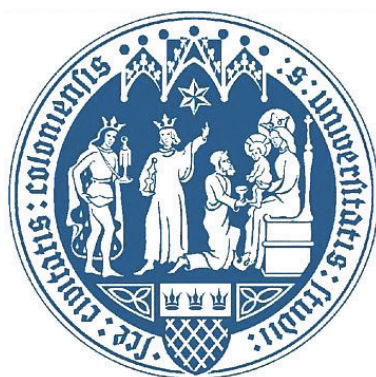


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Department of Chinese Legal Culture



Universität zu Köln

The Department of Chinese Legal Culture at the University of Cologne is the most established center of excellence in research and teaching of Chinese law in continental Europe. The approach practiced by researchers in the Department of Chinese Legal Culture combines doctrinal legal analysis with an emphasis on the context within which the law operates. In terms of the research and teaching, it covers, inter alia, constitutional and administrative law, criminal and criminal procedure law, judicial reforms, the social credit system and Chinese positions on international law. The Department of Chinese Legal Culture maintains a wide network of cooperation partners in Mainland China and Hong Kong. It frequently hosts conferences and workshops on timely and relevant issues of Chinese law and innovative research approaches. Together with the European China Law Studies Association, the Department of Chinese Legal Culture has initiated the European Chinese Law Research Hub that shares widely current and important research on Chinese law.

Keywords: Chinese Legal Culture, Chinese Positions on International Law, Chinese Constitutional Law, Chinese Criminal Law, Chinese Migration Law, Comparative Law

1. Chinese Legal Culture at the University of Cologne

Research in Chinese law in post-war Germany has traditionally been the domain of the Max Planck Institutes, which were established as dedicated research centers for foreign and comparative law. As German universities started to build cooperation programs with Chinese law faculties in the 1980s, expertise on Chinese law was gradually introduced in a broader manner through universities. This research and educational program not only provided education in German, comparative and international law for Chinese visiting students, but also received Chinese professors to deliver lectures on Chinese law. Among these universities, the University of Cologne was the first to establish a professorship for the study of Chinese law in 1992. Over the past three decades, the Department of Chinese Legal Culture at the University of Cologne has developed into an internationally recognized hub of excellence in the research of Chinese law. During this time the Institute of East Asian Studies has built one of the most comprehensive libraries on Chinese law in Europe.

Figure 1: The University of Cologne's Main Building



2. Establishment

The Department of Chinese Legal Culture was founded in 1992 as part of an initiative that gave more weight to specific disciplines with a regional focus on China. The department was established in the Institute of East Asian Studies of the Faculty of Arts and Humanities with Professor Robert Heuser as the founding chair. He developed the Department of Chinese Legal Culture into a center of excellence for the research in Chinese law with international recognition and broadened the scope of the field in order to cover almost every aspect of Chinese law from legal history and philosophy, human rights and public law to civil and business law.

Figure 2: Professor Robert Heuser



In 2012, Professor Björn Ahl took over as chair of the department. He has a background in German and Chinese public law, comparative law and international law. Before joining the University of Cologne, he held positions at the Max Planck Institute of Comparative Public and International Law in Heidelberg, the School of Law of the University of Nanjing, the School of Law of the City University of Hong Kong as well as the China-EU School of Law at the China University of Political Science and Law (CUPL) in Beijing. He holds a visiting appointment at the Faculty of Law of the University of Helsinki and is President of the European China Law Studies Association.

