

Making, Enforcing and Accessing the Law: Report upon Perspectives from the 2014 ECLS Annual Conference

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The 2014 Annual Conference of the European China Law Studies Association (ECLS) was hosted by the Chinese University of Hong Kong (CUHK) on the 15th and 16th of November. The two-day conference gathered the intellectual acumen of many academic and professional leaders from Australia, Canada, France, Germany, Hong Kong, Italy, Macau, mainland China, Netherlands, Singapore, Ukraine, United Kingdom, and United States, to name but a few. With reference to China's ongoing reform, the conference brought together academics, professionals, members of the judiciary, policy makers, and the like, with their collective knowledge and expertise to engage open communication with the themes of "making, enforcing and accessing the law". Founded in 2006, the ECLS seeks to establish a forum for the global exchange of ideas and academic collaboration in Chinese legal studies. As the first ECLS annual conference held outside Europe, this year's gathering not only benefited from geographic proximity to China, but was also enhanced by the cultural richness of Hong Kong, one of the world's greatest cosmopolitan cities.

The conference opened in a gala ceremony with addresses from Benjamin Wah (Provost, CUHK), Christopher Gane (Dean, Faculty of Law, CUHK), and Knut Pissler (Chairman, ECLS). They extended warmest welcome to all the speakers and participants for their preparations to introduce and to discuss the themes that shaped the two-day conference. As highlighted, the Chinese legal system has been involved in global interactions between various civil law and common law traditions. The emergence of China as a leading economic and political power has been measured and debated in a varie-

ty of transnational spheres, whereas the genius of Chinese law and its actual practices remain largely unknown to the Western world. The sessions of the conference covered a wide range of pressing issues, from theories concerning the rule of law and judicial reform, through subject matters that include company law, international sales law, labour law and criminal law. The conference also provided a platform for academic deliberation on the recent Fourth Plenary Session of the 18th CPC Central Committee. The broadness of the topics has been one of the core characteristics of the ECLS annual conferences, as has their emphasis on an interdisciplinary approach to these topics.

I. Rule of Law and the Globalised Legal Profession

Following the opening addresses, the distinguished guest speakers shared their visionary ideas with the conference participants. Lord Macdonald of River Glaven (Warden, Wadham College, Oxford University; formerly Director of Public Prosecution, England and Wales), Dr. Markus Ederer (Secretary of State, German Federal Ministry for Foreign Affairs), and Grand Justice Guixiang Liu (Grand Justice of Second Rank and Executive Member of the Adjudication Committee, the Supreme People's Court) addressed in the topic "The Rule of Law: Local and Global Perspectives", subsequent to which Giles White (General Counsel, Jardine Matheson Limited), Vincent Connor (Head of Hong Kong Office and Asian Sectors, Pinsent Masons), and Yi Zhang (Managing Partner, King & Wood Mallesons and SJ Berwin) shared their insightful viewpoints and invaluable experience on the subject of "China Law and the Globalized Legal Profession".

According to Dr. Markus Ederer, the rule of law should be pursued not only as an ambition in modern societies, but also as a principle commonly accepted in international risk management, a field characterized by crisis and conflicts. He mentioned that the recent international conflicts in Ukraine and other jurisdictions such as in Asia, and indicated the transnational need for a rule-based international order. In addition, the rule-of-law cooperation played an important role in foreign policies. To illustrate, the Germany-China rule-of-law dialogue has taken place since 1999, after which the German government assisted in a number of Chinese projects, including the design of institutional reform, and the capacity-building of civil society. According to Dr. Ederer, the international community has witnessed significant changes in China, with emphasis on the rule of law being a pillar of its continual reform. Among other examples, the Chinese government has devoted to further reform in a variety of areas

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recently, such as reinforcing the protection of intellectual property and safeguarding equal treatment in government procurement.

Lord Macdonald demonstrated his understanding of the rule of law and judicial independence based on his experience of public prosecution. Referring to counter-terrorism cases and relevant public protocols in the UK, his presentation demonstrated the complexity of state secrets, the supervision of security intelligence agencies, and the tension between human rights and national security. Among the more important and recent examples are the cases of Binyam Mohamed and Edward Snowden.² When facing these challenges, judges must act with extraordinary courage and practice exemplary ethics in upholding judicial independence and the separation of powers. In the view of Lord Macdonald, no country is immune to the dangers imposed by sensitive cases, serious crimes and the threat of terrorism, and thus a strong and independent judiciary is the critical condition for good governance and the rule of law.

