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The Conceptualization of ‘*fazhi*’ – Towards a ‘Rule of Law’ in China?

INTRODUCTION

The story of China’s encounters with the West over the past century is also the story of it getting to know – one way or the other – the power of law in the Western world. Foreign relations from the late Qing Empire to the “reign” of Deng Xiaoping and his successor Jiang Zemin, as well as China’s changing position in the international community resulting from the ups and downs in those relationships, have been going along with the sometimes pushed and sometimes slowed down process of approaching and partly adapting to the Western concept of legality. Simultaneously, the question of establishing a post dynastic order and reforming China’s political system, which was a revolving issue for the entire 20th century, was answered in great part by philosophical and ideological concepts imported from the West. The legal and political concept of constitutionality which had provided a model of modern statehood in the first half of the century was jeopardized by the communist idea of the law being subordinate to politics for most of the Maoist era, and only the last two decades of the century saw new approaches to defining the status of law in the context of governance. This tendency for new methods to contain factional struggles was greatly influenced by the idea that economic reforms were in need of stability of the social and political system. Furthermore the importance of new and substantial legal settings for both international and domestic business soon became an uncontested demand.

The difficulty to simultaneously strive for legality and legitimacy of the communist regime became especially poignant in situations of political crisis. Chinese intellectuals’ attitude towards law and legality ten years after starting Deng Xiaoping’s reform project was made visible, to the Chinese public as well as to the outside world, by wall posters and posters carried by protesters in May and June 1989 calling for ‘the rule of law’ as a saviour from turmoil and political arbitrariness (e.g. Shell/Shambaugh 1999:197–198). This was a clear indication for law not just being approached on a theoretical level, but as an emotionally accepted component of the intellectuals’ renewed perception of Chinese society and

culture. The (re-) establishment of a legal component in Chinese culture at the end of the 20th century is reflected by the increasing representation of legal issues in Chinese arts and media (books, movies etc.), a tendency that raises the question of a cultural component of law and a legal culture.¹ Both fictional and real life stories like those about customers suing producers of harmful consumer articles, companies suing media critics for defamation, citizens trying to defend individual property rights against state agencies which for their part are also using legal remedies to limit such attempts², show that legal culture is about the way in which interaction between political and/or social actors is shaped or even determined by the regulatory guidelines of a legal system.

Consequently, legal culture would have to be monitored or assessed in the following fields of interaction:

- foreign relations, i.e. the encounters of the nation state with the outside world;
- governance, i.e. the interaction between state and society, including both the attitude of government towards people (with intellectuals as a special category among them) and the reaction of people to be felt by the government;³
- and socio-economic relationships between individuals.

The standard by which legal culture is usually assessed in or by the Western world is ‘the rule of law’. The corner stone of this concept is a set of rules that, although possibly having been created by the ruler(s), should finally have a status of its own and stand above the political and social hierarchy, in order to legitimize the binding character of decisions derived from it.⁴ If taken as a standard to be attained or kept to, the ‘rule of law’ is measured against the degree to which decisions in political, social, intellectual, economic or cultural controversies or conflicts are made according to this established and acknowledged set of rules instead

¹ For a Chinese view on legal culture see Liu Zuoxiang 1999; Yu Ronggen 2003; Liang Zhiping 1994; Li Jiaofa 2004; Xie Hui 2001. From the Western side a comprehensive introduction to Chinese legal culture was provided by Robert Heuser 1999.

² Accounts of incidents of this kind are to be found in foreign magazines like the Far Eastern Economic Review (FEER) (examples given here: Forney 1998; Lawrence 1998; Saywell 1999, but the developing of a culture of litigation in general is also portrayed in Chinese daily newspapers, some of them explicitly focussing on legal matters, with the 法制日报 (*Legal System Daily*) as the most prominent example.

³ Reciprocity also marks another aspect of legal culture which is the relationship between positive law and the external factors of legal culture: While on the one hand legal guidelines have an obvious impact on life and society, social development has an equally strong influence on legislation.

⁴ For an overview of the historical emergence and development of this concept in the West and its status in East Asia in the 1990s see Clark 1999.

of being provided by the conflicting parties themselves. The following text shall explore the application of this standard to the situation in the People's Republic of China in the reform era, and point to the complexity of the underlying conceptual transfer as well as of the related question of terminology.

