



The Rule of Law in the People's Republic of China: Statements, Realities, Insights and New Approaches

University of Göttingen

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Presentations & Abstracts

Björn Ahl (Chair for Chinese Legal Culture, University of Cologne)

Topic: Chinese Judicial Reforms as Judicialization

Abstract: Increasing reliance on courts and judicial means for addressing questions of public policy and important political controversies is a significant phenomenon of constitutional development in rule-of-law systems. Whether we can observe similar developments in authoritarian states remains contested. In contrast to other studies that have found courts to be weak and dependent institutions of the party state I argue that the transformation of Chinese courts and their immediate institutional contexts constitute a process of judicialization. I distinguish between judicialization processes on the central and local levels. On the national level, the study focuses on the Supreme People's Court, which has become a quasi-legislative body.

Katrin Blasek (Professor for Commercial Law, Intellectual Property Law, Chinese Law; Technical University of Applied Sciences Wildau)

Topic: Rule of Law in China – A comparative approach

Georg Gesk (Chair for Chinese Law, University of Osnabrück)

Topic: Detention-Classifications and Reforms

Abstract: When seen from a Western perspective, rule of law is much concerned about legal limits to state power. In a very traditional sense, freedom from arbitrary detention as it is included in the Magna Charta is an example of a very early fundamental legal limit to state power and at the same time probably the kernel of what came to be a whole range of human rights. Therefore it is an important part of any human rights regime and a test case for any claim to realizing rule of law. Therefore this article first traces the right to personal freedom throughout Chinese constitutional law, before analyzing exemptions to this very basic right. These exemptions are - in line with the current Chinese Constitution from 1982 - divided in detention in criminal law, and detention under other legal circumstances. The legal framework of these different detention regimes show both - achievements of recent legal developments and deficiencies that ought to be addressed. Due to the fact that detention in criminal procedure law is the archetype relevant regulations, this article is mainly focused upon detention during the trial period, leaving detention in form of incarceration

or in form of medical treatment open for further research.

Ling Li (Visiting Professor for Chinese History and Law, University of Vienna)

Topic: 'Rule of Law' in a Party-State: A Conceptual Interpretive Framework of the Constitutional Reality of China

Abstract: This article identifies and conceptualizes the structural features of the Party-state and proposes a "dual normative system" as a framework to interpret the constitutional reality of China. This framework has four components: (1) structural integration of the Chinese Communist Party (CCP or the Party) and the state; (2) reserved delegation of authority to the state; (3) bifurcation of state decision-making processes; and (4) cohabitation of the two normative systems: one of the Party and one of the state. This article demonstrates that the political reforms in China since the 1980s have not separated the power of the Party and the state, but have created an increasingly institutionalized dual normative system that is more complex compared with the previous fused system, yet more pliable to adjustments and more open to different interpretations, including to that of the "Party-state constitutionalism", which interprets the "rule of law" as compatible with the rule of the Party.

Katja Levy (Professor of Chinese Politics and Law, FU Berlin)

Topic: What do they mean by 'Rule of Law'? A critical analysis of the discourse on the Rule of Law in the PR China under Xi Jinping.

Abstract: In this paper I analyse selected political statements and Chinese academic articles from a political scientist's point of view in order to find out what is meant by "法治" in Chinese politics under Xi Jinping. By application of systematic qualitative and quantitative content analysis methods the use of this term and Chinese political and academic interpretations of it are investigated under two guiding research questions: first, which characteristics does Chinese term "法治" encompass? And second, how far is this Chinese term in accordance with what is usually understood as "rule of law" in the Anglo-American legal sense and/or "Rechtsstaatlichkeit" in the German legal understanding. The paper identifies similarities and differences of these understandings and argues that the Chinese term "法治" should no longer be translated as "rule of law" or "Rechtsstaat". In the conclusion I propose a better and more precise translation of the term.

Participants

Björn Ahl

Björn Ahl is Professor and Chair of Chinese Legal Culture. Before joining the University of Cologne in 2012, he was Visiting Professor of Chinese Law, Comparative Public Law and International Law in the China EU School of Law at the Chinese University of Political Science and Law in Beijing. Prior to that he held a position as Assistant Professor of Law in the City University of Hong Kong. He has also worked as Associate Director and Lecturer in the Sino German Institute of Legal Studies of Nanjing University and as a Researcher at the Max Planck Institute of Comparative Public Law and International Law in Heidelberg. He received a doctorate in law from the University of Heidelberg after passing the second state examination in law in 2001. Prior to that he served as a legal clerk in the Heidelberg District Court, Local Court and Public Prosecutor's Office, the Administrative Appellate Court of Baden-Württemberg and the Legal Department of the Regional Administrative Council in Karlsruhe. He completed the first state examination with distinction in 1999. Björn Ahl studied law and Chinese language at the Universities of Heidelberg and Nanjing with scholarships of the German National Scholarship Foundation and the Alfried Krupp von Bohlen und Halbach

Stiftung.

