

LEGALITY OF RULE OF LAW WITH CHINESE CHARACTERISTICS: A CASE OF “ULTRA-SINOISM”

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The legal progression in China is portrayed negatively by western scholars who often argue that the state institutions in China are subordinate to the control of Chinese Communist Party's leadership which makes these institutions politically insignificant. We consider that the legal progression in China has an instrumental role in achieving "Harmonious Socialist Society." The purpose of this thesis is to provide an analytical literature review of scholastic work to explain the legality of rule of law in China and to elaborate the outcomes of China's recent legal developments. This paper has two main subjects. First, it examines the nature of law and rule of law in China through the prism of different legal theories. Secondly, by arguing from different political theories, it explains the necessity of customized legal system in China for establishing a Harmonious Socialist Society. By giving different examples from contemporary China, this thesis argues that the legality of the rule of law in China ought to be understood in the context of China's economic and social progression rather than the western legal scholarship. China's economic progress demands a customized legal system. In our thesis, we claim that the regular upgradation of laws and introduction of constitutional amendments in China, should be recognized as important achievement which is required for the institutional innovation. Legal progression in China during last decade perfectly fit into the framework of "Socialism with Chinese Characteristics" and is very crucial for building a harmonious socialist society. It is vivid from China's economic growth and developed international relations. Finally, this paper suggests that the Chinese legal progression can be taken as successful example of legal experimentalism.

Keywords: rule of law; legality; socialist society; legal philosophy; Chinese law.

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Introduction

The Western perception of Chinese Legal System is that the Rule of Law in China is authoritative. Since the mid-2000s, Chinese legal progression has been more and more control oriented and all the state intuitions have surrendered to the authority of law in China. The rule of law in China is portrayed with negative connotations and often argued that the state institutions are subordinate to the control of Chinese Communist Party's leadership which makes these institutions politically insignificant. We consider that the law in China has not only an instrumental role to maintain an order in the society but a substantive role which is to achieve Harmonious Socialist Society.

Taisu Zhang and Tom Ginsburg have offered a very different take on current legal developments.¹ They argue that, contrary to conventional accusations that China has "turned against law," Chinese politics have become substantially more law-oriented over the past 5 years, and that several core legal institutions, including the judiciary and the constitution, are now more politically significant than at any point in the 70-year history of the People's Republic of China (PRC). The CCP under Xi Jinping has indeed centralized power and control to an almost unprecedented extent, but

¹ 2018 Constitutional amendments, Anticorruption campaign, etc.



it has done this in a highly legalistic way, empowering courts against other state and Party entities, insisting on legal professionalism, and bringing political powers that were formerly the exclusive possession of the Party under legal authorization and regulation. In fact, nowhere is this “legalism” – defined here as a willingness to both operate in accordance with the written law and to strengthen the institutions charged with its enforcement – more powerfully expressed than in the 2018 constitutional amendments. The amendments show that, even if China is deepening its dictatorship, it is nonetheless doing so through harnessing the organizational and legitimizing capacities of law, rather than circumventing it.²

In our thesis, we argue that the legality of rule of law in China is indeed an important progress which was required for the institutional innovation in China. It also fulfils all the criteria of the morality of the law and justifies the authority of the law. Moreover, legal progression in China during last decade perfectly fit into the framework of “Socialism with Chinese Characteristics” and is very crucial for building a harmonious socialist society.

The legal progression which has been observed during last years in China is to strengthen the interaction between party, society and state. These developments in China’s legal domains have changed the delicate balance between different fractions of Chinese institutions including between the Chinese society and the party. They have also given a new direction to the Chinese politics in domestic and international arenas. It is too early to judge the outcomes of China’s legal development. We think that the commentaries of Western scholars on rule of law in China and legal progression (that they are a useless effort) are illogical because it is too early to be judgmental about it. What we can do is the evaluation of the Chinese legal progression in recent years and make a conclusion based on the different indicators used to judge the development of a country such as economy. It is the demand of academic integrity to evaluate the China’s legal progression instead of declaring it as a complete failure. The evolution of the legal progression in China is not only a successful attempt but also harmonizes the Chinese leaderships’ ideology of Socialism with Chinese Characteristics. Until quite recently, there was genuine uncertainty about the role that law could play in political and social life – and indeed a long tradition of overriding or ignoring legal institutions in modern Chinese politics – legal institutions have now assumed a position of central importance and, in all likelihood, will continue to gain stature moving forward.³ In comparison to Chinese legal history, this is the time when rule of law in China is vividly flourishing and evident from its economic development and raise in living standards of ordinary populates.

² Taisu Zhang & Tom Ginsburg, *Legality in Contemporary Chinese Politics*, Virginia Journal of International Law (forthcoming, 2019) (Jul. 10, 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3250948.

³ *Id.*



Legal and political scientists often consider that the rule of law and strong legal institutions are very important for the smooth functioning of a state. But in case of China, the strong legal system is pursued as a problem by Western scholars. All scholars including Western ones are agreed that the legal system of a country is certainly very important for maintaining an order in nation, but strong legal system of China is considered by Western scholars as a tactic to legitimize the authoritarianism. Chinese example shows, in particular, that legal institutions, and even genuine commitment to legality in governmental operations, can empower authoritarianism just as well as constrain it. In fact, not only has the Party leadership under Xi acknowledged the political significance of law, it has actively tried to strengthen it, and has reaped immense benefits along the way. Law is strengthening both Party and state in China. Nonetheless, over the long term, the sociopolitical entrenchment of legal institutions may very well constrain the Party's exercise of power. If we closely observe the President Xi's anticorruption campaign, we can say that it has already begun to do so – even if these constraints do not necessarily conform to the normative expectations of liberal democracies.

In our paper, we first try to find the theoretical grounds of the legality of the rule of law in China. How the authority in Chinese legal system can be grounded in established legal scholarship? And why legality of the rule of law in China goes hand in hand with socialism with Chinese characteristics?

Scholars have already tried to highlight the broad and powerful trends in recent Chinese politics towards legality, and then provide several reasons for its emergence. They have laid out the wide array of political and institutional gains made by the judiciary since Xi Jinping took power in 2012, many at the expense of other governmental entities: growing financial independence from local governments, expanding jurisdiction over administrative disputes, the creation of circuit courts, greater statutory interpretation authority, substantially stronger enforcement powers, and heightened levels of legal proficiency and professionalism among judges. Their claim is that the courts have never been as independent, professional, and powerful in PRC history as they currently are.⁴ As many scholars have pointed out, the political position of the judiciary has traditionally been very vulnerable and may even have been in decline as recently as 5 or 6 years ago. Under Xi, however, the Party leadership has made a concerted effort to empower the judiciary against other governmental entities, engineering a quick and dramatic turnaround in its

⁴ For a brief history of the development of courts up to 1978, see Randall Peerenboom, *China's Long March Toward Rule of Law* 27–54 (Cambridge: Cambridge University Press, 2002). Clearly, the status of courts rose substantially after 1978, and continuously so until 2007–2008. See Shen Kui, *Commentary on "China's Courts: Restricted Reforms,"* 191 *China Quarterly* 639 (2007). See also Jonas Grimheden, *The Reform Path of the Chinese Judiciary: Progress or Stand-Still?*, 30(4) *Fordham International Law Journal* 1000 (2006); Ling Li, *The Chinese Communist Party and People's Courts: Judicial Dependence in China*, 64(1) *American Journal of Comparative Law* 37 (2016).



institutional status and capacity.⁵ Thus we will try to explore if the authority of law in Xi government has any pragmatic importance for Chinese society and if it is a step towards achieving Harmonious Socialist Society.

