

Comparisons of the Rule of Law of China with the West

Katrin Blasek, *Rule of Law in China: A Comparative Approach* (New York: Springer, 2015) pp 89. Paperback: \$69.

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Katrin Blasek's book analyzes the concept of "rule of law" by comparing the "development" of a Chinese "version" of rule of law in post-1978 China to that of Germany, France, and the UK. Unlike most "Western" models, concepts of "individual rights" do not occupy the centre of a "rule of law with Chinese Characteristics" or a "socialist rule of law" (pp. 15, 26, 77–8). In the absence of an ideology of individualism, and in the context of Chinese cultural and political history, the "core" principles of "rule of law in Western civilization" must be and are being fundamentally reorganized in China so as to protect/secure "Chinese Characteristics" and/or "socialist" goals, particularly if the social and economic development of China (in relation to the West) is a central goal for Chinese people (pp. 16, 79–80). By comparing Western and Chinese codifications of these "core" principles, Blasek's text explores the effect Western models have over the "younger" development of a "rule of law with Chinese Characteristics" (pp. 1, 77–8).

The main Western and Chinese advocates for the implementation of rule of law in China since 1978 have been "entrepreneurs" and "investors" (including "ordinary citizens") who demand legal protections for "sustainable economic development" and (especially foreign) investment security (pp. 1–5, 78–9). Blasek argues that it is because "the call for more rule of law [in China] comes especially from Western entrepreneurs and Western institutions" (including the WB) that she must ask the question: "is China on the way toward their [Western] understanding of rule of law?" (p. 5). By operationalizing the Western definition of "rule of law" into a set of five core principles/elements of rule of law—(1) Separation of Power, (2) Supremacy of Law, (3) Protection of Individual/Human Rights, (4) Legal Certainty as a Mentality of Rule-Making, and (5) the Independence of Courts and Judges—Blasek compares the codification of each principle/element across the independent legal systems of Germany, France, the UK, and China (pp. 11, 19–77). In this way, Germany, France and the UK come to represent "Western models," and the kinds of variation in development and practice that can/do exist within "rule of law in Western civilization." The analysis of each of the five selected aspects of Western rule of law always begins with an analysis of the West (Germany, France, and the UK) before drawing a comparison to the development of variation in these core principles in China since 1978.

From the perspective of disability studies, the comparative analysis of (1) the "separation of powers" in terms of its "impact on the legislative system, accessibility, and transparency of law," (2) the protections for "human" and/or "individual" rights, and (3) "legal certainty" as a "mentality of rule-making" are of particular note for their multiple intersections. In the case of the "separation of power," for instance, German, French, and British systems make distinct efforts to erect barriers between legislative, administrative, and judiciary powers of state based on a shared "idea of man" as naturally endowed with "individual human rights (basic

rights)” but also a proclivity to “fail or misuse their power” (p. 21). Based on this Western theory of individuals’ human nature, those who create laws cannot be the same as those who interpret laws and/or regulate laws—thus, demanding a separation of powers.

By direct contrast, China practises a form of “concentration or even unity of power” and “democratic centralism” organized through a “division of duties” meaning that “a separation of power only takes place in terms of organizational structure (different bodies in different houses) but not in terms of functions or persons (legislation in all houses made by members of the CPC)” (pp. 25, 27, 78–9). Today, still grounded in a deep (not “young”) tradition of Confucian thinking, “China’s Communist Party stresses the aim of a ‘harmonious society’ ... [and] ranks the interests of *the whole society* or nowadays the objective of ‘socialist harmony’ much higher than the basic rights of the individuals” (p. 26, 78–9, emphasis in original). As Deng Xiaoping explains, to “copy bourgeois democracy” of the West through a separation of powers and individualistic theory of human nature would be “unsuitable for China” and would betray Confucian traditions (p. 26). This is not to discount, however, those Chinese scholars/advocates who criticize the “eternal” power of the Communist Party of China over rule of law in China—the denial of rule of law in the legal mandate for “*adhering to the law and the leadership of the CPC*”—as “outdated and backward” (pp. 26, 78–9, emphasis in original).

