

(Mis)perceptions of Xi Jinping Thought on the Rule of Law in the English Scholarship

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Abstract

Xi Jinping Thought on the Rule of Law has attracted much academic attention in the English scholarship. This paper explores how Western scholars perceive this thought to see whether they have correct perceptions. Relevant English literature suggests that most English scholars recognize the contributions made by president Xi Jinping to promoting the rule of law. Some researchers employ a liberal democratic approach to examine China's socialist rule of law, and the findings are therefore distorted. This paper concludes that Xi Jinping Thought on the Rule of Law is a milestone in China's march toward the rule of law.

Keywords

Xi Jinping Thought on the Rule of Law, English Scholarship, Legal System

1. Introduction

Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era was put forward by General Secretary Xi Jinping at the 19th National Congress of the Communist Party of China (CPC) on October 18, 2017 in Beijing (Xi, 2017). Six days later, this thought was added to the Constitution of the CPC. March 11, 2018 saw that thought inscribed in the Constitution of the People's Republic of China. The preamble to the Constitution contains a phrase—the socialist legal system, which was changed to the socialist rule of law. The thought covers a wide range of issues, economic growth, ecological development, good governance, foreign policy, and the rule of law, among others.

Xi Jinping Thought on the Rule of Law expands the scale and scope of law, making law enforcement more effective and efficient. This development has attracted much attention in both Chinese and English scholarship. This paper focuses on how Xi Jinping Thought on the Rule of Law has been perceived in Eng-

lish academia.

Marxist-Leninist legal concepts are fundamental components of Xi Jinping Thought on the Rule of Law. The rule of law goes hand in hand with the supervision of the exercise of power. Whenever a Chinese official, no matter how high-ranking, is punished, if he or she violates law. High officials can never be above the law. The CPC is to serve and protect the people. No predatory behavior of any officials is tolerated. Xi Jinping Thought on the Rule of Law is, by nature, the latest development of a socialist rule of law with Chinese characteristics. It aims at the comprehensive improvement of the rule of law and restriction as well as supervision of the exercise of power. Enforcement and enhancement of the rule of law lead to considerable decline in corruption and injustice. Development of the rule of law also boosts human rights. The rule of law is an integral part of the socialist democracy in China or China's socialist democratic system.

According to Article 1 of the Chinese Constitution, "the defining feature of socialism with Chinese characteristics is the leadership of the CPC." China's socialist rule of law is tied to this feature. The CPC's leadership guarantees the rule of law in China. This distinct institution has been largely misread by Western researchers, who adhere to Western liberal view and ignore China's circumstances. Western discourse fails to understand Xi Jinping Thought on the Rule of Law, as researches have been done from a liberal, capitalist perspective on the rule of law. Xi Jinping, as general secretary of the CPC, accepts the intrinsic value of the law and contributes much to the rule of law, culminating in the Xi Jinping Thought on the Rule of Law. This thought draws on traditional Chinese legal tradition and Chinese legal system. It also incorporates the teachings of Confucius, morality and virtue for example. The rule of law implies the rule of virtue. The CPC cadres and the people are expected to develop moral and virtuous behavior.

2. Judicial Reforms under Xi Jinping

President Xi Jinping has launched a series of judicial reforms to establish the rule of law in China. He initiated a massive anti-corruption campaign to reduce injustice in legal disputes, to eliminate abuse of power, and to safeguard the well-being of the people. Judicial reforms were made to boost the local judiciary over local party cadres. Measures were taken to professionalize judges. President Xi Jinping has promoted law-based governance and socialist rule of law. The state is more efficient in applying the law, and daily arbitrariness declines at the local level. The National Security Law came into force in 2015. People's congress at all levels is given more power in the legislative process. More laws will be passed. Law enforcement system is more efficient. The judiciary is increasingly professionalized, with specialized and professional legal teams. Plan on Building the Rule of Law in China (2020-2025) defined Xi Jinping Thought on the Rule of Law as made up of five components: enhancement of the CPC's centralized and unified leadership, scientific legislation, strict law enforcement, fair trials, and

law-abiding people. The Western understanding of the rule of law cannot grasp the defining features of China's socialist rule of law.