Secondly, it is important to see that if these legal developments are justified according to the morality of law? Why Chinese leadership has authority to established customized rule of law with Chinese Characteristics in China? And if morality of law in China fits into the establish scholastic frameworks? It was common observation of legal scholars that in China, practice proceeds the policy and policy proceeds the law. Constitution was a politically insignificant document, which now carries substantial and steadily growing weight after the recent amendments. The 2018 constitutional amendments, which ended term limits was an attempt to solidify Xi Jinping's personal authority through constitutional legitimation also has pragmatic importance for China which is clear from China's strong institutions. But there is a need to explore the morality dimension of it. How far this amendment has contributed to the centralized decision making in China and does it have any significant in the context of Harmonious Socialist Society?

Up till now, scholars have tried to comment on the economic progression of China by giving empirical evidences and tried to relate Chinese economic progress with Chinese legal progression. But this thesis makes several contributions to the Chinese legal scholarship by providing a theoretical framework which justifies the importance of judicial and constitutional progression in Xi Jinping's era. It sheds a light on the importance of rule of law in China and demonstrates that the rule of law in China is actually a key to the China's economic progression. Moreover, this thesis tries to create a link between different elements such as economics, social, governing ideology of Chinese society with law and by using the theoretical criteria set by legal scholarships in order to proves that the relationships of these different dimensions in producing successful results in the form of a harmonious socialist society. Finally, on a more theoretical level, this thesis seeks to expand our understanding of present condition of socialism with Chinese characteristics.

Chapter 1

1.1. Legal Progression in China

The rule of law as a legal terminology is very common in western legal scholarship which usually refers to the control of society by using law. Law is considered as a set of rules which applies on all the people living in the state, no matter with which social, political and economic class they belong to. Law spreads its tentacles on all the areas of life and regulates the interactions among individuals and institutions. One of the most important features of law itself is rule of law which means that law

⁵ Zhang & Ginsburg 2019.



is independent and free from interference of any influence by any person, religious or cultural norms and public or private institutions in the country.

It is unavoidable for Chinese legal system, being a socialist country to not take the influence of dynamic nature of society. Scholars that have written on the rule of law in China have noted that the Chinese system, more than many other socialist legal systems, for long time downplayed the role of statutes, regulations, and of the law, in general, because of the idea that such centrality of law is a Western-created bourgeois superstructure, not useful for the cause of socialism⁶. In the traditional socialist view, law is a tool available to the political authority for government and policy ("rule by law"); it is

impossible to understand Soviet law, or communist law generally, without taking into account its political dimension, or to be more explicit, without recognizing that law under those circumstances was almost totally dependent on political determinants.⁷

The legal progression in capitalist, market based economic systems have propagated the concept of the rule of law. These economic systems are the representatives of liberal democratic political regimes which are common in West. That is the reason that rule of law is often considered as a western idea. However, after much debate, and many public speeches by the political leadership, China enacted in 1999 a Constitutional amendment⁸ making a reference to a concept akin to that of the rule of law.⁹ The introduction of the idea of rule of law in Chinese constitution raised questions among legal scholars working in the area of comparative law that how Chinese understanding of rule of law is in accordance with the orthodox understanding of the rule of law especially emerging from the West.

At present, there is a consensus among scholars that the Chinese notion of rule of law is different from the Western concept because of two reasons.¹⁰ First, in China,

⁶ Good books on the English language on the legal system of China are, for instance, *Introduction to Chinese Law* (W. Chenguang & Z. Xianchu (eds.), Hong Kong: Sweet & Maxwell Asia, 1997); Albert Chen, *An Introduction to the Legal System of the People's Republic of China* (Hong Kong: Butterworths, 1998; 2nd ed. 2004) especially the latter with a copious and relatively recent amount of Chinese legal literature cited therein; specifically on the issue of rule of law in China, a very thorough and accurate analysis is made by Peerenboom 2002; see also *The Implementation of Law in the People's Republic of China* (J. Chen et al. (eds.), The Hague; London; New York: Kluwer Law International, 2002).

⁷ Ignazio Castellucci, *Rule of Law with Chinese Characteristics*, 13(1) *Annual Survey of International & Comparative Law* 35 (2007) (Jul. 10, 2020), available at https://pdfs.semanticscholar.org/41b3/c82569f07031deef8baf4c52d2a505d4bfe4.pdf?_ga=2.11297524.1380578051.1605932267-2019624016.1605932267.

⁸ Constitution of the People's Republic of China, Amend. 3 (1999). Amendment 3 added a new section to Article 5 of the Constitution, stipulating that "The People's Republic of China practices ruling the country in accordance with the law and building a socialist country of law."

⁹ Castellucci 2007.

¹⁰ *Id.*



the law and politics are difficult to identify separately because of China's socialist experience and the role of Communist Party of China. Secondly, China has a unique history which impacted on the legal progression in China. The Chinese historical experiences and perception of law among its populates have heavily influenced on the Chinese concept of rule of law. We have also mentioned in upcoming chapters, some of the examples from Chinese history and their rule in establishing contemporary Chinese legal mentality.

Looking at the history of legal progression in China especially with reference to the Chinese constitution, we can identify a number of occasions where China has introduced the Western legal connotations in order to comprehend and to deliver a true legal sense to its citizens and the other countries. For example, in 1993, an amendment in Chinese constitution declared it as "Socialist Market Economy."¹¹ Well-known references to a new kind of socialism "with Chinese characteristics" was also introduced in 1993 in the Preamble of the Country's Constitution; similar references, also found in the Communist Party Constitution and in the legislation, indicate the influence of the Chinese history and context (on economy, politics and legal conceptions) as the second factor to be considered.¹² These historical evolution of law in China and the velocity of these amendments in constitution reached to their peak in 2018.

In this chapter, we have tried to highlight some of the peculiarities of rule of law in China and tried to frame them as Rule of Law with Chinese Characteristics to contextualize Chinese rule of law with the demands of Chinese society. For this purpose, we have tried to highlight interaction between legality and rule of law, morality of law and customization of authority in China. Finally, we have argued that the content of law in China is to establish a social contract which would otherwise fail if not governed by the law as per the demands of Chinese state of nature.

1.2. Nature of Law in China

There is a complex relationship between Law and Morality because both have been used interchangeably in historical context. But the nature of their interconnection became vivid when scholars tried to explore the concept of rule of law. The classic understanding of law and the rule of law can be comprehended by two approaches. One approach views law as consisting of coercive and empowering laws, and the rule of law as a purely formal concept. The other sees the rule of law as a substantive concept, in which the substance of the laws is part of the validating conditions of law. Which of these two views of law and the rule of law is in operation in China?

¹¹ See *Id.* Amend. 2, provision 7 (amending Article 15 in 1993: "The state has put into practice a socialist market economy. The State strengthens formulating economic laws, improves macro adjustment and control and forbids according to law any units or individuals from interfering with the social economic order"). A further reference to socialist market economy is made in the Preamble as revised after Amendment 3 of the Constitution in 1999. *Id.* Amend. 3.

