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得獎專書：*Bestimmte Bindung unter Unbestimmtheitsbedingungen: Eine institutionelle Analyse zur Funktion der unbestimmten Rechtsbegriffe im Umwelt- und im Telekommunikationsrecht.*
(《不確定情境下的拘束：環境法與電信法領域中不確定法律概念功能之制度性分析》) Tübingen: Mohr Siebeck, 2013.

得獎簡評：

本書從法學方法論的角度，運用 Hans Kelsen 的理論，討論行政法總論的傳統議題：「不確定法律概念」，並選擇環境法及通訊法兩個特定法領域為具體的研究領域，兼具基礎及應用研究的價值。作者亦將「新行政管理」的觀點納入，增加了本書科際整合的面向。本書對於抽象的不確定法律概念之司法審查，試圖提出更具體的審查準則，並應用於特定領域，確具學術貢獻。尤值一提的是，本書由德國著名的 Mohr Siebeck 出版社出版，並已為德國法學者多方引用。不僅對於德國法學研究有其貢獻，對於我國法學之發展，也當會有長期影響。

得獎感言：

本書得以問世，首先必須感謝德國宏博學術基金會的慷慨獎助，讓我能有機會重返母校慕尼黑大學從事研究進修，專心寫作。其次要感謝我旅德期間的指導教授 Stefan Koriath，與當時的中研院法律所籌備處主任湯德宗教授，對本書寫作計畫的支持與鼓勵。此外也感謝輔仁大學鍾芳樺教授為本書初稿提供寶貴意見；以及本次專書獎評審委員，對本書研究成果的肯定與獎勵。最後感謝我的父母親，無條件支持我追求學術理想。



Bestimmte Bindung unter Unbestimmtheitsbedingungen: Eine institutionelle Analyse zur Funktion der unbestimmten Rechtsbegriffe im Umwelt- und im Telekommunikationsrecht

(Binding Force under Indeterminate Conditions: An Institutional Analysis of the Function of Indeterminate Legal Concepts in Environmental and Telecommunications Law)

by **Shu-Perng Hwang**

About the author:

Shu-Perng Hwang received her Bachelor's and Master's Degree at National Taiwan University (1997/1999), her LL.M. Degree at Columbia Law School (2001), and finally her Doctoral Degree at University of Munich (Ludwig-Maximilians-Universität München, Germany) (2004). She is currently Research Professor at Institutum Iurisprudentiae, Academia Sinica (Taipei, Taiwan). Her research field primarily includes constitutional law, administrative law, European law, theory of the state and legal methodology. In 2008, the Alexander von Humboldt Foundation in Germany granted her a research fellowship, which enabled her to carry out her research projects from February 2009 to October 2009 and from May 2011 to January 2012 at the University of Munich. Professor Hwang has been intensely engaged in international publication. For the past few years, her German and English articles have been published in prominent German law journals such as *Der Staat*, *AöR*, *Rechtstheorie*, *ARSP*, *Verwaltungsarchiv*, *ZStW*, *EuR*, *Rechtswissenschaft*, *KritV*, *DÖV* as well as the English journal *Common Law World Review*. Due to her numerous and high-quality publications, she has been invited to membership of the German Public Law Professors Association (*Vereinigung der Deutschen Staatsrechtslehrer*) since May 2013. She is also the winner of the Ta-You Wu Memorial Award of National Science Council (2006), the Junior Research Investigators Award of Academia Sinica (2011), the Outstanding Research Award of National Science Council (2012) as well as the Young Scholars' Creativity Award of Foundation for the Advancement of Outstanding Scholarship (2013).



About the book:

This book attempts to thoroughly reexamine the institutional function of the so called “indeterminate legal concepts” in light of German administrative law. In the contemporary society, characterized by rapid shifts and technological progress, the reformers’ view is that the executive, aided by higher level of expertise and capability to adapt, is better qualified and equipped in policy-making. This view poses a fundamental challenge to the traditional presuppositions in German administrative law. However, whether the administrative reform suggestions are helpful in reaching a proper balance between the executive expertise and the binding force of the law is subject to doubt. Based on a critical methodological approach inspired by Hans Kelsen’s *Rahmen*-theory, this book presents a critique on the semantic assumptions toward the indeterminate legal concept, the reserved room for administrative discretion, and judicial review. This is followed by pointing out the misunderstanding on the binding effects of the indeterminate legal concept taken by the court, and the resulting crisis to *Rechtsstaat* and democracy, utilizing recent issues faced in environmental law and telecommunication law in Germany to illustrate the points. This book argues that, although it is a truism that the application of an indeterminate legal concept has to be made concrete by an administrative action, this does not mean that the semantic “indeterminacy” represents a normative void; also, this does not mean that the management function of an agency cannot be performed independently from the aid of scientific expertise. The main reason lies in that, against the increasing specialization of all types of social functions, regulation should no longer be premised on semantically making certain the exact content of the regulated subject-matters; instead, the point is to ask the regulatory agency to act under the circumstances of high uncertainty, out of an appreciation of the mandate it receives from the legislature in performing its functions. From this perspective, the “indeterminacy” inherent in the indeterminate legal concepts has its institutional meaning, in that it authorizes and binds the administrative agencies at the same time. The key role of implementing such an institutional meaning depends on the judiciary in performing its functions in normative control.