Figure 3: Dr. Björn Ahl, Professor and Chair of Chinese Legal Culture



3. Research

The approach practiced by researchers in the Department of Chinese Legal Culture combines doctrinal legal analysis with an emphasis on the context within which the law operates. For the purpose of avoiding misconceptions and misinterpretations of Chinese law, research is sensitive to the historical, political, economic and institutional conditions of the creation, application and enforcement of law. Research in Chinese law at the University of Cologne focuses on constitutional development, with special references to judicial reforms and rights litigation.¹ A further focal point is Chinese administrative law including policies, laws and practice of regulating international migration to China and the legal dimensions of the Social Credit System. Chinese practice and scholarly view on the issues of

public international law as well as domestic implementation of international treaties constitute another area of research.² Chinese criminal law and policies and their application are studied from a transnational and a law and society perspective.³

Currently, more than ten students from different countries and academic backgrounds pursue their PhD studies at the Department of Chinese Legal Culture. They take part in a wide range of academic activities at the institute, including an international PhD seminar. The Institute of East Asian Studies regularly hosts post-docs and visiting scholars with a specialization in Chinese law.

An ongoing research project investigates how the social credit system challenges law and courts in China. The Chinese social credit system is intended to systematically assess the trustworthiness of citizens in complying with law, moral norms and professional and ethical standards. Nudging through rewards and punishments, restricting access to public transport, hotels, educational institutions and social security systems shall induce compliance. The social credit system is designed as a comprehensive instrument of social control and a cure-all tool for societal ills that aims at upgrading the Chinese authoritarian system. The research project addresses three interlinked issues that are fundamentally transforming Chinese society and will have an impact that goes far beyond the Chinese state: (1) the rise of assessment systems of individual social behavior that circumvent, supplement and change legal regulation as well as traditional law enforcement mechanisms; (2) the development of smart courts that are partially changing into automated decision makers through an increased use of big data and AI; and (3) the legal regulation of social credit systems, in particular the legal protection of personal data.⁴

Another project that was recently concluded focused on constitutional development under China's one-party rule by drawing on fundamental rights jurisprudence of the courts. Chinese scholarly discourse on constitutional development and the theory and practice of fundamental rights has been gradually changing from being dominated by concepts of rule of law and the constraint of governmental power to a discussion that focuses on constitutionalism with Chinese characteristics and rejects the previous cautiously liberal reading of the written constitution as a symptom of "Western ideological hegemony."⁵ This highly ideological debate goes hand in hand with an unprecedented official emphasis of rule-of-law rhetoric and far-reaching judicial reforms under the leadership of

President Xi Jinping.

The current constitutional debate and its perception in Western scholarship on China, however, is not sufficiently informed by judicial practice, in particular the multifaceted ways in which Chinese courts implement fundamental rights and basic constitutional principles in their day-to-day practice. This project analyzed and systemized the application by Chinese courts of laws and regulations that regulate areas falling within the sphere of protection of fundamental rights of the Chinese constitution. We investigated decisions in which Chinese courts applied the constitution directly and are studying current Chinese official and scholarly discourses on constitutionalism and the role of courts in constitutional development. Further, the study linked discourses on Chinese constitutionalism with fundamental rights jurisprudence in order to develop a sound theoretical framework that takes into account both theories of different schools of constitutionalism, and court practice and contributed to the literature on courts and constitutional development in those authoritarian regimes.⁶

Another already concluded project investigated Chinese immigration law and policy reforms. The project investigated the transformation of Chinese immigration legislation and policy on the national and local levels by looking at the perspectives of state and non-state actors, including lawmakers, administrators and immigrants. The study analyzed the negotiation, implementation and enforcement of the new national immigration legislation and its local implementing rules with regard to different immigrant groups as well as immigrants' responses to these changes.⁷ The project formed part of the larger research co-operation between European and Chinese universities focusing on the topic of Immigration and the Transformation of Chinese Society, which is funded by the relevant national funding organizations under the Europe-China Collaborative Research Programme on Understanding Population Change.

Recent research on the Chinese positions toward international law has examined Chinese positions on global constitutionalism and the legal meaning of the "community of common destiny for mankind" concept.⁸ This study analyses Chinese legal discourses and government statements that relate to elements of global constitutionalism and the community of common destiny in order to identify the values and structures of the future international legal order envisaged by China. As the global constitutionalism debate asserts human rights, the rule of law, and

democracy as substantive ingredients, it is oriented towards an ideal international legal order, which materializes those core liberal values.