¹² Castellucci 2007.



Affects how laws can diminish or enhance the freedoms of people and legitimize the authority. It is also important to have a bottom up approach towards both of these concepts to see the contemporary Chinese legal practices if they are harmonizing with rule of law being a formal concept or rule of law being a substantive concept. For this purpose, we have explored the nature of law and rule of law in China.

The concept of law is often theoretically divided along the lines of natural law and legal positivism.¹³ This dichotomy carries over to writings on the concept of the “rule of law,” which are frequently classified as either formal theories or substantive theories, although most do not fall into line so neatly.¹⁴ The object study on this issue is one which discusses the concept of the rule of law from both formal and substantive perspectives.¹⁵ In China, the law is formal one but why is it so that the concept rule of law is making its place in legal discourses? The reason may be that rule of law is gaining a status of being formal from previously being substantive or vice versa. To explore this phenomenon, we need to look into the theoretical frameworks provided by legal scholars and then try to put Chinese Law and Rule of Law through the prism of these theoretical frameworks.

According to the famous legal philosopher H.L.A. Hart, the laws can be divided into primary rules and secondary rules. Secondary rules are those which initiate mechanism to create, change or repeal the primary rules.¹⁶ H.L.A. Hart’s lectures gave new expression to the old idea that legal systems comprise positive law only, a thesis usually labeled “legal positivism.” Hart did this in two ways. First, he disentangled the idea from the independent and distracting projects of the imperative theory of law, the analytic study of legal language, and non-cognitivist moral philosophies. Hart’s second move was to offer a fresh characterization of the thesis. He argued that legal positivism involves, as his title put it, the “separation of law and morals.”¹⁷

On the other hand, John Austin proposed a Command Theory in which he argued that the law can be seen as a command issued by a sovereign and backed by threat of sanctions. There is a third explanation by John A. Bruegger for categorization of laws which divide laws into coercive, empowering and combination of both.¹⁸ John himself says that his explanation of division of law is same as of Hart’s. Hart’s division of laws

¹³ Lon L. Fuller, *The Morality of Law* (2nd ed., New Haven: Yale University Press, 1969); H.L.A. Hart, *The Concept of Law* 213 (2nd ed., Oxford: Clarendon Press, 1994).

¹⁴ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2012).

¹⁵ John A. Bruegger, *Freedom, Legality, and the Rule of Law*, 9(1) Washington University Jurisprudence Review 81 (2016) (Jul. 10, 2020), available at http://openscholarship.wustl.edu/law_jurisprudence/vol9/iss1/7.

¹⁶ Hart 1994, at 213–214.

¹⁷ Leslie Green, *Positivism and the Inseparability of Law and Morals* (Jul. 10, 2020), available at <https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-83-4-Green.pdf>.

¹⁸ Bruegger 2016.



into primary and secondary rules can exist alongside this classification of coercive and empowering laws. Primary rules can take the form of coercive laws, empowering laws, or a combination of the two, as shown above. Secondary rules are “metalaws”: they are laws about laws. Secondary rules set forth the conditions through which laws are created, changed, or repealed, and they are usually empowering laws.¹⁹

Hart’s division of laws doesn’t mean that he wanted to separate law from the morality. But he actually meant that law is based on the morality thus cannot be combined with it. Morality sets ideals for law, and law should live up to them. Nor did he mean that law and morality are separated. We see their union everywhere. We prohibit sex discrimination because we judge it immoral; the point of prohibiting it is to enforce and clarify that judgment, and we do so by using ordinary moral terms such as “duty” and “equality.” To the extent that it suggests otherwise, the term “separation” is misleading.²⁰ To pacify the literal-minded, Hart might have entitled his lecture “Positivism and the Separability of Law and Morals.”²¹ That captures well his idea that “there is no necessary connection between law and morals or law as it is and ought to be.”²² But is not like this.

Lon Fuller refused to take Hart at his word. He thought that Hart was recommending that “law must be strictly severed from morality” – if Hart was not, then why did he say that it is morally better to retain a broad concept of law, one that applies even to wicked legal systems? And anyway, if positivists were not recommending separation, then what advice were they offering to politicians who have to design constitutions or judges who have to decide cases? The answer is that legal positivists were not offering advice. They were trying to understand the nature of law. Fuller’s unwillingness to credit that project flowed from his apparent conviction that it could amount to nothing better than “a series of definitional fiats.” Fuller was certainly not the last to have doubts about the prospects for an explanation of the concept of law, nor the first to think it more important to change the world than to interpret it. The only surprising thing was that Fuller also supposed that world-changing could be brought about by philosophy-changing. He thought that jurists could improve society by treating philosophies of law not as efforts to understand social reality but as “direction posts for the application of human energies.” In which direction should they point? Toward a much greater “fidelity to law.”²³ One of Fuller’s great contributions to legal philosophy was to offer the first fairly comprehensive analysis of the internal excellences of law or the virtues that inhere in its law-like character: its “inner” or “internal” morality – a morality, he claimed, that makes law possible.

¹⁹ Bruegger 2016.

²⁰ Green, *supra* note 17.

²¹ *Id.*

²² *Id.*

²³ *Id.*



Joseph Raz noticed that the separability thesis is logically independent of the idea that legal systems contain positive law only:²⁴ The claim that what is law and what is not is purely a matter of social fact still leaves it an open question whether or not those social facts by which we identify the law or determine its existence do or do not endow it with moral merit. If they do, it has of necessity a moral character.²⁵

Usually, law makers try to find explanation of positive law into natural law. In China, law is coercive and empowering whereas Rule of Law has a formal status. It is simply because of the reason that laws are not emerging from society most of time, but laws are governing the society. Even in Fuller's words, the inner morality of society is well understood by China's leadership thus they are able to take a lead role in developing laws for making their society more harmonious. In our understanding, positive law in China is grounded in progress of society well understood by its leadership and not purely by natural law. This can be referred as nature of law in China. If we want to put this into a pragmatic theoretical framework for our own understanding, we can say that the law in China is a combination of Austin, Fuller and Hart's explanations which differs only at the point where morality articulates.

1.3. Rule of Law in China

Rule of Law is one the most important politico-legal connotation which represents a cluster of ideas constitutive of modern politico-legal morality. The other similar concepts are democracy, human rights, free market economy, globalization, etc. Especially in contemporary western journalistic writings, this word "Rule of Law" is often encountered as a matter of reproach, occasionally as an affirmative aspiration, almost always as a benchmark of political legitimacy.²⁶

Fuller talked about the virtues in his book, *The Morality of Law*: the prominence of general norms as a basis of governance, the clarity, publicity, stability, consistency, and prospectivity of those norms, and congruence between law on the books and the way in which public order is actually administered.²⁷ He further emphasized the interconnectivity and dependency of these virtues.

The Rule of Law is a multi-faceted ideal, but most conceptions give central place to a requirement that people in positions of authority should exercise their power within a constraining framework of public norms rather than on the basis of their own preferences, their own ideology, or their own individual sense of right and wrong. Beyond this, many conceptions of the Rule of Law place great emphasis

²⁴ Green, *supra* note 17.

