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### Regulatory reform in China and the EU: A law and economics perspective

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## Regulatory reform in China and the EU: a law and economics perspective

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courts to adopt an extremely cautious attitude towards approving forced relocation.<sup>35</sup> Within Article 6 of the judicial interpretation, seven enumerated circumstances may override an application by local governments for judicially-forced relocation.<sup>36</sup> Furthermore, the Supreme People's Court issued a notice on 5 April 2012 emphasizing that local courts must strictly and accurately implement the judicial interpretation, so as to safeguard the right to housing of Chinese citizens.<sup>37</sup>

Based on the above analysis, it is clear that the Party-State places great emphasis on the housing rights of citizens and actively cracks down on any abuses of power by local governments in the process of relocation. Although there is still some room for the Party-State to improve the legal regime governing housing rights in China, in particular for farmers, it is doubtful whether this kind of fundamental right is continuously and massively violated by government authorities in China.

## V. Conclusion

In the National Human Rights Action Plan (2016–2020), the Party-State clearly manifests its commitment to develop and improve human rights in China.<sup>38</sup> Regrettably, the reviewed book only focuses its attention on human rights criticisms of China, rather than the Party-State's renewed commitment. A more constructive approach would be to explore means of improving human rights in China, while at the same time, recognizing the progress made by the Party-State in this aspect since 1949.

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**Regulatory reform in China and the EU: a law and economics perspective**, Stefan E. Weishaar, Niels Philipsen and Wenming Xu (eds), Cheltenham, Edward Elgar, 2017, 288 pp., GBP 85.50 (hardcover), ISBN: 978-1-78536-853-0

Edited by Stefan E. Weishaar, Niels Philipsen and Wenming Xu, this volume is an output of collaborative efforts that bring together a group of both established and emerging law and economics scholars from China and the European Union (EU). The volume makes a timely contribution to existing scholarship in several crucial ways. First, although this collection originated from a series of conferences held between 2012 and 2015, many of the debates engaged in by contributors, and in particular the overarching theme of this book, turn on the role of the Chinese government in directing the behaviour of market participants at home and abroad, a structural problem lying at the heart of today's Sino-US trade war.<sup>1</sup> By virtue of

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Notice of the Supreme People's Court on Effectively Implementing the Provisions on Several Issues Concerning the Handling of Cases for Application to the People's Courts for Compulsory Enforcement Decisions on Compensation for Expropriation of Buildings on State-Owned Lands 2012 (最高人民法院關於認真貫徹執行《關於辦理申請人民法院強制執行國有土地上房屋徵收補償決定案件若干問題的規定》的通知).

<sup>38</sup> The State Council Information Office of China (n 8).

several critical assessments of the Chinese regulatory interference and its broader implications, the volume brings our understanding of this topical issue to another level. The issue areas featured therein — financial markets, social and administrative regulations, and environmental regulation, make this volume valuable to not only those who are concerned about the Chinese model of governance in general but also those who have been closely following these specific topics. In my view, the book's contents are especially relevant to debates on the financial and environment sectors. The book's in-depth analysis of China's banking industry and securities market prompts readers to reflect on the impacts of both market and regulatory failures on a nation's financial industry and its cross-border ramifications, as seen with the Global Financial Crisis (GFC) almost a decade ago.<sup>2</sup> China's responses to environmental issues are proving significant, given President Trump's recent withdrawal of the United States (US) from the Paris Climate Agreement.<sup>3</sup>

The book's interdisciplinary approach is another salient feature. It moves away from the doctrinal approach by considering the role of the public and private sectors and their interactions from a law and economics perspective. Here, empirical data informs policy-makers of the effectiveness (or lack of it) of existing regulatory frameworks, and helps to identify possible reform proposals. In this light, this volume is of both theoretical and practical value.