Grand Justice Liu focused on the development of judicial transparency, a matter of paramount importance in the Chinese legal system, and, in particular, safeguarding fairness and promoting efficiency in judicial process. Three mechanisms are central to this development, including trial procedure transparency, judgment availability, and the enforcement information accessibility. Recently, the Supreme People's Court established websites and other channels for release of official information, with its emphasis on different levels of judicial documents to be provided in accordance with legal rules and ethics. By November of 2014, more than 5,800 Supreme People's Court's decisions and more than 3,553,000 local courts' decisions can be accessed online. The availability of online information, in his opinion, greatly safeguarded the value of transparency and the Right to Know of the general public, and doubtlessly, facilitated further legal studies in the academic sphere.

Giles White shared his experience from being a law-firm practitioner to a general counsel. Against the backdrop of global convergence in business regulation and governance, White pointed out that the biggest issue international lawyers have commonly confronted with is the delivery of legal services in consistent standards. The rapid changes in legal rules and regulatory environment have created new challenges for different industries, where people

generally turn to their trusted advisors. In this consideration, he suggested that trust may be more important than expertise.

Vincent Connor further examined the shifting landscape of legal service provision since the financial crisis. Among the more symbolic changes are the increasing competition, division of labour and stratification of the legal profession. In recent years, although the Chinese local firms became more competitive in domestic legal services, the foreign law firms remained predominant in international legal practices. In addition, Connor touched upon the integration of core values, as demonstrated in recent convergence of regulatory policies and internal governance within a law firm. Such integration, together with other aspects of improvement, would enable the international law firms to function in some kind of unity crossing legal jurisdictions and cultural boundaries.

Yi Zhang echoed Connor's ideas of mutual influence between the East and the West. Among other institutional changes, the convergence of the civil law and common law traditions was manifested in the history of legal service provision, especially in China. As pointed out by Zhang, the number of Chinese lawyers topped up to 250,000 in 2013, and 88 per cent of them were full-time lawyers. At the same time, the total annual revenue of Chinese lawyers was reportedly 47 billion RMB, approximating 2.3 million RMB per firm evenly and around 20,000 RMB per lawyer. Having mentioned the above statistics, Zhang managed to highlight the disparities between the leading firms and the others. Additionally, the leading Chinese firms would be more aggressive in outbound expansion, mainly through establishment of overseas branches or engagement in special international partnerships.

II. Court Reform, Dispute Resolution and Access to Justice

China's Court Reform

Lixin Yang (China Renmin University) opened the session with his presentation about the recent Fourth Plenary Session of the 18th Communist Party of China (CPC) Central Committee and the relative Communiqué focusing on "comprehensively advancing the rule of law in China". Among other things, Yang gave a comprehensive introduction to the Communiqué, highlighting the measures for safeguarding judicial justice, improving judicial transparency and credibility, and promoting fairness as well as public awareness of the rule of law. Yang argued that the historical comparison with the reform in the 1980s should be taken into account in evaluation of China's recent legal reform. Yang ad-

² In the former case, Mohamed was detained as a suspect in Guantanamo, but was eventually released by the US Government. Upon returning to the UK, he filed suit against the UK government. In the latter case, Snowden leaked information on Tempora, a formerly secret computer system operated by the Government Communications Headquarters (GCHQ) in the UK.

mitted that the performance of legal reform agenda had been hindered by the political considerations in modern Chinese history. Therefore, whereas the CPC Communique can be perceived as an achievement of great historic value, further studies would be needed in examination of how these ideas can be translated into actual practice.

Stéphanie Balme (Sciences Po Paris and Columbia Law School) and Benjamin Liebman (Columbia Law School) further echoed Yang's speech in terms of legal transparency and credibility, the relationships between legal reform and the political power centralization, and the uniqueness of Chinese legal system. For legal transparency and legal credibility, Balme mentioned that although the wordings in the Communique might be promising, there are limited concrete solutions as for how these goals might be achieved. Liebman also commented that Chinese legal reforms somehow have strengthen the centralization of governors' political rights over the years, compared with the performance in terms of advancing the establishment of a rule of law system in China. In addition, Balme made brief remarks concerning the uniqueness of the routes taken in Chinese legal reforms throughout the history.

For issues concerning legal transparency and credibility, Yang replied by quoting the Grand Justice Liu that several innovative measures have been applied to achieve legal transparency and credibility, including launching online judgment database and incorporating life-time responsibility mechanism for judges. In order to realize the goal that "fairness and justice should be available to every citizen involved in the judicial process", Yang agreed that more effective measures might still be needed. When touching upon centralization of political rights and judicial uniqueness, Yang said that different perspectives other than the western ones need to be utilized in understanding China. The development of Chinese legal reform is self-evident that significant and fundamental advancements have been made in recent decades. Considering the significant regional, national, and cultural varieties in China, it is natural that unique solutions might be applicable in solving existing problems.