²⁵ Joseph Raz, *The Authority of Law: Essays on Law and Morality* 38–39 (Oxford: Clarendon Press, 1979).

²⁶ Jeremy Waldron, *The Concept and the Rule of Law*, New York University School of Law, Public Law & Legal Theory Research Paper Series, Working Paper No. 08-50 (2008) (Jul. 10, 2020), available at <http://ssrn.com/abstract=1273005>.

²⁷ Fuller 1969, at 39 & 46–91.



on legal certainty, predictability, and settlement, on the determinacy of the norms that are upheld in society, and on the reliable character of their administration by the state. It is said that citizens need predictability in the context of their lives and businesses. There may be no getting away from legal constraint in the circumstances of modern life, but freedom is possible nevertheless if people know in advance how the law will operate and how they have to act if they are to avoid its having a detrimental impact on their affairs.²⁸

The authority in China (CPC Leadership) is exercising its power within a constraining framework of public norms because of the simple reason that Party is the Public. The membership system of CPC and the structure of party is deeply rooted in all spheres among all fractions of society. Communist Party of China is the World's only well-organized and the most disciplined political structure. The preferences of party members are the preferences of ordinary people, party's ideology is the ideology of the people of China, and party's sense of right and wrong is not imported from outside of China but is the outcome of feedback received by the ordinary populates of the China. As for reliability on law is concerns, it is obvious that people would trust on someone who was one of them and now is holding a decision-making position. He has progressed and reached to this authoritative position step by step on the bases on his own hard work and demonstration of his loyalty with public. As for predictability is concern, the Party leadership is in a better moral position to decide on the behalf of their own fellow citizens because these holding leadership positions were once one of them and very well aware of the ground realities. Thus, they know their spectrum of freedom and its utility in Chinese context.

On the other hand, there is a western narrative about rule of law in China. They often refer it as rule by law instead of rule of law and criticize on it by claiming that the legal system of China is not transparent. Western concern is that during China's first three decades of communist rule, China has experienced arbitrary governance and social control that heavily relied on "leaders" who arose from peasant wars. They think today as well; the personal orders of administrative and Party officials often take the place of legal rules and procedures. China's human rights record in west remains an object of international criticism and disputes because of allegedly Chinese practices such as the imprisonment of some citizens for political conscience and the suppression of free speech. They say that during the past twenty years China has shown progress in implementing the rule by law. Because according to the West, the legal circumstances of the country are complicated, and research and evaluation of China's legal system and culture are difficult for them.²⁹ While commenting on these legal progression in China, these western critics forget that it is the China who brought half of its population out of extreme poverty. And this poverty was that which leads to majority of the human rights violations according to west's own parameters.

²⁸ Waldron, *supra* note 26.

²⁹ Gu Su, *Progress and Problems with the Rule of Law in China*, 34(3) Contemporary Chinese Thought 55 (2003).



At this point if it is difficult to judge that China is successful in implementing rule of law but there is a vivid evidence that China is in the midst or even very close to the establishment of rule of law. This rule of law measures up favorably to the requirements of the theory of rule of law. The most important thing is that China is backing up its rhetoric of rule of law with actions. The argument that China's legal transformation towards rule of law is actually rule by law, banishes when we see the pragmatic outcomes favoring China's ordinary populates. Rule of law in China is actually its functioning legislative system which is independent, professional and authoritative at national and local levels. This is the true representative of rule of law in China or Rule of Law with Chinese Characteristics.

Another broadest understanding of the rule of law, a thread that has run for over two thousand years, is that the sovereign, the state and its officials, are limited by the law. This notion long predates liberalism. At its origins, it was not about protecting personal liberty or autonomy. It was an essential idea long before the modern understanding of individual liberty had developed. This is about government tyranny. Restraining the sovereign's awesome power has been a perennial struggle for societies as long as they have existed. This concept of rule of law can be seen articulated in China. It can because sovereign is none other than the people of China themselves and China has propagated this idea on each and every level of government. The idea sovereign should abide by the rule of law is true in the context of China's recent legal developments and anticorruption campaign.

The second theme common within discussions of the rule of law is formal legality. The requirements of formal legality all derive from the nature of rules – what rules *are* and how they operate. These requirements are the ones that different legal theorists have mentioned that laws must be set forth in advance, they must be general, they must be publicly stated, they must be applied to everyone according to their terms, and they cannot demand the impossible. A legal system that lacks these qualities cannot constitute a system of rules that bind officials and citizens. In case of China, rules are made in a highly legalistic way. In Chinese context, I think that there is no need to separate law from ideal of rule of law because it is same. Rule of law is a formal connotation but law itself is governing rather than a just being a set of rules as considered by western scholars. Or formal legality is not a political ideal but a part of the concept of law in Chinese legal context.

Matthew Kramer has defined the rule of law as “the set of conditions that obtain whenever any legal system exists and operates,” and he has concluded that

[e]specially in any sizable society, the rule of law is indispensable for the preservation of public order and the coordination of people's activities and the securing of individuals' liberties.³⁰

³⁰ Matthew H. Kramer, *The Quality of Freedom* 102 (Oxford: Oxford University Press, 2008).



John A. Bruegger explains the widespread disagreement, that what “the rule of law” means. Is the rule of law a merely formal concept, akin to how legal positivists would describe the concept of law itself? Or is the rule of law substantive, like natural law theory’s description of law? Natural law theorist, Lon L. Fuller, straddles the line between the two, laying out eight “principles of legality.” Kramer has noted that Fuller’s

elaboration of the eight principles of legality is a permanently valuable contribution to legal philosophy, but some of his arguments in support or explication of his principles are confused or otherwise inadequate.

Regardless, Fuller’s eight principles are a useful starting point for describing the necessary and sufficient conditions for a formal (non-normative) theory of the rule of law.

Fuller’s eight principles require the following: (1) a generality in making rules, (2) laws that are made publicly known, (3) a ban on retroactive legislation, (4) laws that are comprehensible, (5) laws that are not contradictory, (6) laws that are not impossible to perform, (7) some measure of relative stability in the laws, such that constant changes are not being made, and (8) congruence between the rules as announced and their actual administration. A substantive failure in one or more of these criteria, for Fuller, results in something that cannot properly be called a “legal system.”³¹ Based on these principles, there is a general consensus about western and eastern legal scholars that China has some sort of legal system. But our argument is that it not only has one of the best legal systems but also it is delivering to the populates of China. The only debate about law and rule of law is not importance in Chinese context because it is the matter of concern for those scholars who want to evaluate China’s legal system. For China, its legal system is ideal and customized to the demands of Chinese society. This is what we refer as rule of law with Chinese characteristics.

1.4. Planning Theory of Law³²

It is obvious that laws in China are not coming out of nothing. They are the result of hard work of Chinese legal scholars and state officials trying to understand the social dynamics and proposing new laws. The only issue might be the theoretical framework which could explain the process of law formation in China. Scott J. Shapiro has provided a theory of planning for law which gives an explanation of how legal activity plans the society. Here we have quoted some extracts from his paper to show that how this theory can be relevant in the context of legal activity in China.

³¹ Bruegger 2016.

³² Scott J. Shapiro, *The Planning Theory of Law*, Yale Law School, Public Law Research Paper No. 600 (2017) (Jul. 10, 2020), available at <https://ssrn.com/abstract=2937990>.