Turning to a closer examination of each chapter, in their introductory chapter, Wenming Xu, Stefan E. Weishaar and Niels Philipsen set the stage by offering a comprehensive recount of the major theories underpinning this volume. Built on the concept of the 'regulatory state' by Edward L. Glaeser and Andrei Shleifer, Chapter 1 begins by describing different governance models each serving a matrix of policy objectives. Among these objectives are 'the minimisation of social harm for market activities'. The editors point to a growing body of literature that has used this exact term to describe China, while acknowledging that today, even Americans and Europeans 'are more regulated than before'. Having engaged the so-called 'public interest' theory and identified information asymmetry, market power, externalities and free-rider problems as primary causes of market failures that may lead to regulatory intervention, Chapter 1 highlights the risk of 'regulatory capture' and relates it to the key literature on the 'private interest' approach to regulation and public choice. In addition to regulatory designs, Xu, Weishaar and Philipsen pinpoint the enforcement strategies which translate 'black letter law' into 'de facto deterrence'. They contrast private and public enforcement by considering hurdles like the collective action problem and the institutional capacity of regulatory agencies.

Building upon this conceptual framework, the rest of this book is divided into four parts. Part I consists of four chapters that concentrate on regulatory reforms in financial markets. Tao Xi in Chapter 2 picks up one of the most heated debates by considering the trajectory of the Chinese regulatory approach to commercial banks from a contextual perspective. Having documented in detail the risks to the banking industry of regulatory reforms in developed countries, such as the Volcker rule in the US, Tao suggests that China's Law of Commercial Banks, despite several amendments since its promulgation in 1995, still needs to be reformed to 'increase access to financial services' and to reflect new financial practices. According to Tao, the institutional arrangements established by the Law of Commercial Banks (for example, deposit interest rates, comprehensive management, market exit mechanisms, etc.) should be redesigned in a way that takes into account both the nation's 'actual financial development' and the nation's 'financial supervision capacity'. Tao warns however that the

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Law of Commercial Banks is but one of many pillars that underpin China's financial system. The Law cannot operate effectively without 'other economic and social support'.

The next chapter by Jiye Hu and Yang Chen echoes this view. In Chapter 3, Hu and Chen engage in a contextual analysis by revisiting the role of three types of institutional investors (i.e. mutual funds, insurance companies and pension funds) in managing China's capital market and financial stability in the post-GFC era. To this end, they draw on empirical evidence from institutional investors and capital markets in selected Organisation for Economic Co-operation and Development (OECD) countries, dividing the latter into two groups, namely NASU — short for the Netherlands, Australia, Switzerland and the United Kingdom — and IGPS — Italy, Greece, Portugal and Spain — based on the markets' respective features. In addition to the above-mentioned countries, Chapter 3 singles out the US as a yardstick against which it assesses China's institutional investors, concluding that their role in 'emerging capital markets is thus not on a par with the role such entities play in developed countries'.

The next two chapters turn to enforcement issues. Tianshu Zhou and Wenjing Li in Chapter 4 consider how the Chinese Securities Regulatory Commission (CSRC) addresses insider trading. Zhou and Li argue that the CSRC's approach is broader than the American one, in that insider trading can be triggered by way of negligence and that the regulator's enforcement power is 'not always based solely on the relevant legislation'. Nevertheless, there are three major hurdles for enforcement here: the absence of judicial review, evidence collection and corruption by public officials. These obstacles lead Jiajia Dai, Shiting Feng and Wenming Xu to examine, in Chapter 5, the role of private enforcement of securities, by virtue of an empirical analysis. The so-called '2002 Notice on A/B share markets' issued by China's Supreme People's Court is a document that, for the first time, expressly allowed private securities litigations in certain types of cases. The authors' empirical data shows that institutional investors with sufficient resources place greater value on such a private enforcement mechanism. They also note the positive correlation between the efficiency of the judiciary and the willingness of firms to launch private actions.

Part II contains two chapters devoted to social and administrative regulations. In Chapter 6, Qi Zhou argues that the law and economics movement should not be a one-way street: lawyers and economists each have their competitive advantages that can complement each other. By way of several examples drawn from the contract law literature, Zhou identifies three key takeaways. First, lawyers can contribute to law and economics theory by improving economists' understanding of contract law and practice, thereby helping economists concentrate on important research questions. While economists are, according to the author, primarily concerned with the question as to how the party should respond to a given legal remedy, lawyers focus instead on which legal rules can best serve their clients' needs. In doing so, lawyers can also help correct misunderstandings as to the law, thereby enhancing the quality of the economic arguments. Third, from the perspective of regulatory design, lawyers can help assess the reform proposals advanced by economists.