Dispute Resolution and Access to Justice

Michael Palmer (Shantou University and SOAS, University of London) examined the legal and procedural responses to the social problem of domestic violence. Palmer's research focused on the domestic violence from male partners against women. He argued that in many parts of the world, including in China, the predominance of domestic violence is against women partners. Echoing Palmer, Yanmin Cai (Sun Yat-sen University) presented on "Ap-

proaches on the Reform of Civil Judicial Mediation in China", in which Cai mentioned that the related provisions in the PRC Civil Procedure Law might be too abstract to guide the national mediation reform. In addition, earlier pilot schemes by the local courts unveiled the disadvantages of the existing model, namely the combination of mediation and trial proceedings. Thus, Cai argued that more open-minded approaches should be introduced in the continual reform of judicial mediation.

Yun Zhao (Hong Kong University) continued the discussion with his observations on mediation reform in China, with, *inter alia*, focuses on the "normalisation" of mediation laws and regulations. With the newly amended People's Mediation Law 2010 and the Civil Procedure Law 2012 being the landmarks, recent legal reforms have demonstrated the trends as for the reinforcement of administrative regulations in mediation practices, and the more significant role that arbitration rules have been playing in promoting mediation. Zhao further mentioned that the integration of legal rules and recent experiments will be invaluable for the development of mediation in China. In addition, He Zhihui (Hubei University) later talked about practices and history of civil mediation in China. He argued that that Confucianism cannot be seen as the only source for mediation in traditional China, nor are present developments in this area solely based on Confucianism.

Björn Ahl and Daniel Sprick (University of Cologne) examined existing restrictions on judgment availability in light of legal transparency in China. According to Chinese legislations, judgments that show criminal practices cannot be published. This might be problematic, since most criminal law decisions might involve certain descriptions of the aforementioned practices. In addition, the existence of the catch-all clause in judicial interpretations, which gives judges the competence in forbidding certain judgments from being published, might be too liberal to foster legal transparency. Ahl and Sprick also argued that transparency is needed not only to legitimate the work of courts, but also to check whether Guiding Cases are referred to by lower courts in their judgments.

Beth Farmer (Pennsylvania State University) presented on the inner conflicts hidden in the enforcement of the Chinese Anti-Monopoly Law. Chinese Anti-Monopoly Law is performed by three different agencies: NDRC, SAIC and the Ministry of Commerce. While the NDRC is responsible for price-related violations, SAIC handles non-price-related violations. In addition to that, the Ministry of Commerce controls fusions according to the Anti-Monopoly Law. Possible conflicts could arise from

the competences divided between NDRC and SAIC, considering the blurred boundaries between price-related and non-price-related issues. Farmer pointed out other existing problems, including unbalanced burden of proof, statutory gaps, and absence of collective action mechanism, are also hindering the process.

Peter Wang (City University of Hong Kong) addressed the evolution of the Guiding Case System towards judicial centralization in China. Wang argued that Guiding Cases issued by the Supreme People's Court (SPC) have binding effect pursuant to empirical findings, whereas Typical Cases issued by Higher People's Courts might have no formal binding force. General cases can have potential influence on similar cases, but are even weaker in binding courts due to their lack of institutionalization. The aforementioned case systems have fostered the judicial centralization in China, which has freed SPC from the National People's Congress and its Standing Committee, allowing SPC to exercise its legislative function in the constitutional domain.

III. Enforcing the Law: The Business and Non-Profit Sectors

Regulating the Business Sector

Thomas Kristie and Qianlan Wu (University of Nottingham) demonstrated the persistent constraints in terms of enforcement faced by China's legal system. Their research focused on examining the public and private enforcement of the competition law and consumer protection law. Kristie and Wu also touched upon the challenges faced by legal enforcement, while evaluating the impacts imposed by "Chinese Characteristics" on the development of the relevant Chinese market regulations. Lea Murphy (China Great Advisory), on the other hand, outlined the enforcement regimes of China's antitrust laws and the reality of their enforcement. Murphy pointed out the existences of overlapping authorities and the absence of cooperation in executing governmental duties when enforcing antitrust laws.

Felix Mezzanotte (Hong Kong Polytechnic University) highlighted the infringement notice and the warning notice as novel tools of competition law enforcement. Created by the Hong Kong Competition Ordinance 2012 (Ordinance), the infringement notice and the warning notice have been providing speedier, more flexible and cheaper enforcement while injecting greater discretion and uncertainty into the process. The empirical findings provided by Mezzanotte suggested that the aforementioned situation happened because the participating actors might have either ignored or neglected their po-

tential risks, which should be well understood and managed in development of competitive markets in Hong Kong.

Law and Enforcement

Raffaello Girotto (University of Trento) studied the interaction of the legislative and judicial formants in the evolution of PRC trademark law from the statutory amendment of 2001 to that of 2013. Girotto argued that the courts seem to be the driving force in the evolution of Chinese trademark law. As a result, although the legal system of the PRC denies judicial precedents any binding value, case law in fact leads the evolution of law, in which sense the statutes actually ratify *ex post* solutions. Girotto further mentioned that this trailblazing activity of courts seems to be mainly triggered by policy impulses.