‘FAZHI’: ‘RULE OF LAW’ – ‘RULE BY LAW’

When Western legal knowledge was exported to late imperial China, experts in charge of introducing those partly new and mostly alien ideas to Chinese legal theory and practise were prone to use Chinese translations of foreign scientific terms that were already known or at least did not sound completely unfamiliar to people who were supposed to use them.⁵ In the case of transferring the concept of ‘the rule of law’ to the Chinese context, ‘法治 (*fazhi*)’, a term that had connotations going back to Chinese legalist tradition with a clearly instrumentalist approach to law (Wu Shuchen 1999:32–33), was chosen. As a consequence, the process of integrating the idea of law ruling over government into Chinese thought which has been going on for more than a hundred years, as well as the reception of this process in Western sinology and legal studies, was continually accompanied by a flavour of law being used by rulers as an instrument of government instead.

The concept in direct opposition to *'fazhi'* (法治) is *'renzhi'* (人治, the rule of men), which has had a long history in China as well, reaching a climax versus the end of the Maoist era. The central discussion on legal reform in the PRC in the first years after 1979 therefore revolved around these two opposite concepts.⁶ Deng Xiaoping who himself had been a victim of Mao's ruling without law before was eager to find an alternative to the arbitrary ‘rule of men’ and thereby safeguard national stability. Alongside political, economic and social changes that he orchestrated in the 1980s there was also a change in the general attitude towards legality, and in the 1990s the greater part of foreign and domestic evaluations of the process and results of Chinese legal reform were based on the assumption that *'fazhi'* was, or at least should be, the ultimate goal of all efforts made in this respect (Zheng Yongnian 1999:32).

Astonishingly enough, experts who contrast *'fazhi'* with *'renzhi'* and/or claiming *'fazhi'* as the ultimate model to be followed do not always deem it necessary to consider and comment the fact that the structure of wording in Chinese makes two translations of the term *'fazhi'* possible – and that as a consequence the term

⁵ For information on the history of translating Western legal knowledge into Chinese in the late Qing period see Wang Jian 2001.

⁶ For an account of the early period of this controversy see Keith 1991.

can stand for two different concepts: as the nature of synthesis between the characters ‘*fa*’ (法, law) and ‘*zhi*’ (治, rule) is not as clearly determined as in English,⁷ the ‘of’ between ‘rule’ and ‘law’ can be replaced with ‘by’ – and the ‘rule of law’ becomes a ‘rule by (way of the) law’.⁸ This distinction becomes visually discernible when recurring to the more complete phrase ‘依法治国’ (*yi fa zhi guo*, rule the country in accordance with the law) and its counterpart ‘以依法治国’ (*yi fa zhi guo*, rule the country by means of the law) – still identical in the oral form (with exception of the intonation of the syllable ‘*yi*’), but drawing a clear distinction by using two different characters as co-verbs or prepositions to ‘law (*fa*)’⁹. While the latter clearly indicates an instrumentalist approach and was to be found in many texts on the reform process at its very beginning, the terminology of ‘ruling in accordance with the law’ has become prevalent in recent years and even found its way to the top of the legal system when written into the Fourth Constitution of the PRC of 1982 in 1999.¹⁰

This tendency towards a ‘rule of law’ notwithstanding the question of how to interpret the ambiguity of the Chinese term ‘*fazhi*’ and how to handle its implications for the analysis of legal development in the PRC remains a complex one – especially if research on this subject is done in the West where the idea of a clear distinction between the ‘rule of law’ and the ‘rule by law’ prevails. Another way to see the relationship between the two concepts is the definition of the ‘rule by law’ as an earlier or lower stage of legal reform that has to be passed through on the way to the final level of ‘the rule of law’. It is equally questionable even though proposed by researchers both of Chinese and Western origin¹¹. In order to

⁷ ‘*Fa*’ can function both as subject and as definition to the verb ‘*zhi*’; while in the first case law is acting, it is just a more precise definition of the action performed by someone or something else in the second case.

⁸ Some scholars taking the differentiation between ‘rule of-’ and ‘-by law’ into account refer to Baum 1986. For another depiction of this differentiation see Peerenboom 2002:64–65. In a chapter on “‘The concept of *fazhi*’ and ‘socialist *fazhi*’ in China” Shen Yuanyuan (2000:24) points to the fact that the Pinyin transliteration ‘*fazhi*’ has a third meaning (notwithstanding with a different character for ‘*zhi*’, 制) which is ‘legal system’.

⁹ In the first case ‘*yi* 依’ has a first tone and the central meaning of ‘use, take’, in the second ‘*yi* 以’ has a third (second) tone and means ‘depend on, comply with, according to’.