The study assumes that the way in which Chinese academic and state actors position themselves with regard to this constitutionalist interpretation of international law reveals; which elements of international law are deemed acceptable; and which will be rejected in the process of developing the international law they envision. The analysis explores further whether there are any elements of the global constitutionalism debate that appear worthy of retention from a Chinese perspective. Whilst this component of the study approaches the conundrum of China's international norm-making by way of excluding elements from a liberal agenda drawn up without Chinese participation, the section on government statements and the debate among Chinese international lawyers about the community of common destiny shows the direction of international norm-making by relying on positive pronouncements that are presented as innovations of the Chinese party-state.⁹

4. Publications

Björn Ahl is founder and editor-in-chief of the Chinese Law and Legal Culture Series (Studien zu Recht und Rechtskultur Chinas, Nomos). Further, he is a member of the editorial boards of a number of international journals and book series dedicated to Chinese law.

His most recent book is: *CHINESE COURTS AND CRIMINAL PROCEDURE: POST-2013 REFORMS* (Cambridge University Press, 2021). The edited volume combines a wide range of analytical perspectives and themes in order to investigate questions linking institutional changes within the court system and legal environment with developments in criminal procedure law. The first part of the book investigates topics that contextualize institutional and procedural aspects of the law with a focus on various actors in the judiciary and other state and party organs. The second part of the book shifts the perspective to three controversial themes of criminal procedure reform: pretrial custody review, live witness testimony in court, and criminal reconciliation. By shedding light on performance evaluation of judges and interactions of courts and the media, the final part of the book introduces two sets of contextual factors relevant to the adjudication of criminal cases.¹⁰

Members of the Institute of East Asian Studies publish frequently in international

peer-reviewed journals in the field of Chinese studies such as China Quarterly, Modern China, China Information, The China Review, China and WTO Review, as well as in journals on international and comparative law such as the International Journal of Constitutional Law, Human Rights Quarterly or the Chinese Journal of Comparative Law.

Figure 4: List of Publications



5. International Cooperation

Chinese Legal Culture maintains a wide network of cooperation partners in Mainland China and Hong Kong. Research on Chinese Law is regularly undertaken in collaboration with Chinese partners. Students at the Institute of East Asian Studies can choose one of the best research or educational institutions in China from a long list of universities for their studies abroad. Partners for research and teaching include, inter alia, The Chinese University of Hong Kong, City University of Hong Kong, CUPL, University of Nanjing, Fudan University (Shanghai), Shanghai Jiaotong University, Zhongnan University of Economics and Law (Wuhan), and Jilin University (Changchun).

6. Conferences and Workshops

The Department of Chinese Legal Culture frequently hosts conferences and workshops on timely and relevant issues of Chinese law and innovative research

approaches. For example, in 2015, the department hosted the 10th Annual Conference of the European China Law Studies Association. In 2016, the South China Sea dispute was discussed in a workshop with scholars from China, the UK and the Netherlands. The Judicial Examination, Legal Education and the Law - Politics Nexus in China was the topic of another workshop joined by scholars from Mainland China, Hong Kong, Australia and the US. With invited guest from Beijing, London, Oxford, Shenzhen and Hong Kong, the department organized a workshop on recent developments of Chinese judicial reforms and criminal procedure in 2017.

In cooperation with The Chinese University Hong Kong and Jilin University, the department organized a conference on Big Data and Courts in 2019.