Rebecka Zinser (Humboldt University Berlin) argued that the incorporation of administrative enforcement mechanism in Chinese copyright law, unfair competition law, and consumer protection law enables the state to play an active role in law enforcement, the reasons for which are rooted in history and the current state model likewise. Later, Matti Tjäder (University of Lapland) discussed the features of Chinese legal system related to post-contractual parties' obligations, with special emphasis on inspecting the changing circumstances doctrine in Chinese civil laws. Tjäder also touched upon the question as to whether the changing circumstances doctrine can be seen *de facto* bringing flexibility for the post-contractual evaluation of obligations.

Saisai Wang (University of Brussels) examined the formats of the Traditional Chinese Medicine (TCM). The controversy of the TCM formats led to the misusing or misunderstanding of TCM, which further brought confuse to medical legislation. Wang suggested dividing TCM legislation into two branches, with one regulates the crude Chinese drugs and Decoction piece whereas the other focuses on the pharmaceutical supervision of Zhong Cheng Yao. Following that, Zhang Shunxi (China Renmin University) touched upon the non-enforcement phenomenon of the legislation relating to cultural heritage preservation in China. Low cost of offence, over reliance on external intervention rather than citizens, the monopoly of the benefits of cultural heritage might be the contributing reasons behind the scene. Zhang argued that China should establish a better monitoring and co-operation system in the area of cultural heritage preservation.

Energy, Environment, Labour and Immigration

Paolo Farah (West Virginia University) presented a comparative study between the development of Shale Gas in China and the unconventional fuel development in the US. He pointed out the perplexities faced by China in the development of shale gas, which include limited liberalization of gas prices, absence of technological development, and market-access barriers. Fernando Dias Simões (University of Macau) later stressed the absence of concerns about the individual behaviour in Chinese environmental law and policy. To achieve effective behaviour change, Simões argued that behavioural economics and social psychology should be incorporated in law-making procedures, while duly considering the specificities of Chinese society and culture.

Yuhong Zhao (Chinese University of Hong Kong) explained the rationales and the effects of using market based mechanisms, including pilot schemes, to reduce carbon intensity and fulfil China's international obligation in terms of emissions control. Xianshu Wu (China University of Political Science and Law) later shared her findings on the prevention of agricultural land pollution. Wu argued that the lack of special legislations, specific legal measures, and absence of effective administrative governance and proper prevention mechanisms would impair the control of pollution.

Ronald Brown (University of Hawaii at Manoa) presented on collective bargaining in China, with regard to the question whether the Guangdong regulatory model is a "Harbinger of National Model". Brown argued that even though the Guangdong regulation is innovative in detailing the negotiation procedures, questions regarding whether employees have the right to strike or mediation remain untouched. Pilar-Paz Czoske (University of Cologne) shed light on a contracting chain in Chinese building industry that involves prohibited unqualified sub-contractors. Czoske found that the judiciary has recognized legal mechanisms within the prohibited contracting chain, by which the judiciary however maintained the prohibited status-quo of those projects, to grant legal protections to the migrant workers.

Mimi Zou (Chinese University of Hong Kong) touched upon the specific regulations within the new Exit-Entry Law in order to analyse how the state decides over an individual's legal or illegal status. Jasper Habicht (University of Cologne) furthered the discussion on the new Exit-Entry Administrative Law issued in 2012. Habicht concluded that the Guangdong and Beijing campaigns to combat illegal "san-fei" foreigners do not only serve to implement political aims by legal justification, but the law-making process also draws on the experience to prior or parallel campaigning. Therefore, cam-

paigning and law-making are interrelated processes in China.

IV. Criminal Justice, Human Rights and the International Legal Order

In this session, Hermann Aubié (University of Turku) examined the cases of Xiaobo Liu and Zhiyong Xu, both of which concerned with the inner conflicts between the freedom of speech and inciting subversion of state power. Aubié argued that interpretations and implementation of laws in China can become a battlefield for political aims. On the one hand, the use of legal rhetoric to silence different voices has shown the prevailing status of politics over law in China. On the other hand, Chinese intellectuals and lawyers have also endeavoured to use the legal language to express their opinions and thoughts.

Joy Chia (Chinese University of Hong Kong) discussed the enforcement issues concerning China's first National Mental Health Law, which has granted discretion to public security organs, hospitals and guardians to involuntarily commit those deemed "dangerous" to society, leaving the system open to abuse. Chia argued that understanding this apparent conflict requires contextualizing the law within its political and social context, where the twin government goals of economic growth and social harmony are paramount.