Previously, Hart highlighted the importance of Systematicity of legality by providing two categories of rule. He divided the “essence” of law as “the union of primary and secondary rules.”³³ In a legal system, every primary rule is linked to every other rule by virtue of their common validation by the secondary rule of recognition.³⁴ Compare the law to the rules of etiquette. Insofar as etiquette consists just in those norms of politeness that members of a group accept, there is no one rule which is responsible for the existence of all others. The rules of etiquette, therefore, are not systematically interconnected; they simply form a simple set of separate standards. By contrast, legal systems are *systems*: the existence of any primary rule can always be traced to the very same source.³⁵

Hart explained that the law and other phenomena can be differentiated on the bases of their systematicity, but he also believed that the other moral or judgmental phenomena can also have systematicity. Many other normative systems proved to be systemic and have secondary and primary rules. Condominium associations, for example, have rules about who can change the rules of the condominium and which rules residents are required to follow. Condo by-laws are thus systematically interconnected in same way as legal rules are; yet, condominium associations are not legal systems. At best, the existence of secondary rules provides only a partial answer to the question “What is law?” It constitutes the “essence” of law in the ordinary meaning of the term, i.e. the main idea or gist, rather than the technical, philosophical sense, i.e. the complete set of properties the possession of which makes the object in question the thing that it is and not something else.³⁶ Means the rules can govern a system but they cannot necessarily called as legal systems.

We stand with the claim of Scott J. Shapiro that the legal systems are institutions of a very special kind: they are compulsory planning organizations that have a moral aim and bear a privileged relation to other planning organizations. These properties constitute the essence of law insofar as their instantiation makes the law the law and not something else.³⁷ The main idea behind what he calls the “Planning Theory of Law” is that legal activity (i.e. the exercise of legal power) is the activity of social planning. Legal institutions plan for the communities over whom they claim authority, both in the sense of telling their members what they may or may not do, as well as authorizing some of these members to plan for others. Call this idea the “Planning Thesis.”³⁸ According to Shapiro, the legal activity is an activity of planning.

³³ This phrase is the title of Chapter 5 of “The Concept of Law.”

³⁴ Shapiro, *supra* note 32.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*



By characterizing legal activity as planning activity, Shapiro aim thus far has been to highlight the incremental nature of the law's regulatory behavior. But the parallel does not end there. As he showed, legal activity also seeks to accomplish the same basic goals that ordinary, garden-variety planning does, namely, to guide, organize and monitor the behavior of individuals and groups. It does this by helping agents lower their deliberation, negotiation and bargaining costs, increase predictability of behavior, compensate for ignorance and bad character and provide methods of accountability.

The Planning Thesis does not simply state that legal activity is an activity of planning; it claims that it is an activity of social planning. The planning is "social" in three different senses. First, the activity creates and administers norms which represent communal standards of behavior. Members of the community are required to conform to these standards and are held accountable by legal officials if they do not. Second, the planning regulates most communal activity via general policies. The law's primary mode of address is not naming particular individuals; actors are regulated only insofar as they instantiate the general description set out in the rules. Third, the planning regulates most communal activity via publicly accessible standards. Secret plans that satisfy the formal requirements of the system are possible, but if most legal regulation is inaccessible to those to whom they apply, then these plans are not the result of social planning and hence not law.³⁹

If legal activity is social planning activity, then it follows that legal authorities are social planners. In other words, they exercise their power by formulating, adopting, repudiating, affecting and applying plans. Of course, legal authorities often do things other than engage in social planning. Most notably, they support the social planning effort through law enforcement. When the plans do not succeed in guiding conduct, the master plan of the system normally authorizes certain officials to impose costs on the violators.⁴⁰

According to the Planning Theory, the law is not simply a compulsory planning organization – it is a compulsory planning organization with a distinctive aim. The fundamental aim of the law is to rectify the moral deficiencies associated with what Shapiro called the "circumstances of legality." When a community faces moral problems, which are numerous and serious, and whose solutions are complex, contentious or arbitrary, certain modes of planning such as improvisation, spontaneous ordering, private bargaining, communal consensus or personalized hierarchies will be costly to engage in, sometimes prohibitively so. Unless the community has a way of reducing the costs and risks of planning, resolving these moral problems will, at best, be

³⁹ To say that legal planning regulates most communal activity via general and publicly accessible standards is not to claim that most laws are general and publicly accessible. Most laws in a legal system might be private bills addressed to individuals or secret, but as long as the bulk of the activity regulated is governed by open policies, then the regulation counts as social planning.

⁴⁰ Shapiro, *supra* note 32.



expensive and, at worst, impossible. On the Planning Theory, the fundamental aim of the law is to meet this moral demand in an efficient manner. By providing a highly nimble and durable method of social planning, the law enables communities to solve the numerous and serious problems that would otherwise be too costly or risky to resolve. Shapiro called this the “Moral Aim” Thesis.⁴¹

Chapter 2

2.1. Social Contract in China

While talking about essentiality of a just society, legal and political philosophers take a start from the social contract. Legal regulations are inevitable because of the main reason that the Social Contract will be disturbed otherwise. In the absence of rules, the situation order cannot be maintained. This law and order is a prerequisite to bring humans out of the state of nature. This state of nature is also mentioned with reference to the society but not with reference to the individual. Hobbesian state of nature is the state of nature because individual is not acting as a good member of the society. Therefore, claim is that laws are a demand of a successful social contract and all the individuals identifying themselves as a human, must compromise on their rights for a successful social contract.

We think that the social contract is a hypothetical situation, which is useful to provide a near accurate explanation of the origin of state but is not useful to completely rely on it.

We are also agreed with this premise that social contract theory is the best among all the theories explaining the original of the state and collaboration between humans. Social contract provides a systemic approach towards finding the solutions of issues in China between individuals and a near rational mood of action in social, political and legal spheres. Moreover, social contract theory, accommodates the evolutionary theory of origin of state as well. Evolutionary theory argues that individuals act selfishly, and social contract also agrees with this idea that the formation of a state is benefit for the individuals. But we are also concerned about the state of nature which motivated this social contract and even in sub stages of state of nature.

⁴¹ The primary method by which legal systems should resolve moral problems depends on the nature of political morality. On one view, political morality is largely determinate, namely, it provides answers to most political questions. Given this conception of political morality, the law should solve moral problems primarily by revealing these answers to those who need them and secondarily by selecting arbitrary solutions to coordination problems. Others regard political morality as largely indeterminate: it provides very little by way of specific guidance about what the law should be. Political morality, in other words, does not tell us what kind of property, contract, criminal, constitutional and tax laws we must have. On this conception, the law resolves moral problems primarily through a process that Aquinas called “determinatio,” namely, the determination and filling out of the details that are left indeterminate by morality. The law is needed not so much to reveal the answers to moral questions, but rather to create them. On this conception of political morality and the role that law plays within it, see Arthur Ripstein, *Force and Freedom: Kant’s Political and Legal Philosophy* (Cambridge: Harvard University Press, 2009).