3. Perceptions of Xi Jinping Thought on the Rule of Law

Xi Jinping Thought on the Rule of Law has generated much academic interest in the English scholarship. Researchers investigate this idea from various perspectives, with insights and misperceptions. Insights are given by those who have much knowledge about China's socialist system, whereas misperceptions are caused by applying Western liberal view of the rule of law to Chinese circumstances. [Wilking and Love \(2020\)](#) use a national urban sample of 2100 Chinese residents to examine mass attitudes toward the rule of law. They find that corruption reduction is the most significant justification for strengthening the rule of law. People's income and experience with the courts also shape the justification people use for the value of the rule of law. The findings of this research support China's commitment to the rule of law under Xi Jinping. China's achievements have implications for the developing world. [Horsley \(2019\)](#) notes that Xi Jinping stresses the legitimating power of law. Xi has made law-based governance the core of the CPC's governance strategy. While acknowledging the progress in legal work under Xi Jinping, Horsley joins other Western scholars in groundlessly accusing China's top leader of bypassing some legal requirements. She fails to examine the rule of law against the backdrop of China's socialist democratic system. Xi Jinping Thought on the Rule of Law is intended to enhance the value of the law. Everyone must abide by the law to promote economic growth and social stability. The CPC and the state legal system are in fact an unity, but Horsley argues for a dual and contended relationship. Intraparty regulations are part of the state law. She does not recognize that the CPC leadership is the cornerstone of the rule of law in China.

President Xi Jinping strengthens the CPC leadership to promote the rule of law. [Peerenboom \(2015\)](#) investigates the CPC Central Committee Decision Concerning Some Major Questions in Comprehensively Promoting Governing the Country According to Law (the Decision), passed at the 4th Plenum of the 18th Central Committee of the CPC in October of 2014. His research finds that China is committed to establishing socialist rule of law with Chinese characteristics. China has not merely made legal reforms but also promoted rule-of-law culture among the CPC cadres and citizens. [Peerenboom \(2015\)](#) rightly points out that the Decision deals with judicial reforms, including the enhancement of the authority and independence of the courts, crackdown on judicial corruption. Smith's study tracks the development of the conception of the rule of law from 2002 to 2014 ([Smith, 2018](#)). The CPC leadership and the rule of law constitute an organic unity, according to the Party doctrine. [Smith \(2018\)](#) suggests that Xi Jinping contributes to the conception of the rule of law by clarifying the interconnection between the CPC leadership, the anti-corruption campaign and governing the country according to law. The rule of law means the CPC cadres

cannot interfere in law enforcement and that protectionism at local and ministerial level must be overcome. In the end, people do not want to break the law and cannot break the law. Rule of law and rule of virtue are inseparable in the Xi Jinping Thought on the Rule of Law. [deLisle \(2017\)](#) illustrates that law plays an important role in supporting market-oriented economy and promoting state governance. There is a growing demand for legally trained officials, judges and lawyers. Under president Xi Jinping, legal reforms have been made to increase accountability under law for officials. Law has more robust roles to play. [deLisle \(2017\)](#) identifies some challenges facing law reform in the new era.

Research by [Trevaskes \(2018\)](#) finds that governing the nation according to law is politically significant in the new era under Xi Jinping. It is necessary to ensure the CPC leadership over all processes of law-based governance. Governing the nation in accordance with law contributes to the great rejuvenation of the Chinese nation and the enhancement of the CPC's credibility. In early 2015, president Xi Jinping said that "law is the embodiment of the Party's key proposition and the people's will" ([Xi, 2016](#)). The people are lawmakers and justification for law. The law manifests the people's will. The leadership of the CPC represents the people in the whole process from legislation to law enforcement. [Trevaskes \(2018\)](#) mentions that president Xi Jinping governs China through law and moral virtue. Supervisory mechanism is strengthened to prevent corruption. All civil servants must comply with relevant laws and regulations. President Xi Jinping is determined to build the rule of law by reducing local official's authority over the legal system, promoting legal professionalism, and boosting the CPC's authority in legal issues ([Zheng & Shan, 2015](#)).

While the world is dominated by Western liberal democratic conception of the rule of law, we have our own conception of the rule of law, as evidenced by Xi Jinping Thought on the Rule of Law. We uphold socialist rule of law with Chinese characteristics. General secretary Xi Jinping seeks to improve the norms and practices throughout the judiciary through his thought on the rule of law. Most researches recognize the advancement in professionalism of the judiciary, efficiency and justice in the judicial process. Socialist democracy is largely different from liberal democracy. We will never turn toward liberal legality.

4. From Legal System to the Rule of Law

The change was made in the amendment to the Chinese Constitution at the 13th National People's Congress on March 11, 2018 when Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era was specifically written into the Constitution. This change has been given little attention by Western scholars. The term legal system enjoys a long history in China, whereas the rule of law is a modern term that has much to do with the Western discourse but has been sinified to suit Chinese legal culture and tradition. *The Book of Rites (Li Ji)* records "restoration of the legal system (*xiu fazhi*)" ([He & Qi, 2018](#)). The term legal system refers to the China's existing laws and regulations. It also means a

dynamic process of the overall legal system composed of legislation formulation, revision, enforcement and supervision. Since every country has a legal system, legal system is a neutral term.