¹⁰ 中华人民共和国宪法第五条第一款 (Constitution of the PRC, Art. 5, 1): “中华人民共和国实行依法治国, 建设社会主义法治国家 (The People’s Republic of China practices ruling the country in accordance with the law, in order to establish a socialist country of law [Rechtsstaat].)”

¹¹ One text attempting to ‘show why rule by law is an unavoidable development stage in China’s legal progress, and also to analyse the difficulties of the transition from rule by law to a rule of law’ is Zheng Yongnian 1999:32. In Wei Pan 2003 the distinction between ‘rule of and by law’ is not drawn clearly throughout the whole of the text, but in a reply to Wei’s argu-

demonstrate that the above named approaches are to be revised and how in the reality of today's legislation, jurisdiction and legal science in China the border line between the two concepts gets blurred, the text uses the examples of Internet regulations and administrative review.¹²

RULE BY LAW: THE EXAMPLE OF INTERNET REGULATIONS

The relevance of this example is due not only to the important role that the Internet plays in the lives of an ever growing part of the Chinese population (Lawrence 1999), but is also given by the impact that the existence and implementation of legal measures in this field has on every one of the fields of interaction defined as parameters of legal culture in the introductory part of this text: the accessibility of information and services formerly unknown to the Chinese public have changed both the way people interact on an equal basis, as well as the hierarchical relationship between the "ordinary citizen" and the political elite "educating, guiding and protecting" them. Getting linked online is not only about communicating facts or selling information, but clearly facilitates the expression of thought, which offers a new perspective to Chinese citizens in general, and is of extreme importance to Chinese intellectuals. Furthermore an exchange of views and ideas is not limited to Chinese sources, but revolutionizes contacts with the outside world.

Forming part of the World Wide Web, which in theory was to tear down any kind of information and communication barrier, had to be a shock, both in the positive and negative sense of the word, in a country where little more than ten years earlier any activity of this kind would have been handled as an affair of public security (Hartford 2000). Apart from widening the view on what was to be known or learned from the outside world, the internet and electronic mail provided a new device for exchanging news of what was going on in other parts of China and thus contributed to the forming of a preliminary stage of civil society (Yang Guobin 2003). The awareness of new forms and possibilities to associate and reunite made activities possible that had formerly been blocked or severely impeded by legal regulations like the "PRC Law of Assembly, Procession and Demonstration" – another piece of legislation often linked to the concept of 'rule by law' (Hintzen 1994). This process has been closely monitored and encouraged by the Western world because of its being considered essential for democratisa-

ments (not to be further discussed in this context) Randall Peerenboom (2003:45) quotes Wei as setting up a timetable in three stages, the first of them being a "rule by law period".

¹² The decision to choose both examples from the field of administrative law was influenced by the fact that the difference between ruling by law and a rule being limited by the law becomes most obvious – and most controversial – when applied to the state-society relationship, visible in everyday life of the Chinese people.

tion in the PRC (Goldman/Perry 2002; Brook/Frolic 1997; White Howell/Shang 1996). In the eyes of the CCP leadership, even though Party committees in charge of information policy and propaganda themselves did not miss the chances offered by the new media, the obvious risk of political dissent developing on internet sites or user platforms, and then possibly spreading over the whole of the Chinese internet community was a clear indication to curtail the reach of this flow of information. As a consequence of this official attitude a race of users against institutions trying to control them took off soon after the Chinese mainland was linked to the internet: while the former kept trying to expand the range of information they could access via the net, the latter wanted to at least track or trail these new channels that could very easily lead to “dangerous” sources of information, such as homepages of exiled Chinese dissidents, organisations promoting Tibetan or Taiwanese independence, Falun Gong (Thornton 2000) or others and provide a forum for on-line discussion on subjects like corruption scandals or atrocities of the Cultural Revolution (Holland/Saywell 2000).