Daniel J. Taylor⁴² sheds light on the formation of social contracts and his explanation is correlated with our understanding of the formation of contracts. He says that contracts are formed through two different processes. There are two distinct processes that form contracts. First, there is what he calls “spontaneous formation.” This is achieved when a group of humans come together to negotiate solutions to shared problems. He says that by “spontaneous,” he does not mean to imply that all culture is invented from scratch with a specific plan in mind. In most cases, new contracts are likely to be heavily reliant on older ones. The second type of process of cultural change is the “gradual” process of cultural evolution. The theory of cultural evolution has recently been given a theoretical overhaul, inspired by standard models of biological evolution. In this theory, rather than genes being copied in subsequent generations by the process of sexual reproduction, it is strategies being copied by the process of social learning.

Human acts to secure their individual benefits. When they are in group (society), they do compromises as per the demand of the contract for group’s benefits. The temporal investigation shows that individuals are selfish and try to secure their rights more than the group willing to grant them. On the other hand, group wants to claim more rights than individuals want to compromise. This tension between individual rights and group rights demands a social contract for the settlement of the issues. But the contest between individual and group rights is the starting point of the human rights discourse whose main goal is to protect individual rights while ensuring the group that their rights will not be disturbed.

An evaluation of this claim shows that the discussion about the rights of individuals starts when a human comes in contact with other humans but not from the point where human starts itself. There is much more happening on individual level which motivates it to strive for a social contract. Likewise, there is much more to be discussed for legal and political philosophers under the layer of social contract. We claim that before the social contract, a human’s behavioral, cognitive and biological selves prepare it for a social contract. The call for a social contract doesn’t arise when a human come in contact with the society, but this call is the call of its biological self, which reflects through its cognition and articulates in its behavior. This call originating from itself is intrinsic about humans and true interpretation of “Social Animal.”

Inside the groups, a social contract is very beneficial in finding solutions and providing interpretations of many complex phenomena including social, economic, political disputes and likewise, human rights. But if we accept that there was lot more happening before the social contract and in the state of nature, (of course it was happening) then we have to deal with a cluster of variables which argue against the current sermon of the harmonious society. In the context of Chia, we think that Chinese individuals demand a Social Contract. It is not because they are living with

⁴² Daniel J. Taylor, *Evolution of the Social Contract*, PhD Thesis, University of Bath (2014) (Jul. 10, 2020), available at <http://www.cs.bath.ac.uk/~jjb/ftp/Taylor-PhD.pdf>.



other Chinese, but it is because they individually consider their responsibilities towards individual Chinese and Chinese Society.

2.2. Authority in Harmonious Society

The idea of authority has shaken philosophies behind individualism and socialism. Authority advocate for individual's power by using a strategy of socialism. Authority has replaced the concept of power by rights. Instead of saying this that state and individuals can use their power on each other, legal scholars say that state and individuals have authority on each other. Human rights made it clear that rights must be distinguished from the power. A power becomes authority only when it is recognized by the society and when its exercise contributes to social good. Rights arise from the social nature of the man. As Laski says,

our rights are not independent of society as well as for our own. We have them because we may contribute to the social good. We have no right to act unsocially. We have rights because we are members of the state.⁴³

The aim of state is social welfare. The social welfare is the total sum of individual welfare and the welfare of individuals depends on those conditions and opportunities of social life which are essential for developing their best self or good life. These conditions are called as rights. Laski says,

Rights are those conditions without which no man can seek to himself at his best.

Without rights no man will be able to develop his abilities. The state guarantees such rights or conditions for developing one's abilities. In fact, the worth of state is judged by the extent of the rights it grants for its citizens. Now at this point, we need to carefully see the rights of individuals and rights of state.

The great political problem of all ages has been to determine the relationship between the state and the individual. This relationship can be referred as a boundary line between liberty and the authority. Ancient scholars general regarded the authoritarian nature of the state and minimized the importance of the individual. On the other hand, there were scholars and philosophers in those days as well, which minimized the importance of state and emphasized the importance of the individual. They highlighted the importance of natural rights to man and opposed extensive state opinion. Both these views that state is an end itself without regards to the interest of individuals and that the individual is all important and the state is merely an artificial contrivance are extreme and one-sided. The aim of the constitutional government is to protect liberty of the individual and at the same time to maintain its authority.

⁴³ Harold J. Laski, *A Grammar of Politics* 94 (5th ed., London: G. Allen & Unwin, 1967).



There is an inseparable connection between state and individual. The state is composed of individuals. It is the totality of a group of individuals. The individual on the other hand is a part of the state. Individual is a member of state by birth. Theoretically, individual has no rights against the state. The state on the other hand has every right against the individual. It can confiscate his property and imprison him. Even it can demand his very life when existence of the state is at stake. It can compel everyone to go to the battlefield. But state is not an end itself. It is simply a mean to achieve the end which is the betterment of the individual life. State exists for the sake of individuals and to serve them.

There are two theories regarding jurisdiction of the field of activities of the state. They are individualism and collectivism (socialism). According to the Individualism, state is a necessary evil. Because state actions are against liberty of individual, but individuals require state. State exists because crime exists, and the existence of state is the sign of man's imperfection. But state is a necessity because of the inherent egoism of man which leads him to disregard the rights of his fellowmen for his own selfish purposes. So, as state is an evil and a necessity, the smaller the functions are entrusted in it, the better for us.

According to the individualism, individual is a better judge of its own interests than officials of the state. His self-interests drive him to do his best in serving his interests and developing his facilities. He should be interfered by the state as little as possible. Because every interference with his freedoms will "destroy his sense of self-reliance and spirit of initiative, weaken his responsibility and blunt his character." In economics, this type of behavior is commonly observed. Self-interest is the spring of economic activities. Trade and industry flourish where there is an economic freedom. In a general context, the sole purpose of state is to leave the man alone and let him decide for himself. This is also called as Laissez-Faire⁴⁴ Theory, "Leave alone theory." Question arises, if individuals will be left alone to do their own jobs then what will be left for the state to do? The individualists answer to this question is that the one and only supreme function of the state is to "Police" the people. It only keeps Law and order. Its function is to protect and restrict and not to foster and promote. The individualist theory was popular in 18th century. Scholars like Adam Smith, Herbert Spencer and John Stuart Mill were the advocates of individualism. It seems that modern states are swiftly drifting towards socialism and individualism is no longer supported in modern world. But we think that human rights are the modern, innovative and rebranded form of individualism which is replacing the collectivism in all over the world.

Collectivism is of different types. Socialism means anything from the extension of state-activity to state-ownership and state management of all the instruments of production and distribution. In extreme sense it means the abolition of all form of private property in land, natural resources, industries and even the incentive to private

⁴⁴ Laissez-Faire, Investopedia (Jul. 10, 2020), available at <https://www.investopedia.com/terms/l/laissezfaire.asp>.



profit. This extreme form ultimately results in communism which advocates the state itself and establishment of the classless society. Collectivism or state socialism is one of the varieties of socialism. It is a reaction against extreme individualism of the 19th century. The central idea underlying collectivism is that the masses are to be protected from the evils of free competition by a greater measure of interference with regulation of industry by the government with a view that ultimately all means of productions and distributions are collectively owned. The new social order the collectivists envisage is to be brought not by the revolutionary methods, but by slow, gradual and peaceful means through government.