In Chapter 7, Niels Philipsen directs the reader to consider the economic lessons from the EU State Aid policy for China. Methodologically, Philipsen joins the book's other contributors by revisiting the rationales underlying government subsidies from the perspective of law and economics. In his analysis, Philipsen not only considers the key factors that may justify the granting of aid (i.e. the coordination issue; externalities; asymmetric information; and market power) but also sheds light on equity concerns and public choice arguments. After reviewing major provisions on state aid under the 2007 Treaty on the Functioning of the European Union, as well as evolving European policy goals since the late 1960s, Philipsen distils lessons that may inform the Chinese government today. First, there are valid reasons to create a supranational control mechanism on government spending (for example, to avoid subsidy

wars). One should bear in mind, however, that conflicting policy objectives (for example, income redistribution or social policy) may justify subsidies at a national level — or, in the case of China, at a provincial or local level. However, such a control mechanism is not available in China's administrative law and the country's Anti-Monopoly Law plays a limited role. Second, one should never overlook the role of lobby groups, regulatory capture and public interests in this context.

Part III consists of three chapters, each analysing the Chinese approach to environmental protection and international regulation. A by-product of China's strong economic growth is the huge increase in environmental pollution, which China sees as a serious and urgent problem. In Chapter 8, Roy Partain and Michael Faure examine the regulatory framework governing carbon capture and storage (CCS) — one of China's primary methods of reducing greenhouse gas emissions. The authors evaluate existing public and private regulatory framework models for offshore CCS, concluding that China is well positioned to make efficient use of both types of frameworks, in order to manage their offshore CCS activities. These frameworks, moreover, largely address the regulatory requirements of the Kyoto Protocol. Creating regulations that follow these models will enable China to benefit from the Clean Development Mechanism financing tools available under the Kyoto Protocol.

In Chapter 9, Binwei Gui, Michael Faure and Guandong Xu conduct a regression analysis to test whether the Environmental Kuznets curve (EKC) hypothesis — which suggests that pollution follows an inverted U-shaped curve when measured against income growth — can be applied in the context of China. By examining four different types of pollutants, their findings demonstrate that the EKC relationship is established in regard to industrial gas and SO<sub>2</sub> pollutants; however, there is only a weak trend in CO<sub>2</sub> pollutants and no such relationship in terms of wastewater emissions. Second, the authors examine scale, composition and abatement as three channels through which income may influence pollution. The three-effect model — which includes all three channels — demonstrates that increasing pollution abatement measures actually *increases* net pollution, though the authors are concerned that their results may be skewed, due to China's data manipulation.

Finally, Chapter 10, written by Stefan Weishaar and Ruohong Chen, considers carbon labels in terms of legal and economic insights and the World Trade Organization (WTO) rules. As Weishaar and Chen point out, there are currently four carbon labels (Carbon Trust, Carbonfund, Indice Carbone, Climatop) produced by private entities that can indicate the environmental impact of a product. The authors provide insights as to the advantages and disadvantages of public and private regulation on carbon labels by way of a legal and economic analysis. Then, from an international trade law perspective, the authors apply the WTO rules to carbon labelling by focusing on, in particular, the Agreement on Technical Barriers to Trade Agreement.

The last two chapters, found in Part IV, conclude by mapping out a research agenda for future inquiries into regulatory reforms in China and the EU. Chapter 11, written by Jonathan Klick, critically reflects on an empirical approach to studying the Chinese regulatory system. Having traced the development of the law and economics field, Klick concludes that the use of natural (or quasi-experimental) research designs has by and large improved the credibility and the usefulness of law and economics as a scholarly approach. Klick also argues that field experiments can play a role in mitigating certain limitations, such as limited confidence on assumptions, or reliance on unsuitable shocks. He points to China's large population and various jurisdictional units as unique assets to engage such research.

Finally, the book's editors, Philipsen, Weishaar and Xu summarise in their concluding chapter the key findings of each earlier chapter along four dimensions: regulatory governance, actors, the relevance of interdisciplinary research, as well as a reform agenda and recommendations. Overall, the chapters in this book prove extremely cohesive. Such

cohesiveness allows a variety of interrelated themes to emerge from the edited volume as a whole. The book makes an excellent contribution to our understanding of the Chinese governance model and sheds light on an associated research agenda. I must, therefore, congratulate the editors on their success in producing such a wonderful and timely book.

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