The rule of law, by contrast, is not originated in traditional Chinese culture. This idea is heavily influenced by the Western tradition and sinified to suit Chinese conditions, ending up with the Chinese Marxist approach. Since the reform and opening-up was launched in 1978, there has been a growing demand for a robust rule of law to facilitate the operation of the socialist market economy. But the rule of law should be adapted to China's socialist system by removing its Western liberal and capitalist dimensions. The Chinese Marxist approach to the rule of law integrates China's long legal tradition and the sinified Marxist ideas. This distinct Chinese approach makes socialist rule of law, which consists of both sinified Marxist tradition and China's legal development to undergird Chinese socialist system.

The shift from legal system to the rule of law—one word difference in Chinese character but the same in pinyin as *fazhi*—is a big stride in Chinese legal development. The legal system denotes a system of laws, including constitution, laws, judiciary, and legal profession. The rule of law deals with the principles of the legal system, such as the supremacy of law, justice, and equality of law. Every country has its own legal system but does not necessarily have the rule of law. The rule of law means everything from economy and politics to ecology and governance is subject to the law. The law has the supreme authority and everyone is equal before it. Clearly, the legal system and the rule of law concern distinct sense of meaning. The rule of law offers principles and framework under which the legal system functions smoothly. The rule of law enables the legal system to improve further. If a legal system cannot embody the rule of law, the rule of law is meaningless. The legal system is foundation of the rule of law and the rule of law is the goal the legal system seeks to achieve.

4.1. The Rule of Law and the Rule of Virtue

The sinified rule of law is produced by incorporating Chinese legal tradition and removing the capitalist as well as liberal sense. Socialist rule of law is different from its capitalist counterpart, as law is part of superstructure of an economic base.

Confucianism and Legalism in traditional Chinese culture contribute to the rule of virtue and the rule of law respectively. A group of pre-Qin dynasty scholars known as the Legalists argued for governance according to law as the basis. Everyone should follow the law with no exception. This idea was based on the perspective that human nature is evil and thus called for stringent punishments to maintain a good social order. The Legalists are sharply criticized for harsh punishments. The Qin Dynasty (221-206 BCE), the first dynasty that unified China, adopted Legalist ideas but was overthrown soon. The harshness of laws was blamed for this dynasty's overturn. What should be noted is that this Legal-

ist tradition is significant for a government to eliminate corruption and ensure stability for socioeconomic improvement.

Confucianism, on the other hand, emphasized virtue complemented by legal sanction. The key virtues are benevolence, faithfulness, righteousness, propriety, and wisdom, which enables harmony and stability in society. As Confucius put it, “Guide them with government orders, regulate them with penalties, and the people will seek to evade the law and be without shame. Guide them with virtue, regulate them with ritual, and they will have a sense of shame and become upright” (Confucius, n.d./2007: p. 20). Confucius emphasizes rule of both virtue and ritual or propriety. But the Confucius’ ideal of a virtuous ruler, administrator of law, may bend the law. Law and virtue can be related to each other in a dialectical way, as they are equally important for good governance. Virtue can be seen as positive whereas punishment as negative. Though virtue is more vital than the sanction of law, the latter is indispensable to every society. The socialist rule of law integrates both law, the Legalist emphasis, and virtue, the Confucian tradition.

4.2. Governance According to Law

China’s approach to governance is law based or governed according to law. The theory of law is thus related to the practice of governance in accordance with the law. In a report to the 15th National Congress of the CPC, the then general secretary Jiang Zemin (1997) put forward the concept of governing the country according to law and building a socialist rule of law country. Hu Jintao (2012), Jiang’s immediate successor, described the rule of law as the fundamental way of ruling the country in a keynote report to the 18th National Congress of the CPC, which saw Xi Jinping elected as the new General Secretary of the CPC. Two years later, the CPC Central Committee (2014), with general secretary Xi Jinping as the core leader, issued a statement on promoting the four comprehensives, the rule of law as a major component. This development laid a good foundation for further promotion of the rule of law in a new era.

