

European University Studies



Yuanyuan Wang

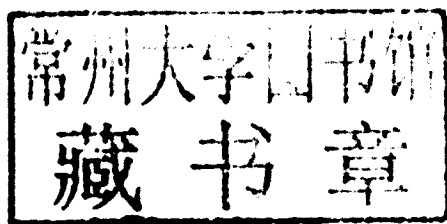
The Independence of Judges in China and Germany



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Yuanyuan Wang

**The Independence of Judges
in China and Germany**



PETER LANG

This book compares the systems of judicial independence in China and Germany, with the aim of drawing lessons from the German experience to improve the judicial system in China. The review of the German system not only discusses the system of judicial independence itself but also analyses its corresponding social and constitutional set-up in order to identify the social and constitutional and/or governmental foundations necessitated. On this basis, the author discusses which experiences by the German system of judicial independence the Chinese system could draw on, which aspects would have to be adapted to certain particularities of the Chinese system, and which problems of execution or social context might arise due to the differences between Germany and present-day Chinese society and constitutional government.

Yuanyuan Wang was born 1977 in Hunan (China). After studies in Beijing she came to Germany as postgraduate at the Humboldt University of Berlin. In 2006 she became a member of the Graduate School "Multilevel Constitutionalism" at the Humboldt University of Berlin. She finished her doctorate in 2010.

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Vorwort

Ein besonderes Wort des Dankes möchte ich an meinen Doktorvater Prof. Dr. Ingolf Pernice richten, ohne den ich niemals ein Licht am Ende der Doktorarbeit gesehen hätte. Er hat nicht nur in fachspezifischen, sondern auch in privaten Gesprächen immer dafür gesorgt, dass ich meinen Geist anstrenge.

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Introduction

I. Why China?

Since the 1980s, a contemporary global movement has arisen and developed which may be described as the third wave of globalisation. In the course of these modern developments, different market players have been drawn into a “market without borders” by revolutionary changes in global information and communications technology and the gradual formation of a global network. Given this tide of globalisation in investment and trade, it is also clear that the State is unable to deal on its own with global challenges such as poverty, the environment, terrorism, etc. Without communication and integration, there can be no supranational co-operation between different peoples across the world, no mechanisms such as the EU, the Asian Union and the African Union which are more open and inclusive, nor the requisite share and balance of global rights, and so-called globalisation would be some monstrous many-headed colossus with countless different hearts and minds, forever trapped in self-dispute and self-harm.

The inherent motive of economic globalisation as characterised by the globalisation of trade and finance is the operation of the market economy, which has the expanded feature of market relationships and the accumulation of capital. Objectively, it seeks its developing space in the global arena, and the technological revolution provides the technological support for expansion of the market economy. In the course of this process, the economies of many countries are opened up, and economic co-operation and association become closer and more integrated. The global economy as a whole has become more interdependent and integrated, such that it significantly affects the development of the market economy in many countries. As an emerging dominant power in an intricate and rapidly changing global situation, China is constantly developing its vibrancy and energy. Its huge economic achievements since the beginning of reform and opening-up have also attracted the attention of the world. In the modern world in which multi-polarisation and economic globalisation have developed so deeply, what position will China have when it emerges onto the world stage? What is the “real China”? This is a topic which has attracted general interest. The future and destiny of China are increasingly linked to that of the world at large. China’s development cannot avoid the outside world, and global prosperity and stability likewise cannot ignore China. However, it is regrettable that the world’s knowledge of China does not compare to China’s knowledge of the world.

In 2001, China finally joined the WTO thanks to its tireless efforts and so took a first step in its formal return to the world stage. China thus formally undertook to adopt an active participating role in the process of economic globalisation. The refined market economy has strict requirements regarding the distinction and specialisation of market behaviour, the unity of market rules and the distinction and specialisation of social management functions. As unified international economic laws, the fundamental rules of the WTO have had a deep influence on the content and application of domestic economic law in China. The unified principles of transparency, impartiality and judicial unity established by the WTO rules require judicial activities in China to be independent, just, public and effective. This dissertation aims to introduce the judicial system in China in order to inform a wider audience of the efforts being expended in order to develop a better legal framework and organisation in China, and of the problems which still have to be solved. This essay shall also endeavour, by analysing various relevant topics, to assist in a global understanding of the current state of the law in China, so that China may be allowed in due time to develop its legal environment and to make more and better suggestions for developments in the law in China.

Some readers may ask whether it is of general relevance to research questions of modern China. In this author's opinion, it is of general relevance, since whether certain knowledge is of general relevance or not does not depend on the subjective intention or aims of the author but rather on whether it is applicable to other areas and/or may be usefully referenced by a wider audience. The origin of knowledge or intellectual resources does not influence the ultimate quality and/or effect of such knowledge or resources. This point applies equally to the provision of knowledge and the provision of other, for example commercial products. For example, television sets made in Japan can be sold around the world. From the point of view of the current sum of development knowledge and experience in the developed Western countries, it may be that the problems in China are specific to their locale. But if modernisation is not regarded as a one-track evolution, and the rule of law is not regarded as having only one model, then the experience and knowledge of any country will always once have been localised (for example, the Anglo-American legal system arose from the circuit judges dispatched by the British monarchy, who settled disputes in accordance with local customs and traditions, as was also the local practice). In this respect, there is never a distinct boundary between what is local and what is general.