The Party and the government would have previously applied political and social repression to control the use of information, but after 1979 the PRC leadership started developing new means of prevention and punishment, or prevention by punishment, to achieve the same result: activities in the fields of publishing, journalism, trading in copyrights and similar activities were now to be held under control by way of laws and regulations (Chan 2003; Alford 1995:65–94; Schick-Chen 2001:37–47) issued by the People’s Congresses or governments, implemented by the law courts or government agencies and leaving space for censorship and propaganda if deemed necessary. The degree of technological specialisation and extremely fast development of the electronic media made respective legislation and implementation a difficult task for legal experts and politicians¹³, not only in the PRC. It took the Chinese authorities a number of years before the first rather comprehensive set of regulations, the “Measures for the administration of Internet information services (互联网信息服务管理办法)” together with the provisions of the new “Regulations for Telecommunications of the PRC (中华人民共和国电信条例)”, was issued by the State Council in 2000 (Giese 2000), but the overall amount and speed of Internet-related legislation¹⁴, as well as trials and verdicts

¹³ In order to improve the efficiency of Internet supervision departments established under the Public information network supervision departments, collage graduates with special skills in computer and telecommunications were “invited” to work as “public functionaries” in those public security institutions. In: Summary of World Broadcast/BBC. 11.12.2000:FE/4020 G/6.

¹⁴ Information on up-to-date legislation in this and other business-related fields of law is provided by: Baker & McKenzie: China Legal Development Bulletin 3:10 (March 1996), 3–4 (Internet regulations); 3:6 (July 1996), 9–11 (Internet Channels, Computer Network Security); 4:5

covered by the domestic and international press seem to convey two different messages to two different groups of addressees: they reassure the international business community of Beijing's will to join world-wide efforts to provide a legal framework for this new, virtual reality, while at the same time demonstrating to users all over China as well as providers and users outside of the PRC of Beijing's vigilance concerning any exchange of information or ideas.

Cases like the one of a young entrepreneur in the software and internet business who was sentenced to a prison term of two years plus a fine of 10,000 RMB for forwarding Chinese e-mail addresses to "hostile foreign" organisations (Hartford 2000:261; China Aktuell 1999), or a Chinese web master prosecuted for publishing sensitive information on an internet site named after June 4 (Taipei Times 08/19/2001), as well as the repeated fining, confiscating and closing down of internet cafes and provider companies because of "improper" usage¹⁵ identify the fear of losing control over social currents and possible political consequences as the main force behind official China's taking legal action (Chase/Mulvenon 2002). They also seem to confirm critical voices claiming that the "ambiguity around the term *fazhi* reflects a continuing reluctance in China to have laws curb the discretion of the government" (Woo 2000: 165). Nonetheless, other cases like the conviction of a Chinese company by an Intermediate People's Court for unlawfully registering the trademark of an international brand as domain name and similar lawsuits (Saywell 2000) are signs of the Chinese legislation, administration and judiciary getting orientated towards international standards of Internet security. However, as news of legal victory against unlawful conduct as understood by the Western rule of law philosophy are outnumbered by reports on the interpretation and implementation of Internet-related regulations and laws that displays a lack of strictly legal motivation, the overall picture is still one of law being used for the political purpose of state control.

RULE OF LAW: THE EXAMPLE OF ADMINISTRATIVE REVIEW

The dispute between advocates of complete liberalisation in the virtual world and supporters of certain limitations set by safety measures in favour of public and personal interests is not unique to the case of China; neither is the danger of authorities making use of respective legal provisions in order to exercise some sort

(6/1997), 12–13 (Amendment to Computer Networking Regulations); 7:5 (6–9/2000), 14–20 (Measures for the Administration of Registration of Website Names, Implementing Rules for Measures for the Administration of Registration of Website Names); 8:1 (1–2/2001), 1–3, 9–11 (Administration of Chinese-Language Domain Names, Resolution of Internet Domain Name disputes, Internet Security Decision).

¹⁵ Summary of World Broadcast/BBC. 11.12.2000:FE/4020 G/8.

of control over the net community. Nonetheless, as even those parts of the world where law is supposed to rule might not be immune from misuse of power, a genuine rule of law should at least provide for legal ways to defend oneself against such abusive behaviour on the part of the rulers. Administrative review and administrative appeal enable citizens to ask administrative bodies for reconsideration and possible reversal of former decisions, or even sue officials that have caused harm by “misinterpreting” or just plainly misusing administrative regulations or laws. The introduction of this concept is linked to the question whether the ruler is to be above or below and therefore constrained by the law and was the point of departure for the development of the rule of law in the West (Clark 1999:30). The rule of law debate in the PRC under Deng Xiaoping and Jiang Zemin paid special attention to the reform of the administrative law and focused on administrative law in general¹⁶ as well as the problem of administrative appeal and/or review specifically. About the passage of the Administrative Litigation Law (行政诉讼法) in 1989 Pei Minxin says that “[...] it was hailed in the Chinese legal community. Optimists felt it had the potential to be the key legal instrument for protecting human rights and laying the foundation of the rule of law in China” (Pei Minxin 1997:835). The idea of one or several individuals, or even a juridical person, taking a representative of the state to court seemed outrageous in view of past usages in state-society relations and was therefore likely to have the greatest impact on the attitude towards law and legality of individuals and officials alike. At the same time the lack of familiarity with and immensity of the very thought of self-defence in the form of legal action against state authority impeded an instant and overall acceptance and implementation of this legal measure. The second form of legal protest against inappropriate use of official power, which is administrative reconsideration, consisting of a formal appeal to the superior administrative agency,¹⁷ is met with a higher degree of acceptance, as the number of cases clearly show. It seems to correspond better to the Chinese tradition of complaining to the superiors of misbehaving officials or cadres and therefore to contain less of a psychological barrier.¹⁸ And while the Regulations on Administrative Reconsideration (行政复议条例) of 1990 still limited the scope of control and interference from above, the