Li Li (Sun Yat-sen University) pointed out that the revised Chinese Criminal Procedural Law has not addressed the fundamental power relations between the police, the prosecutors and the courts. Li also touched upon the recent trends in the law enforcement, including the reduced arrest rates, the exclusion of illegal evidence, and the decisions of conditional non-prosecutions. In addition, Shuo Liu (University College Dublin) found the strict border controls imposed by modern states rendered the realisation of the asylum right difficult in practice. Although China is routinely viewed as a refugee-producing state, China has resisted commitments to establish a clear legal framework or refugee determination system to ensure the proper processing of refugee claims. Liu concluded with some insights into the gaps that currently exist in refugee protection regime in China and also proposed the explanations for the failure in establishing a more structured system.

Wim Muller (University of Manchester and Chatham House) pointed out that the domestic status of treaties and customary international law in China remained a doctrinal, theoretical matter. Muller touched upon the controversial question as to how norms of a foreign provenance enter and later

become internalised in a society. Following Muller, Kate Surala (Maastricht University) suggested that, with the continuing efforts of the European Union in reducing diversity of national private laws, the European contract law is blurring the line between national and Community law and arousing transnational impact on other countries, including China. The adoption of Common European Sales Law ('CESL') may be a potential example for the above EU-China correlations, especially in harmonization of private law perspectives.

V. Making the Law: Judges, Legislators and Beyond

Law, Politics and Law Making

Sarah Biddulph (Melbourne University) examined the role of campaigns in law making. Biddulph argued that law enforcement campaigns then do not only present a centralized coordination of administrative action plans that address growing incidents of social unrest, but further establish a basis for and facilitate legislative reforms. Campaigns provide access to understanding the addressed problems on a national level and thus are a tool of enacting new laws that respond in a regulatory and centralized way to social unrest.

Ignazio Castellucci (University of Trento) discussed the framework of law-making in China. According to Castellucci, law-making in China is interacting with informal norm setters, while attributing competences and guiding the other norm setters. Castellucci observed that Chinese law is responding more to other norms already put into practice, than laying its own foundations on which other norms should be based on. By using the term "reactive legislation", Castellucci described this interactive and simultaneously authoritarian character of Chinese law making.

Ranran Zhao and Yu Xiao (East China University of Political Science and Law) discussed inter-ministry politics within the process of law-making by taking the example of drafting laws and regulations for Private Equity Funds (PEF). In analysing the conflicts between National Development and Reform Commission (NDRC) and the China Securities Regulatory Commission (CSRC), Zhao and Xiao observed that China's legislation procedure heavily depends on the consent from related administrative agencies.

Keith Hand (University of California) drew attention to the Chinese system of addressing legislative conflicts. China's legal system mainly provides three different ways of addressing the problem of legislative disorder. Hand emphasized that due to

multidimensional capacity limitations, the legislative organs can barely assume their responsibility to review the large amount of legislative documents. Thus, in practice also courts play an important role in reviewing legislation on a case-to-case basis, developing a form of judicial review.

Judges as Legislators

Min Lee (Central South University of Forestry and Technology) addressed the problem of judge-made law in Chinese civil law from an empirical perspective. Lee argued that judge-made law might endanger the uniformity of the legal system. Therefore, legal restrictions of judge-made law are necessary. Firstly, the judge-made law should only be applicable provided literal, teleological and systemic interpretations and analogical use of statutes fail to solve the problem. Also, the judge-made law should be established on civil legal principles and should only be applicable on a case-by-case basis.

Vai Io Lo (Bond University) focused on judicial interpretations and Guiding Cases in terms of judicial law-making in China. Guiding Cases are used to illustrate how specific legal norms should be applied or how certain disputes have been solved and should be "referred to" by other courts in similar cases. Judicial interpretations are general, abstract and often not up to date, whereas Guiding Cases are therefore used to fill in gaps in judicial interpretations to unify the enforcement of law.

Marco Otten (University of Cologne) touched upon the question as to whether the Chinese Guiding Cases System is a solution to legal problems or a reaction to non-legal demands. Otten found that the complexity of legal problem and the intensiveness of public and political demands play important roles in the selection process of Guiding Cases. The public opinion, especially political demands, seems to be a more suitable explanation to determine whether certain judicial decisions are eligible for becoming Guiding Cases.

The Changing Role of Judiciary

Ivan Cardillo (Zhongnan University of Economics and Law) shared his findings on the Supreme People's Court's use of judicial explanations in giving accurate understanding and appropriate application of the provisions of laws. Accordingly, the SPC's position in the Chinese legal system is unclear, due to its dual power of law-making and delivering judgments. Cardillo demonstrated that the Supreme People's Court has an important role in shaping the Chinese legal system, by combining the abstract legislations with the social needs, solving conflicts of laws, establishing more detailed rules,

dealing with sensitive social issues, and promoting legal awareness.

