nor has he ever been blind to the faults of our own legal system. When some years ago a Chinese official asked him, “What would you say if we criticized the U.S.?” he immediately replied that of course they should criticize and we would welcome the dialogue. (The Chinese must have been listening.) His famous outspokenness and disarming candor have won him respect, though it is not without risk—that he might, for example, be denied a visa to China if he spoke too directly (it has happened to others).¹⁰ Yet Jerry has continued to speak out, and indeed he argues that foreigners need to keep protesting cases of injustice in China. “Foreign critics are useful precisely because their distance gives them a different perspective,” he writes.¹¹ Perhaps it is the unique position he has earned in the field, his personal prestige and integrity (in Hawai‘i it would be called his *mana*) that make him so effective—and that protect him still.

What Does It All Mean?

Jerry Cohen’s career has taken many different paths since 1960, yet teaching and research have always been at the core of his work, whether he was based in practice or in academe. His mentoring of students and support of scholars have played a major role in developing the field of Chinese law; his influence

9. See, e.g., the series of articles Jerry has written for the S. China Morning Post over the last couple of years, many of them available on his blog at the www.usasialaw.org website. You can also watch a video of his powerful March 15, 2010 talk in Hawai‘i, China, Soft Power and the Rule of Law, available at www.law.hawaii.edu/news-events/professor-cohen-ewc-china-soft-power-and-rule-law.
10. See Emily Parker, Censors Without Borders, N.Y. Times, May 6, 2010, available at http://www.nytimes.com/2010/05/16/books/review/Parker-t.html?_r=1&scp=1&sq=emily%20Parker&st=cse.
11. For example, Jerome A. Cohen, Fight the Good Fight, S. China Morning Post, Feb. 17, 2010, available at http://www.cfr.org/publication/21458/fight_the_good_fight.html.
12. Jerome A. Cohen, Viewed From Afar, S. China Morning Post, Oct. 15, 2009, available at http://www.cfr.org/publication/20413/viewed_from_afar.html.

as a teacher will be felt by China scholars for generations to come. How fitting that he has now returned to using his first Chinese name, Kong Jierong, and once again shares a surname with Confucius, the greatest Chinese teacher of them all.¹³

How has Jerry Cohen achieved so much in only fifty years? Few can resist his boundless enthusiasm, his enormous energy and charm, or his remarkable generosity of spirit. Jerry often says that life is not a zero-sum game; he always thinks there is room for one more guest at the dinner table. His powers of persuasion are deservedly legendary: He has persuaded more people to go to law school, to take a chance and go to Asia, to practice law in China, or to leave practice and teach than anyone else I know. Jerry also retains an incredible memory for people—and dates (“I had my first Chinese lesson on August 15, 1960 at 9:00 a.m.,” or “I stopped studying Japanese on April 1, 1972 and I’ve called myself the April Fool ever since.”) How can he be so exact? As he says, “Who is going to check on this?”

It doesn’t hurt that Jerry is a dynamic speaker and brilliant raconteur (“that reminds me of the time...” or “when I was clerking for Chief Justice Warren...”) with a great sense of humor. When writing a reference on your behalf, he often mentioned the time his own mentor, Myres McDougal, gave him a favorable recommendation, saying “I hope my biographer never reads this!” Jerry’s standard reply when you thanked him for help with an interview, an application or a job was usually, “Don’t thank me! All I want is 10 percent of your salary for the rest of your life!” [Note to Jerry: I always laughed, but my students don’t seem to think this is funny.] When you took on a task for him, Jerry often declared that “with you in charge, my heart is at ease” (quoting Chairman Mao to his supposed successor Hua Guofeng—though of course that didn’t work out too well). And once, after I had badgered him relentlessly to finish an article I was editing for the *Hong Kong Law Journal*, he declared that, “if I ever need a bill collected, I’m going to call on you!” when he finally handed it over.¹⁴

Jerry’s students and friends all know his stock of anecdotes, and we still laugh at his jokes, no matter how often we hear them; Jerry says we can now just refer to them by number. Joke No. 113: “You probably think that because of my grey hair I am at least fifty years old. In fact, I’m only thirty—I’ve just been doing business with China for five years!” Or Joke No. 25: “Definition of eternity: three days in North Korea.” One of his favorites, which he often tells on birthdays, is about Justice Holmes. It seems that one day as the ninety-year-old justice was riding in a car with his law clerk, Holmes looked out the window and saw a beautiful woman on the sidewalk. “Oh, to be 70 again!”

13. Kong Fuzi, or Master Kong. When Jerry first went to the PRC, that was not a positive association, and he was given another surname, Ke, instead. But Confucianism (of a sort) has now been revived and Jerry has returned to using the more literary name with which he began his China career.

14. I’m sure Jerry is glad he finished it: His clients very much enjoyed receiving reprints of *Sex, Chinese Law, and the Foreigner*, 18 *Hong Kong L.J.* 102 (1988).

he exclaimed. Jerry sometimes quotes “Cohen’s law”: It’s not the dog you see coming down the street, but the dog you don’t see that bites you (on the effects of the 1997 Asian financial crisis vs. the handover of Hong Kong to the PRC, for example). And if you arrive late for an appointment, he likes to quote Oscar Wilde and reminds you that “punctuality is the thief of time,” meaning his.

Of course one of Jerry’s greatest strengths is his unfailing optimism, a gift lesser mortals can only admire. How else could he have founded this unlikely field, have determined that he would go to China when it was clearly impossible, or even looked for a legal system where you couldn’t reasonably hope to find one? Despite many setbacks in China’s long march to the rule of law, Jerry has remained optimistic. Even after the events of June 4, 1989 shocked everyone in the field, Jerry still thought we should study Chinese law—indeed, he argued that it was even more important for us to do so. And Jerry can always see the brighter side of any situation. When in 2004 I returned to China on my second Fulbright, some twenty years after my first, it was all so different from the early days. Foreigners could live where they wished, they could socialize with Chinese in ways we could hardly imagine during my first teaching gig. I didn’t begrudge anyone those changes, but I couldn’t help feeling a pang of regret. “Why couldn’t I have had that freedom when I was young, why couldn’t that have been *our* China?” I asked Jerry. “Actually, we are the lucky ones,” he told me, “because we know what China used to be, and we can savor the changes.”

Though Jerry sometimes refers to the “resilience of youth,” age hardly seems to affect him. He is still going strong after all these years, always teaching and always learning, whatever the work at hand. Adviser and counselor, promoter of talent, still making introductions and writing recommendations for his students and friends. Visionary risk-taker, tireless advocate and seeker of truth, still bearing witness and speaking out for reform.

Congratulations and happy (81st) birthday, Jerry! Your students all wish you ten thousand years.