Björn Ahl is President of the European China Law Studies Association; Fellow at the Center for Chinese Law of the University of Hong Kong Faculty of Law; and Board Member of the Sino German Jurists Association.

Katrin Blasek

Katrin Blasek since 2012 is Professor for Commercial Law, Intellectual Property Law and Chinese Law at the Technical University of Wildau. Before here appointment to TU Wildau she held a position as Professor at SRH University Heidelberg in Commercial Law, Intellectual Property Law and Chinese Law. Prior to that she held positions at Cologne University and Freiburg University and worked as attorney at Clifford Chance LLP Beijing. She has also worked as civil servant at the Parliament of the State Brandenburg and clerk lawyer, serving as judge, attorney, civil and administrative servant in the State of Brandenburg.

She received a doctorate with honors in jurisprudence with a work on “Chinese trademark law and its WTO-compliance” at the University of Freiburg and studied law and Chinese language at the Universities of Potsdam and Beijing Normal University.

Katrin Blasek is member of the European China Law Studies Association and since 2012 she serves as board member of the Sino-German Jurists Association.

Georg Gesk

Georg Gesk is Professor for Chinese Law and Executive Director of the Centre for International Research on Chinese Economics and Law at the University of Osnabrück. He also holds professorships at the Graduate Institute for National Development at National Taiwan University, the Department of Law at Hsuan Chuang University and the Graduate Institute for National Development at National Taiwan University.

Prior to that he held positions at the Seminar of East Asian Studies at Free University of Berlin, at the Department of Law at Hsuan Chuang University, at the Graduate Institute for National Development at National Taiwan University as well as at the Overseas Chinese Institute of Technology (OCIT). He studied Sinology at the University of Tübingen and received his doctorate in law from the National Taiwan University.

He acts as Member of the Board for the Taiwan Society for Criminal Law, is a member of the board for the International Association of Penal Law, Chapter ROC (Taiwan) as well as Special Expert for the International Forum on Crime and Criminal Law in the Global Era (Beijing).

Ling Li

Ling Li is a visiting professor of Chinese history and law from October 2015 at the University of Vienna. She obtained her doctoral degree from Leiden University Law School in the Netherlands in 2010. Prior to her PhD study, she taught various courses on Chinese law at the Northwest University of Political Science and Law in China. Between 2010 and 2015, she worked as a senior research fellow at the US-Asia Law Institute of New York University School of Law and remains as a non-resident fellow of the same institute. She has done extensive research on corruption in China and the Chinese political legal institutions. Her current research interest is contemporary Chinese politics and law, especially the rules of the Chinese Communist Party as an institution.

She completed her studies in law at the Northwest University of Political Science and Law, Xi’an, PRC and the School of Oriental and African Studies, University of London within the EU-China Legal and Judicial Cooperation Program, Lawyers’ component. She was admitted to the PRC Bar Association in 2000 and prior to that worked as civil servant in Shandong Province, PRC.

Katja Levy

Katja Levy is Professor for Chinese Politics and Law at the Freie Universität Berlin. Before her appointment to FU Berlin, she was Acting Professor for Contemporary Chinese Studies at Universität Würzburg and Professor for Culture and Society of East Asia at Ruhr-Universität Bochum. Prior to her professorships she held positions at FU Berlin and Universität Würzburg as well as the Max-Planck-Institut für ausländisches und internationales Privatrecht, Hamburg. Before receiving her PhD in Politics and Social Sciences at FU Berlin, she completed her studies in Sinology, Law and International Relations in Münster, Tübingen, Shanghai (1990-1993) and Hamburg (Magistra Artium).

In her research she focusses on politics, law and society as well as sociology of law in China. Her other areas of interest are civil society, social innovation and stability in China as well as China's foreign politics, German-Chinese Relations and China's relations with Latin American countries.

Contact:

Peter-Tobias Stoll

Abteilung für Internationales Wirtschaftsrecht und Umweltrecht

Platz der Göttinger Sieben 5

37073 Göttingen

+49 (0) 551 39 4661 (Telefon)

+49 (0) 551 39 4767 (Fax)

intecolaw@gwdg.de (Email)



UNIVERSITY OF GÖTTINGEN
Centre for Modern
East Asian Studies