According to the theory of collectivism, the state should do what it can do. Everything is within the control of the state, nothing is against the state and nothing is outside the state. The collectivists or socialists thought that individualism led to the misery of the masses and inequalities of wealth and opportunities. They want to establish, through the extension of the sphere of the state, a society where all will be equal and contented, where none will exploit, and none will be exploited. The criticism against individualistic theory may be regarded as arguments in favor of socialism.

For socialists, state is not an evil. It is rather a supreme and positive thing. Liberty can be better secured by socialism is the main philosophy behind socialistic criticism on individualism. According to the socialistic point of view, individual is not the best judge of its own interests because an ignorant person doesn't know his best interests. State is often a best judge of a person's interests and best needs. For example, state should compel individuals to educate their children and to live a decent life.

For individualists, the criticism is done on the capacity of the state. Individuals say that socialists overestimate the capacity of the state and its efficiency. The state acts through state officials and they may not provide desired outcomes as compared to private businessmen. They will not feel motivation and urge to work hard as an entrepreneur may feel. Because a salaried official neither has any risk of loss nor a share in the profit. Moreover, socialism would not enlarge but restrict individual's freedom. In the absence of self-interest and an incentive to work, people would have to be disciplined and driven by the state to discharge their duty. So, in place of freedom, we would have virtual slavery in socialism.

According to the individualism, the functions of the state should be restricted to the narrowest possible limits. On the other hand, the socialists think that the state should not be restricted. Although, neither of these doesn't represent the accepted view about the government today but in the case of human rights, we will see that individualism and socialism is perfectly harmonized. With the growing complexity of modern civilization, the need for state is felt more urgently. Most of the states now following a middle course between the two extremes. States are policing the people but also striving to be welfare.

The states are performing two types of functions. The first group is called essential or constituent function. These are police function i.e. defense and to maintain law and



order. To provide, defense, maintain law and order and to regulate the economy are considered as indispensable for the existence of the state. The second group of state functions is called as ministrant or optional functions. The most common functions or these types are promotion of education and agriculture, protection of public health and labor, regulation of trade and industry etc. In short, the modern state claims the right to do everything which it thinks necessary for promoting of the material and moral welfare of the community. It is impossible to draw a line between legitimate and illegitimate interference of the state because it a line which must change with the changed conditions and demand of the society. As society becomes more and more complex and interdependent, general welfare demands that the interests of individual be increasingly subordinated to those of the community. It is not protection, but the service is the prominent characteristic of the state.

For us, the interesting question is determining the status of authority. There are individual rights and they require socialism or collectivism for their enforcement. We also have moral and legal rights and then legal rights are further categorized into civil and political rights. So we need to classify the status of authority, so we may have an individualistic or socialistic approach towards our right by an enforcement body. A moral right is the right which is based on the moral sense of community. It is the sense of justice of the society. It is supported by the opinion of the community and is not guaranteed by the force of the state. If anyone violates a moral right of a person, the state will not punish the guilty. His only punishment is that his conduct may be disapprove or condemned by the people of the community. Whereas a legal right is that which is conferred, guaranteed and enforced by the state. If anyone interferes with such right of someone then state will punish him. Civil rights are those which are concerned with the protection and enjoyment of a secure and civilized life. Political rights are those rights which entitle the person to participate in state's administration. Thus, harmonious society demands a combination of all these types of rights.

Chapter 3

3.1. Success of Chinese Characteristics

Socialism with Chinese Characteristics, as a legal or political concept and as a practice in China has got worldwide attention in recent years. There is an increasing pressure on China to adhere the international standards and forms of governments. It means that China is expected to build a legal and political system which is comprehended by others as well. China has a history compromising of four decades to facilitate its populates by developing a legal and political system which is as per the requirements of Chinese society. Chinese Communist Party is committed to socialistic ideology for building socialistic society which is relevant to Chinese context. The particulars of Socialism and what are Chinese characteristics in terms of legal and political system has been an interesting research question for academicians. The Confucian heritage



rooted legal system and single party ruling system have significantly shaped the legal landscape of the country, making the route to the rule of law a long and thorny one. China is determined to develop a legal and political system that is consistent with socialist ideologies as well as meet the demands of economic dynamics of the country. Whatever difference may exist between Chinese concept of Socialism and rest of the world, the development of governance in China that incorporates Chinese characteristics signals China's determination to move the country toward a sound government system which is meaningful for Chinese populates and for international community as well. Among many challenges, however, is the most concerned one is perhaps how to reconcile the traditional understanding of Socialism and the current Chinese President Xi Jinping's ideology of Socialism with Chinese Characteristics for new era.⁴⁵

Ever since, Deng Xiaoping, introduced "Reform and Opening up" into the Chinese politics and economic strategy, the official ideology of People's Republic of China has adopted couple of other new concepts as well. Chinese President Xi Jinping's Theory of Socialism with Chinese Characteristics and Belt and Road Initiative has spread China's tentacles on the entire world.

The vivid pragmatism with which Deng initiated the reform process – "It does not matter whether a cat is a black one or a white one, as long as it could catch mice" – required it so. Some of these concepts, which constitute the core contributions made by the following generations led, respectively, by Jiang Zemin and Hu Jintao, are "three represents," "harmonious socialist society," "new socialist countryside," and "scientific outlook on development." By means of these concepts, a road map is made up to achieve "a moderately prosperous society" by 2020, in a long, staged path towards Socialism, of which merely the first stage is being crossed now.⁴⁶

The Communist Party of China emerged in response to the contemporary issues of that time and its evolution vividly shows that the party engineered the socialist ideology as per the demands of that era. The concept of Socialism with Chinese Characteristics is nothing but a response to meet contemporary China's Social, Political and Legal demands.

These ideological interventions seem successful if we look at China's economic progress and struggle in securing a respectable place in world community.

According to the World Bank report, China is the world's largest exporter and the second largest importer as well.⁴⁷ Its import market is roughly the size of other BRICS

⁴⁵ Mo Zhang, *The Socialist Legal System with Chinese Characteristics: China's Discourse for the Rule of Law and a Bitter Experience*, 24(1) Temple International & Comparative Law Journal 1, 1 (2010).

⁴⁶ Jesús Solé-Farràs, *Harmony in Contemporary New Confucianism and in Socialism with Chinese Characteristics*, 4(4) China Media Research 14 (2008).

⁴⁷ World Bank Group, *China 2030: Building a Modern, Harmonious, and Creative High-Income Society* (Jul. 10, 2020), available at <https://www.worldbank.org/content/dam/Worldbank/document/China-2030-overview.pdf>.



countries, Japan and Turkey combined. China is leading in other economic dimensions such as investments. It is vivid that unlike Ming Emperors, current Chinese leadership is aware of its economic deals. China has much more to offer to the world, but It has expectations from the other countries as well. In 2013, China's decision to adopt open market strategy for Belt and Road Initiative is well planned as well as unprecedented move in order to embrace the international consequences of China's rise.

Besides economical innovations, China introduced some legal, social and political innovations as well under the flagship of Socialism with Chinese Characteristics. Unfortunately, the success rate or progress of these innovations cannot be monetized in numbers as for Chinese economical innovations is being done. Whereas the critics of these innovations are not patient enough to comprehend the whole picture or contextualize these legal, political and socio innovations along with China's economic progression. That is the reason that many Western legal scholars paint a very bad image of Chinese laws and political system.