Xuanming Pan (Chinese University of Hong Kong) then talked about the conflicts between the increasing size of regulator as well as the deterrence failure triggered by inefficient law enforcement. With allocating original law making powers being insufficient for achieving an optimal level of deterrence, the power to interpret and develop existing law and to decide how to deal with new cases, namely the residual law making power, needs to be allocated to courts and regulators. Pan argued that Chinese judges have strived to mitigate the problem of deterrence failure by expanding their residual law making powers. Pan also contributed to the comparative literature for understanding judicial responsiveness to socio-economic changes in terms of exploring the unconventional regulatory role that can be played by the Chinese local courts.

Juan Wang (McGill University) and Wenting Liang (Beihang University) shared their findings in the emergence of environmental courts in China. Wang and Liang argued that different facilitators and designs on the establishment and use of environmental courts across localities reveal the existence of dynamic relationship between local judicial systems and government administrations. Through interviews and document collection, they compared and contrasted the roles of local judicial systems and government administrations in provincial-levels environmental courts. Wang and Liang also talked about the implications of their findings.

Xiaohong Yu (Tsinghua University) noted the divergence between judicialisation and its adverse trends had been caused by mistaking courts as the judiciary in China. Chinese courts are merely one of the four institutions that compose the Zhengfa system. The judicial empowerment vis-à-vis other state organs derives from both the strategic and activists actions of the courts, and the willing retreat from other agencies, especially when central-local tensions are involved. The dejudicialisation within the Zhengfa system, on the other hand, takes root in the key organizational rule of the party-state: to centralize on major issues and to decentralize on minor ones (daqun dulan xiaoquan fensan).

VI. Social Transformation, Socialist Democracy and the Chinese Legal Reform

Socialist Democracy: Theory, Practice and Innovations

Ulrich Manthe (University of Passau) talked about his findings and observations on some legal phenomena that is recorded in Chunqiu and

Zuozhuan in the Spring and Autumn period. In the Zhou dynasty, the enforcement of Li by Confucius might be seen as the reaction to the decline of the feudal system. During the Spring and Autumn period, the concept of Fa as a code of conduct for the subordinate classes was developed. The first written code was enacted during the 6th century BCE. In family law, the system of clan names was restricted to members of the ruling houses, and marriages were only recorded when they took place between members of the ruling clans. There are also traces of a developing contract law and of criminal procedure in Zuozhuan.

Michael Ng (University of Hong Kong) touched upon the transplantation of the English bankruptcy regime into early colonial Hong Kong. Ng's observation constituted one of the first empirical studies to place English business law and its widely acknowledged contribution to the economy of early colonial Hong Kong under scrutiny. From the perspective of the relationship between English law and former British colonies' quest for business modernity, Ng's findings presented herein contradict the readily accepted notion that English business law provided a solid legal infrastructure upon which colonial Hong Kong's prosperity and economic growth were built.

Billy K. L. So (Hong Kong University of Science and Technology) then analysed the historical formation of commercial arbitration in the chamber of commerce in Shanghai publishing industry in the early 1900s. He concluded that legal transformation in modern China was not only theoretically and normatively driven through passive transplantation of exogenous legal institutions, notions, and values. Legal norms and institutions were also actively adapted into local cultural context and eagerly applied in the pursuit of business interest. The assumption of binary contradiction between transplanted legal institutions and local legal tradition may be enriched in the light of this dynamic phenomenon of adaptive evolution.

Socialist Democracy and the Chinese Legal Reform

Randall Peerenboom (La Trobe University and University of Oxford Centre for Socio-Legal Studies) presented his findings on the 4th plenum and its significance for legal reforms. Peerenboom argued that China finds itself standing at a crossroad between already achieved institutional developments and the insufficiency of major state capacity to further develop towards a high-income country, which might have led to the reinforcement of the rule of law in the CCP main plenum topics. Peerenboom stated that the reaffirmation of the Party's role and the implementation of both law and morality will

further be understood as the characteristics of China's developing path.

Mary Szto's (Hamline University) presentation about gift-giving practices in China and their relation with regards to the concepts of rule of law and virtue, fits Peerenboom's findings about China's aim to implement the rule of virtue as co-existing with rule of law. If gift-giving was differentiated from bribery and other unfair competition acts, gift-giving could be understood as an act of virtue that is rooted in traditional Confucian society and that expresses the establishment of a long lasting relation between families or friends. Thus, the legal acceptance of virtual gift-giving would reflect the co-existence of rule of law and rule of virtue.

Stanley Lubman (University of California, Berkeley) then commented on China's legal reform paths and the outcomes of the 4th plenum by focusing on judicial reforms. His presentation was embedded in an overall assessment of characteristics of China's legal reform process. A key point of the judicial reforms during the last years has been to combat local protectionism and corruption by strengthening local courts' independency from the local government's extra-judicial interference. This aim was again emphasized in the decision of the 4th plenum.