Figure 5: Announcements for Workshops and Conferences

The figure displays four promotional posters for academic events. The top-left poster is for the 10th Annual Conference of the European China Law Studies Association, held in Cologne from September 25-27, 2015. It features a map of Europe and the Chinese flag, and lists various topics such as 'New Perspectives on the Development of Law in China' and 'Online Registration and Paper Submission'. The top-right poster is for 'Big Data and Courts in China', held from July 12-14, 2019, at the University of Cologne. It features a robotic hand holding a gavel and lists the organization as Björn Ahl and mentions cooperation with the Chinese University of Hong Kong and Jilin University. The bottom-left poster is for 'Maritime Disputes in the South China Sea', held on November 5, 2016, from 10:00-17:00. It features a map of the South China Sea and lists speakers including Kong Lingjie, Lei Xiaoli, Youri van Logchem, Wim Muller, and Iain Scobbie. The bottom-right poster is for 'Judicial Reforms and Criminal Procedure in China', held from December 15-16, 2017, at the University of Cologne. It features a detailed schedule of events, including presentations on 'Judicial Reforms in China' and 'Criminal Procedure in China', and lists speakers such as Hui Wang, Xue Han, and Rüdiger Klein.

7. Outreach

The European Chinese Law Research Hub is an Initiative of the European China Law Studies Association and the Department of Chinese Legal Culture at Cologne University. The Blog shares research on Chinese law and announces talks, conferences, and projects in Europe that relate to Chinese law.¹¹



Members of the department regularly engage in advisory activities for stakeholders in politics, the economy or the civil society in the field of Chinese law. Subjects of legal opinions or policy advice to the German Federal Ministry of Justice, the European Parliament, the Ministry of Foreign Affairs of the Netherlands and the Federation of German Industries have included such issues like the development of the rule of law in China, human rights, courts and the Belt and Road Initiative or Chinese approaches to Investor-State Dispute Settlement.

8. Teaching

Amongst various study programs, the Institute of East Asian Studies offers B.A. and M.A. programs in Chinese Area Studies focusing on law. The programs combine courses in Chinese language, culture, politics, society, and legal culture taught at the Institute of East Asian Studies with courses in German, European and international law taught at the Law Faculty of the University of Cologne. The teaching programs offer a wide variety of courses related to Chinese law. They range from introductory courses on the historical development of law in China that put law into the greater context of social and political reality, to those that focus on legal doctrinal issues, particularly in the area of private and commercial law.

Courses include, inter alia, an introduction to Chinese law, the history of the origin of Chinese law, the transformation of Chinese law since the early 20th century, judicial reforms in China, introduction to Chinese civil and economic law, advanced Chinese civil and commercial law, Chinese constitutional law, Chinese positions on public international law and a PhD seminar on advanced issues of Chinese law.¹²

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All the websites cited in this article were last visited on August 1, 2022.