China’s rule of law is socialist, largely if not entirely different from Western counterpart. First, the rule of law ensures the people as masters of the country. This means equal rights before the law, social justice, and common prosperity. The legal system is well administered. Secondly, the rule of law entails equality before the law. Everyone, from the Central Committee members to the common people, is subject to the law. As Xi Jinping (2017) rightly noted in his speech at the 19th National Congress of the CPC: “We must promote the rule of law and work to ensure sound lawmaking, strict law enforcement, impartial administration of justice, and the observance of law by everyone” (p. 16). Thirdly, the rule of law enables each component of the socialist system to function smoothly. Fourthly, the rule of law regulates and supervises the exercise of power by the CPC and other governing bodies. Fifthly, the rule of law is complemented and reinforced by the rule of virtue. In other words, the rule of law and the rule of

virtue is mutually reinforcing. According to Xi Jinping (2012), “Law is written morality, while morality is inner law. We should persist in combining the rule of law with the rule of virtue.” In other words, ruling the country according to law is combined with ruling the country according to virtue. Sixthly, the rule of law promotes social harmony and stability, conducive to socialist modernization and the Chinese dream of the great rejuvenation of the Chinese nation. Last but in fact most importantly, the rule of law rests on and strengthens the CPC leadership. The CPC functions in a comprehensive legal structure covering all realms. The English scholarship takes the Western either-or approach and puts the CPC and the law in opposition to each other. Western scholars are obsessed with the question of whether the CPC is above the law or vice versa. Chinese scholars, however, agree on the unity between the CPC and the rule of law. The leadership of the CPC guarantees the rule of China by law. And ruling China by law is the approach the CPC takes to lead the people to manage state affairs and the strategy the CPC takes to rule or govern China. The law and the CPC do not oppose but strengthen each other in the governance of China.

4.3. Promotion of the Rule of Law under Xi Jinping

General secretary Xi Jinping has made distinct contribution to democratic centralism by further promoting the rule of law. He stresses the need for improvement of the CPC’s leadership or governance through legal procedures of the rule of law (Xi, 2015, 2019). He also emphasizes the unity of CPC’s leadership, the rule of law, and the people as the masters of their own country. His thought on the rule of law guarantees the authority of the Constitution and laws, safeguards people’s rights and interests, ensures social justice and national security. When policies made by the CPC become state laws, law implementation is to administer the CPC’s will, and the implementation of the CPC’s policies is to act according to the law (Xi, 2015). All the bodies of state power are independent and responsible, abiding by the Constitution and laws. General secretary Xi Jinping (2012) puts emphasis on the role of law when he addresses exercise of law according to law and governance of the country according to law. The rule of law is vital to democratic centralism in the governance of China. But weak spots still exist in legislation, law enforcement, and the judiciary (Xi, 2019). General secretary Xi Jinping has set 2035 as the target year for fully building the socialist democratic system and the key practice of democratic centralism. By 2035, socialist rule of law with Chinese characteristics takes shape.

5. Conclusion

The rule of law concerns the statutory process between the CPC and the government. The problems with this process have largely been resolved thanks to general secretary Xi Jinping’s fresh perspectives on the rule of law. China’s socialist rule of law is deeply rooted in traditional Chinese.

As Xi Jinping points out, “the most reliable and effective system is one that

takes root in its own soil and draws on abundant nutrients.” The socialist democracy with Chinese characteristics is feasible, viable and efficient, because “it grew out of the soil of Chinese society” (Xi, 2014: p. 286). This democracy must be deeply rooted in China’s society in order to thrive in the future.

We will never accept the rule of law in the Western liberal sense and never adopt Western-style capitalist democracy, because they do not fit into China’s conditions and will lead to chaos and anarchy. China’s socialist democracy is most effective in maintaining long-term stability. There is an organic unity between the people as masters and the leadership of the CPC. This democracy promotes fruitful interactions between state and society, which ensures peace and stability in society. China’s socialist democracy, socialist rule of law as one component, contributes to economic growth, political stability, social harmony and unity of nationalities.

Western scholars take a liberal view and see the CPC and state as opposition to one another. This approach cannot and will not grasp the significance of China’s socialist rule of law in general and Xi Jinping Thought on the Rule of Law in particular. Xi Jinping Thought on the Rule of Law is the latest development of the China’s concept of the rule of law. This thought provides an alternative conceptualization of the rule of law, unlike the Western liberal approach. The West has sought to universalize its idea of the rule of law to the rest of the world. As discourse has or is power, the Western narrative wants to gain and retain global dominance to the exclusion of other alternatives. Xi Jinping Thought on the Rule of Law promotes China’s discourse on the rule of law internationally, as the existing international legal system is dominated by the West. This international power structure should be changed. In a word, Xi Jinping Thought on the Rule of Law is a milestone in China’s march toward the rule of law.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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