According to the logic of Locke and Montesquieu, arbiters for the Western model, “by separating powers, the misuse [of power] shall be limited and the violation of individual rights by the state shall be avoided” (p. 21). However, this does not mean that German, French, and British legislative systems, for instance, are *equally* separated from executive and judiciary systems. Comparatively, the German model holds the strictest separation, while the French (rationalized parliamentary) model affords the elected executive greater legislative power and the British (common/case-law) model grants the judiciary and parliamentary legislative power. In the case of legislation in China, and characteristic of the “Chinese mentality of rule-making,” the duties of producing/interpreting primary legislation and substatutory regulations are widely shared between: (1) a Full and a Standing Committee of the People’s Congress or two Parliaments (laws), (2) the State Council and its various departments (regulations), and (3) the Supreme People’s Court and the Supreme People’s Prosecution (interpretation) (p. 28). Such a denial of the separation of power and “checks and balances” on rule-making in China are “unthinkable” in the Western tradition (p. 29). Criticism from the West and within China focuses on how the Chinese legislative model: produces laws that conflict with existing/superior laws, lacks legislative competence, and fails to resolve conflicts between existing laws in practice (pp. 29–32).

Blasek also comparatively analyzes how the degree of separation of power, as in the case of the legislative power, directly impacts the “accessibility and transparency of law” in terms of whether it would be “possible” for both legal scholars and ordinary citizens in each nation to “build a reliable opinion on the legal status” of any given rule. In the Western model of rule of law, there is a “requirement of accessibility” in that “everyone is bound by the law, everyone must be able to find out about what the law is and how one has to behave to comply with it without undue difficulty” (pp. 24, 33). Based on Blasek’s analysis, it appears that the less separate the powers of the legislature are from those of the judiciary and the executive, the less accessible the law is to legal scholars, and especially ordinary citizens, which makes

“building a reliable legal opinion” for both groups less accessible overall. The less strict separation of powers in the UK and China, as compared to Germany and France, result in less accessibility to the law for both legal scholars and ordinary citizens in both nations. In both the UK and China, the number of laws/regulations, as influenced particularly by the legislative powers afforded to the judiciary, creates distinct transparency and access issues for legal scholars and ordinary citizens in search of ways to abide by the law, avoid violating the law, understand and question/petition the law.

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Oxymora, Cognition, and Synaesthesia of Legal Language

Rostam J. Neuwirth, *Law in the Time of Oxymora: A Synaesthesia of Language, Logic and Law* (New York: Routledge, 2018) pp 268. Hardcover: \$112.00.

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While the title of the book clearly draws inspiration from Gabriel García Márquez’s book, *Love in the Time of Cholera*, the overall reading experience is reminiscent of Raymond Carver’s *What We Talk About When We Talk About Love*, only this time we talk about law.

For a long time, the scholars in law and society typically have made use of interdisciplinary methodologies to explore the causal relationships between societal processes and laws. For the past ten years, Professor Rostam J. Neuwirth has been actively advocating for increasing the public awareness on the problems caused by the global fragmentation of laws, as exemplified by various “trade and ... problems” like that of “trade and culture.”¹ In the newly released book, *Law in the Time of Oxymora: A Synaesthesia of Language, Logic and Law*, he adds a new and unique perspective to the global governance debate, by exploring the new trend of a shift from the dominance of “essentially contested concepts” to one of “essentially oxymoronic concepts”² in case-law and legal literature. This book pushes the boundary of interdisciplinary studies even further.

An oxymoron is the result of compressing two words that are typically considered as opposites. Prof. Neuwirth has noticed the increasing use of essentially oxymoronic terms, namely “the rhetorical figures that display varying degrees of intrinsic contradictions or consist of apparently conflicting and logically irreconcilable propositions” (p. 3), such as glocalization (a portmanteau of globalization and localization),³ coopetition (collaboration between business competitors),⁴ and prosumer (a portmanteau of producer and consumer). In

1. Neuwirth (2017); Neuwirth (2015); Neuwirth (2011a).

2. Neuwirth (2013).

3. Neuwirth (2011b).

4. Neuwirth & Svetlicinii (2015).