Juha Karhu (University of Lapland) presented the studies about Chinese administrative structures. As Karhu argued, China's overall legal reforms can only be understood by focusing on the relation of national and local administrative levels. Emphasizing the Chinese characteristics in China's own notion of rule of law has simultaneously legitimized the Party's role of leading China's legal reforms.³ Lubman noted that legal reforms will continue to be marked by "Maoist" tools and schemes, such as campaigns, pilot projects and show trials in the criminal procedure.

Larry Catá Backer (Pennsylvania State University) talked about theory of Collective Presidency in light of Socialist Democracy. Backer suggested that state legitimacy can also be conducted through internal democratic patterns, namely within internal structures of the CCP. The internal democratic patterns are expressed through collective presidency. The collectivization is the democratic moment that legitimizes socialist China. Collective presidency is, amongst others, conducted through collective decision making, collective research and learning and collective succession. Thus, limited authority of individuals is the foundation of collective leadership of the party.

Keren Wang (Pennsylvania State University) and Larry Catá Backer later presented on "Institutionalising Shangfang within the Chinese Socialist Rule-of-Law Framework". They demonstrated that the continuous popularity of shangfang shows the citizens' claims for rule of law as they demand the correction of the government's behaviour. Wang and Backer stated that the shangfang system can also reveal the separation of powers within the China. They also argued that by interlinking shangfang with the shuanggui system of correcting inter-party behaviour, Shangfang would then develop to become a multidimensional platform, which would strengthen inter-party rule of law.

Yongxi Chen (University of Hong Kong) examined the freedom of information from a socio-legal perspective. Chen tackled the question the boundaries of journalists' right to information granted by the Regulations on Open Government Information (ROGI) in 2007. Chen came to the conclusion that the granted right of access to information might be effectively implemented in socio-economic realms, however politically sensitive topics and any watchdog-attempts do not fall within the scope of granted access of information and thus don't grant a journalistic-related right of access to information.

VII. Law, the Market and Economic Globalisation

Law and Economic Globalization

Lutz-Christian Wolff (Chinese University of Hong Kong) talked about the liberalization of the Chinese outbound-investment regime. Under the new outbound investment regime, investors only need the verification of NDRC and the Ministry of Commerce if they plan to invest more than one billion dollar or if they are aiming at sensitive industries or countries. It is still not clear, how the new rules will be interpreted by the state organs involved or if other rules will become more important instead.

Julien Chaisse (Chinese University of Hong Kong) then proceeded to take a closer look at the protection of Chinese outbound investments, in specific to state-owned enterprises (SOEs) under investment treaties. Chaisse touched upon the question as to whether SOEs can use the protection measures in bilateral investment treaties, since only private investors are protected in the treaties. Article 25 of ICSID Convention seems to imply that states cannot file a suit against a state at ICSID. Since SOEs do not necessarily fulfil the functions of a state, they might be eligible for filing a suit in front of ICSID.

³ For a detailed assessment of China's reform paths see Prof. Lubman's blog on the Wall Street Journal: <<http://blogs.wsj.com/chinarealttime/tag/stanley-lubman/>> accessed 5 December 2014.

Shuo Liu (Erasmus University Rotterdam) examined different approaches of national jurisdictions to define a ship. Liu explained that the more complicated the definition of “ship” is, the harder it becomes for a vessel to be governed by maritime legislations. In China, where there is no definition of “ship” in the Maritime Code, other statutes suggest that almost all requirements are necessary to define a ship, which might lead to a definition that is too narrow to satisfy practical needs.

Law and the Market

Mary Ip (University of New South Wales) talked about the determinants for effectiveness of Chinese law with a case study of the product quality legal regime. The amendments of the Product Quality Law contained several improvements, such as better supervision, expanded liability and an improved compensation system. Following the melamine scandal, the Food Safety Law was promulgated in 2009. Ip argued that the Food Safety Law still consists of problems in its regulatory structure, and she recommended that both judicial and procuratorate enforcement and higher penalties should be incorporated.

Tianlong Hu (Renmin University of China) addressed issues relating to the recent fiscal and taxation legal reform in China. To achieve the tax and fiscal goals formulated in “The Decision on Major Issues Concerning Comprehensively Deepening Reforms of the Central Committee (2013)”, different measures, including Free Trade Zones, carbon tax, and tax incentives in NGO-related issues, can be utilized to foster an environmental-friendly, energetic, and harmonious society. Hu argued that China should also take a more active role in shaping the international tax order.