¹⁶ The necessity of administrative reform was addressed frequently, not only in the political debate, but also in the academic field; the outcome of discussions on “the overall strategy and objective of ‘rule the country according to law, build a country ruled by socialist law’” usually being that ‘administration according to law is the key to ruling the country according to law’” (Guo Daohui 1999:91).

¹⁷ In most cases this procedure is to be passed through before litigation (中华人民共和国行政诉讼法第37条 (Law of administrative procedure of the PRC §37)).

¹⁸ For some of the cultural aspects of administrative law reform compared to the administrative law system in the United States, see Rubin 1997.

Law of Administrative Reconsideration (行政复议法) passed in 1999 exposes the majority of administrative actions to administrative review.¹⁹

Nonetheless, actual limitations to effective implementation still result from the “human factor” on the side of both the plaintiff and the accused. As the fictional *Story of Qiuju* (秋菊打官司) described in rather drastic, but not that unrealistic images in Zhang Yimou’s film²⁰ of the early 1990s, administrative agencies still had to get used to their new responsibilities before the law, ordinary people still had to learn what defending their rights with the help of the law was really about, law courts were not vested with judicial independence as provided by separation of powers in Western democracies, and as a consequence, administrative review and appeal still could not guarantee a satisfying outcome of a crusade led by the principles of ‘the rule of law’.²¹

A survey on support for anti-corruption campaigns conducted in various provinces in 1997/98 included an “evaluation of local officials’ performance in governing by law”. The result of only a quarter of the interviewed villagers defining themselves as “fairly confident in filing administrative law suits” (Li Lianjing 2001:582) showed that even after several years of legal practice, the Chinese population, especially in rural areas, was not completely convinced of the effectiveness of administrative legal measures.²² On the other hand accounts of singular cases like the one of a township official encouraging people to sue under ALL provisions after having failed in administrative reconsideration (O’Brien/Li 1995:766), as well as an increasing number of administrative law suits and even more applications for administrative reconsideration in general²³, are clear indications of the fact that Chinese citizens at least *do know about and consider* these possibilities of protecting their individual rights when confronted with negligence or maltreatment from officials.²⁴

¹⁹ The respective regulations in force in 2000 can be found in Xingzheng sugong fajiqi peitao guiding 2001.

²⁰ For a short review of this film see Silberberg 1999 amongst others. For an analysis of the novel by Chen Yuanbin on which the film is based see Kinkley 2000:348–357.

²¹ While those principles are unknown to the heroine of the story, their impact on the author’s, director’s and maybe even producers’ motivation seems obvious.

²² In the survey cited (Li Lianjing 2001) the confidence in administrative lawsuits (apparently including both administrative review or reconsideration and appeal) is contrasted with confidence in lodging complaints (individual complaints: 12.8%, collective complaints: nearly 40%).

²³ For both implementation problems and success stories, as well as statistical data on administrative litigation see Pei Minxin 1997.

²⁴ The results of a survey conducted by researchers from several Chinese universities in 1992 in several provinces, targeting relevant segments of the Chinese population (judges, lawyers,

Knowledge of the relevant legal provisions stems to a considerable extent from educational measures such as related newspaper articles, TV-shows or specialised seminars for professionals. Such endeavours, forming part of a campaign-like movement orchestrated in the form of five year plans under the name of ‘普法’ (*pufa*, disseminate law = “law for everybody”)²⁵ make it clear that political authorities not only allow, but even want people to know about means to question or even counter government action. In view of the political implications of this development – underlined by, among others, the number of intellectuals putting their belief in the rule of law into practice and fighting politically motivated censorship and other attempts at silencing dissident activities with the help of administrative law suites (Pei Minxin 2000:33–34) – this might be an astonishing strategy to be followed by an authoritarian regime. Still, realizing that it is not only plaintiffs who are driven by their frustration caused by unlawful behaviour of cadres, especially at the lower levels of administration, but that both the CCP leadership and the Central government themselves are desperately looking for new institutions to fight maladministration and corruption, administrative review and appeal present themselves as perfect means to give a new quality to the interaction between officials and people (= state-society relationship) and thereby diminish the danger of social instability and threats to the political legitimacy of the CCP government.