REFERENCES

1. Björn Ahl, *Judicialization in Authoritarian Regimes: The Expansion of Powers of the Chinese Supreme People's Court*, 17 INT'L J. CONST. L. 252-77 (2019); Björn Ahl & Daniel Sprick, *Towards Judicial Transparency in China: The New Public Access Database for Court Decisions*, 32 CHINA INFORMATION 3-22 (2018); Björn Ahl, *Retaining Judicial Professionalism: the New Case Guiding Mechanism of the Supreme People's Court*, 217 CHINA Q. 121-39 (2014).
2. Björn Ahl, *The Rise of China and International Human Rights Law*, 37 HUM. RTS. Q. 637-61 (2015); Björn Ahl, *China's New Global Presence and Its Position Towards Public International Law: Obeying, Using or Shaping?*, in LEGAL DIMENSIONS OF CHINA'S BELT AND ROAD INITIATIVE 481-505 (L.-C. Wolff & Chao Xi eds., 2016); Björn Ahl, *The Delineation of Treaty-making Powers between the Central Government of the People's Republic of China and the Special Administrative Region of Hong Kong*, 31 CHINESE (TAIWAN) Y.B. INT'L L. & AFF. 116-35 (2013).
3. Daniel Sprick, *From Populism to Professionalism: The Media and Criminal Justice in China*, in POST-2013 REFORMS OF CHINESE COURTS AND CRIMINAL PROCEDURE 258-84 (Björn Ahl ed., 2021); Daniel Sprick, *Predictive Policing in China: An Authoritarian Dream of Public Security*, 9 NORDIC J.L. & SOC. RES. 299-324 (2020); Daniel Sprick: *'Killing Rats in the Street' for the Paramount Human Right of Security: The Law and Policy of China's People's War on Terror*, Paulussen, in HUMAN DIGNITY AND HUMAN SECURITY IN TIMES OF TERRORISM 181-205 (C. Paulussen & M. Scheinin eds., 2019); Daniel Sprick, *Replacing Violence with Violence? A Functionalist Approach to Self-Defense in China*, 13 J. COMP. L. 283-307 (2018); Daniel Sprick, *One Road One Belt: Many Routes for Transnational Crime and its Suppression*, in THE LEGAL DIMENSION OF ONE BELT ONE ROAD 1-26 (Lutz-Christian Wolff & Xi Chao eds. 2016).
4. Lu Yu & Björn Ahl, *China's Evolving Data Protection Law and the Financial Credit Information System: Court Practice and Suggestions for Legislative Reform*, 51 HONG KONG L.J. 287-308 (2021); Björn Ahl, Lidong Cai & Chao Xi, *Data-Driven Approaches to Studying Chinese Judicial Practice: Opportunities, Challenges, and Issues*, 19:2 CHINA REV. 1-14 (2019).
5. Shigong Jiang, *Written and Unwritten Constitutions: A New Approach to the Study of Constitutional Government in China*, 36 MOD. CHINA 12-46 (2010).
6. Lucas Brang, *Carl Schmitt and the Evolution of Chinese Constitutional Theory: Conceptual Transfer and the Unexpected Paths of Legal Globalization*, 9 GLOBAL CONSTITUTIONALISM 117-54 (2020); Daniel Sprick, *Judicialization of the Chinese Constitution Revisited: Empirical Evidence from Court Data*, 19 THE CHINA REV. 41-67 (2019); Björn Ahl, *Why do Judges Cite the Party? References to Party Ideology in Chinese Court Decisions*, 18 CHINA: AN INT'L J. 175-85 (2020); Alexandra Kaiser, *A New Model for Habeas Corpus in China? Procuratorial Necessity Examination of Pretrial Custody*, in CHINESE COURTS AND CRIMINAL PROCEDURE

- 144-82 (Björn Ahl ed., 2021); Yi Sun, *Constitutional Review without Constitutionalism? Prospects and Limitations of a Constitutional Review Mechanism in China*, 29 ZEITSCHRIFT FÜR CHINESISCHES RECHT 7-18 (2022).
7. Jasper Habicht, *Exit Restrictions in the Context of Chinese Civil Litigation*, 27 ASIA PAC. L. REV. 83-101 (2019); Jasper Habicht, *The Role of Campaigns in Law Enforcement: The Example of Sanfei Campaigns in Chinese Immigration Law*, 9 STUDIEN ZU RECHT UND RECHTSKULTUR CHINAS (2020); Eva Richter, *Economic Development through Migration: Facilitating Skilled Migration to China through the Belt and Road Initiative*, 8 CHINESE J. COMP. L. 331-50 (2020); Björn Ahl & Pilar-Paz Czoske, *How China Manages Economic-Stream Migration: The New Points Scheme*, 24 ASIAN & PAC. MIGRATION J. 476-85 (2018); Guofu Liu & Björn Ahl, *Recent Reform of the Chinese Employment-Stream Migration Law Regime*, 4 CHINA & WTO REV. 215-43 (2018); Björn Ahl, Pilar-Paz Czoske & Cui Xu, *Labour Rights Protection of Foreign Employees in China*, 28 ASIA PAC. L. REV. 122-37 (2020).
8. Björn Ahl, *Chinese Positions on Global Constitutionalism, Community of Common Destiny for Mankind and the Future of International Law*, 9 CHINESE J. COMP. L. 304-27 (2021).
9. *Id.*
10. BJÖRN AHL (ED.), CHINESE COURTS AND CRIMINAL PROCEDURE POST-2013 REFORMS (2021).
11. European Chinese Law Research Hub, <https://blog.uni-koeln.de/eclrhub>.