Yelyzaveta Sushko (Ukraine) presented on the protection of minority shareholder rights in China, Germany and Ukraine. While in principle available in China and Germany, derivative suit by minority shareholders is not available in Ukraine. While shareholders of a German joint stock company can lodge a suit directly at a court, shareholders of a Chinese company have to apply to organs of the company to file a suit first. If said organ remained silent for 30 days the shareholders can file a suit at a court. Sushko proposed that a mixture of Chinese and German approaches could be suitable for the Ukrainian law to protect minority shareholder’s rights.

As the last speaker of this panel, Zhongyi Tao (University of Hong Kong) talked about private-ordering on the internet. In the field of Internet, private-ordering it is often encouraged to be used

by the Internet Service Providers (ISPs) as a mean of dispute resolution. Using the Sina Weibo as an example, Tao argued that, potential risks exist in the ISPs private-ordering mechanism, including limiting the freedom of speech or violating parties’ interests. Tao concluded that simultaneous legal protection should be incorporated to avoid aforesaid risks while encouraging ISPs private-orderings.

VIII. Concluding Remarks

The two-day conference facilitated invaluable academic exchanges and engendered transnational dedication to exploring Chinese and comparative legal studies. Among many other tangible outcomes, the scholarly deliberation during the conference shed light upon the following fields of academic interest.

First, a policy trend with its emphasis on legal terminology was widely accepted in the understanding of China’s recent reform. For example, commentators concerned with either top-down law enforcement campaigns or bottom-up pilot schemes, commonly suggested the importance of legal doctrines or other types of legal definitions that have been applied in pursuit of policy legitimacy or, more specifically, suggested support for the implementation of central-level campaigns or local-level experiments. Although the enforcement strategies and the functions of the law may be revealed ambiguously in many case studies, the emphasis on legal discourse is more obvious than in the previous political narratives. This indicates an emerging field for Chinese legal studies.

Second, in-depth studies remain scarce on the role of European legal culture that is played in China’s legal development, and hence more research is needed in this area. During the conference, a number of studies have highlighted the European elements evident in the shaping of Chinese domestic legal order, e.g. some pointed out the impact of European laws on Chinese contract law and consumer protection law, as well as called attention to the Chinese legal reform since the influence of the WTO Agreements and other international treaties. According to comparative studies as presented in the conference, the Chinese legal mechanisms in pursuit of regulating insider trading and protecting minority shareholders are in part the results of legal transplantation that has European origins. However, certain approaches adopted in other areas of Chinese law are dissimilar to their counterparts in Europe, such as those mentioned in the study of post-contractual evaluation of obligations in the Nordic countries. In a nutshell, certain connections between the Chinese and European legal systems have been dem-

onstrated, but further implications should be drawn through continual research.

Third, judicial reform in China has received much attention according to the submissions and presentations in this year's conference, which demonstrates an interesting convergence of research interests between Chinese and overseas legal scholars. As pointed out by Grand Justice Liu of the SPC in the opening session and by other scholars, the court system is imbued with the principle of "judicial transparency" and, among other campaigns, has promoted the Guiding Cases system to a nationwide extent. Simultaneously, different levels of Chinese courts have engaged in the practice of judicial law making, while the issue of judge-made law remains controversial both in practice and in theory. Furthermore, as judicial and legal reforms in general are embedded in the discourse of the concept of a socialist democracy with Chinese characteristics, scholars explored this theoretical framework by asking what socialist democracy might mean and how to apply the different notions of this concept to the developing legal systems. The existing innovations, nevertheless, have been increasingly encouraged and will gather further momentum, especially against the backdrop of recent judicial reform initiated at the central level. In this sense, the field of judicial reform will continue to be a key barometer for China's legal development that will likely attract much scholarly interest.

Last but not least, the availability of new data and the development of new research methods will further the understanding of China's ongoing legal reform. For example, the SPC's decision to publish court decisions online and to allow access to official Guiding Cases has, unprecedentedly, established an authentic source of data for empirical assessment of China's legal cases and judicial practice. As revealed in the conference, the governmental and judicial commitment to transparency has fostered a growing number of platforms for both lawyers and social scientists to conduct quantitative and qualitative research. This trend is also reflected in the studies on judicature, legislation and regulation, and in different subject areas of law such as intellectual property, international investment, and labour and immigration issues.

As the first ECLS annual conference held outside Europe, the intellectual event has benefited greatly from the cultural heritage and geographical advantages of Hong Kong. With global visions and a mission to combine wisdom of East and West, researchers, practitioners and policymakers have reflected on a wide variety of perspectives and advanced the broad themes of law making, law enforcement and access to justice in China. As the biggest internation-

al academic community for Chinese legal studies, the ECLS through its annual conferences has provided an excellent forum for the exchange of ideas and a platform for the development of research collaboration. The achievements of the conference and the collective work accomplished in the year of 2014 have laid a solid foundation for the success of the forthcoming 2015 ECLS Annual Conference that will be held at the University of Cologne in Germany.