In fact, in 2001 an article in “*Qiushi*”, the Party’s ideological mouthpiece, claimed that “from real life and their own experience people know that without exerting control on the circumstances of cadres’ official activities and performance of their duty, [those officials’] exercising their power might leave the path of democracy and legality”, and that “as a result of this the image of the Party is certain to get damaged, the life of the Party endangered, and the foundations of the socialist state shaken”. This text, pointing at the importance of administrative law without explicitly naming it, hints to an instrumentalist approach when it quotes Jiang Zemin saying that “it is necessary to build a sound mechanism of restraint and control on the execution of power in accordance with the law by way of intensifying internal party control, legal control and the control of the masses” (Chen Zheman 2001:31). Seen from this perspective, even administrative review and appeal, hailed as proponents of the ‘rule of law’, still contain the inherent trace of law being used for political purposes.

plaintiffs, administrative personnel, citizens, i.e. workers, peasants, intellectuals etc.) were published in Long Xiangrui 1993.

²⁵ The first of these five year plans for the dissemination of legal knowledge was implemented in 1986. For more detailed information on this educational aspect of legal reform politics in the PRC see Exner 1995.

CONCLUSION

Both the 'rule by law' element in administrative law reforms and the intention of the PRC government to converge with the international 'rule of law' regime in the realm of Internet crime prevention and sanctioning are indications of the difficulty in identifying clear and unquestionable examples for the 'rule by law' or the 'rule of law' in China. In view of the concurrence and even mingling of these two theoretical concepts in legal practice the assumption of 'ruling *by* law' being just a preliminary stage of 'the rule *of* law' has to be discarded. Similarly, it seems difficult to grant exclusiveness to 'the rule of law' as being the sole aim of legal reform, especially, when being aware of the fact that the instrumentalist element can not be completely discarded from the interaction between 'rule' and 'law' in a Western context neither.²⁶ A researcher rooted both in Chinese and Western (legal) culture seems to summarize the problematic issue in the statement that "Too many assumed conceptual categories and theoretical presuppositions have been used so often within the paradigm of thought known as 'legal culture' in Chinese society" (Ren Xin 1997:7).

The finding of factual and conceptual overlapping, as well as the problem of a correct handling of relevant terminology,²⁷ might lead to the conclusion that the terminological ambiguity of '*fazhi*' is nothing but an adequate reflection of the ambiguous reality denominated by it, which might further promote the idea of operating with the Chinese term itself instead of linking it to just one or the other English translation. This approach on the one hand would still allow for an individual interpretation of the word '*fazhi*' according to one of the two lines of Western thought, while at the same time function as a constant reminder of the fact that the process or situation addressed by this term is embedded in China's

²⁶ The instrumentalist aspect of the Western 'rule of law' approach becomes visible when Western researchers write with regard to Western political theory: "The law is regarded both as an instrument for guiding behaviour and as a safeguard, providing citizens with enforceable rights." (Jagtenberg/de Roo 1994:28) Another comment shows that Chinese researchers may be aware of this, but still see a difference between the Chinese and the Western situation: "I do not mean to deny the instrumental function of law in all societies. It is worth noting, however, that in modern Western societies the relatively high degree of law's authority is based not so much on its instrumental capabilities as on its degree of autonomy." (Shen Yuanyuan 2000:28)

²⁷ A quotation from the English abstract of a Chinese article may illustrate the problem of inexact terminology: in this text the term "*xifang fazhi*" is translated as "western rule *by* law", even though the article's content deals with the state-society relationship based on the "rule *of* law" in Western countries. (Ma Changshan 2001:3) At the same time researchers of Chinese origin working in the West are aware of the fact that "the Chinese language is another formidable obstacle in establishing reliable and accurate categories of legal propositions for a sound comparative study". (Ren Xin 1997:7) See also Shen Yuanyuan 2000:24.

political, social and legal culture and therefore prone to “challenge” or even “resist” foreign conceptualization and categorization.

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