Chinese politics is becoming more and more law oriented during last decade. Under the leadership of Xi Jinping, CCP has centralized power and control to an almost unprecedented extent, but all these new patches have been put on in a highly legalistic manner. The centralization of authority has not only empowered the legal bodies against other state and party entities but also demonstrated a high level of legal professionalism. This has regulated the power which was traditionally possessed by the Party only. This legalism is more powerfully expressed in the 2018 amendments to the Chinese Constitution, which show that, even if China is indeed deepening its dictatorship, it is nonetheless doing so through harnessing the organizational and legitimizing capacities of law, rather than circumventing it.⁴⁸

So many questions about how this country managed to advance in a period of about 40 years to become such a success story on all fronts. Recent past or last 40 years of China are vividly showing that China has got victory at all fronts and the list of its achievements in increasing. GDP growth with trillions in reserves, a politically stable environment, technological advances in every conceivable field and also, socially having lifted so many millions out of abject poverty. The consistent answer one gets when inquiring after the secret recipe from the Chinese is "socialism with Chinese characteristics." Which begs the question, what does this actually mean? Socialism in its classical sense means an equitable and inclusive distributive system of wealth while capitalism, as opposite to this is refereed as not an equitable and inclusive distributive system. Capitalism is more individual oriented whereas Socialisms is considered more people oriented.⁴⁹

⁴⁸ Zhang & Ginsburg 2019.

⁴⁹ Oscar Van Heerden, *Socialism with Chinese Characteristics – A Study Tour*, Daily Maverick, 20 November 2018 (Jul. 10, 2020), available at <https://www.dailymaverick.co.za/opinionista/2018-11-20-socialism-with-chinese-characteristics-a-study-tour/>.



The size of Chinese population demands justifiable allocation of resources which requires a strong commitment to bureaucratic legalization. This is possible either by recognizing some version of de-factor federalism in China or to combat local corruption and abuse of power at all levels. With the recent political turn away from decentralized administration, the Party Leadership has pursued the strategy of combating corruption and abuse of power. This is done by investing in legality which was wholeheartedly welcomed by the Chinese population because Chinese people historically attach sociopolitical legitimacy to law and legality.

These ideological changes or legal progression in China resulted into fundamental changes in Chinese policies in all spheres. Belt and Road Initiative and Chinese open investment in foreign markets, China's international political rhetoric in last decade are vivid examples which are unprecedented in Chinese history and argue that China is willing to and has embrace changes at all level in all spheres.

By bringing political-legal reforms, China has not only customized its social, political and legal systems but also tried to meet the western demands by answering them in the political jargon understandable by them. Rule of law, human rights, democratic governance and free and fair elections, free trade and sovereignty are some of the connotations which were considered highly personalized in nature to the west. Xi Jinping reforms not only protected China's socialistic image by referring this form of government as "Socialism with Chinese characteristics" but also proved its success through China's tremendous economic growth.

3.2. Development of Chinese Characteristics in Chinese Economy

In Chinese legends and mythology, Nuwa is the goddess who created the mankind. She also repaired the broken pillars of heaven which were damaged by Gong Gong, the God of Water, in his fight with Zhu Rong, the God of Fire. Some social scientists consider that China's Belt and Road Initiative is coming to repair and stabilize the broken economies of poor Asian and African countries like Nuwa. Whereas many scholars argue that China is fighting like a Gong Gong with the USA (Zhu Rong) to claim the throne of heaven (Economic Hegemony). At least this what Malaysian Prime Minister Mahathir Mohamad thinks about China. That is why he cancelled three Chinese-backed multi-billion infrastructure projects and warned against "a new version of colonialism happening because poor countries are unable to compete with rich countries in terms of just open free trade."⁵⁰ On the other hand, relatively developing countries Laos and Thailand think that coming like Nuwa to construct their economies by introducing infrastructure projects.

If we explore the pages of Chinese history, we can connect the dots that how contemporary Chinese political and economic policies are being shaped. If we look

⁵⁰ Malaysian PM Mahathir Mohamad to scrap China-backed \$22 billion projects, The Financial Express, 21 August 2018 (Jul. 10, 2020), available at <https://www.financialexpress.com/world-news/malaysian-pm-mahathir-mohamad-to-scrap-china-backed-22-billion-projects/1287407/>.



at contemporary China, Chinese have a least one example to justify their action through historical argument. There are many stories and incidents in Chinese history which can help us to break the code of contemporary China's mega projects such as Belt and Road Initiative.

The story of Chinese foreign trade and investment is very interesting. The Ming Dynasty was the first Chinese dynasty interested in exploration and trade with the world. The Ming treasure voyages were the seven maritime expeditions by China's fleet between 1405 and 1433. The Yongle Emperor ordered the construction of the treasure fleet in 1403. The grand project resulted in seven far-reaching ocean voyages to the coastal territories and islands in and around the South China Sea, the Indian Ocean, and West Africa. Admiral Zheng, was commissioned to command the treasure fleet for the expeditions. Their sea routes are used for comparison with the Belt and Road routes, making a claim that China has a history of openness towards possible trade opportunities with anyone in the world. The explorations which were conducted under the Yongle Emperor were ended because they didn't profit the empire. Also, the fleets were extremely expensive because Ming China's main threats came from the Mongolians in the North, not from any sea borne threats. A story of giraffe is also mentioned here: according to it, Zheng He brought a giraffe from Africa on his return. The Yongle Emperor of Ming Dynasty had already conducted many wars and military campaigns during his reign, and he was sapping away all the money. This was the time when Forbidden City was built. So finally, trade was restricted and a sea ban (Haijin) was imposed. The simple rationale behind this was that the Chinese expeditionary fleet was heavily militarized and carried great amounts of treasures, which served to project Chinese power and wealth to the known world. Emperor suffered a trade deficit because his imports exceeded the value of his exports. It is also interesting to note that this was the only option available for the Ming Emperors because the Ottomans dominated trade in Eastern Europe in the 1400–1500s. The Ottomans controlled the roads and the Mediterranean Sea, but the Ming had the South China or Indian Ocean as an available option. Moreover, Ming China was the world's most powerful country and there was essentially nothing they needed or wanted from the outside, "barbaric and uncivilized" world.

Besides starting a trade with the world and then putting it to a halt, there is a moral lesson in this story, at least for China. If China is doing an investment in other countries, opening borders or facilitating trade, it is the result of lessons learnt from the past. Which means that the Chinese government and its leaders are aware of possible trade deficit and wouldn't do any business with anyone which will result into economical loses. On the other hand, China needs to act as Nuwa to maintain its status among international community and to be a regional hegemony. This was only possible through opening and reaching out to the other people and nations which China has done in recent years under the supervision of President Xi Jinping. The results of this opening up are vivid and China and majority of the countries



receiving Chinese investments through Belt and Road Initiative are considering China as revitalizer of their economies. This is what Chinese officials call as fruits of Socialism with Chinese Characteristics and other countries consider as a win-win game.

According to the World Bank report, China is the world's largest exporter and the second largest importer as well.⁵¹ Its import market is roughly the size of other BRICS countries, Japan and Turkey combined. China is leading in other economic dimensions such as investments. It is vivid that unlike Ming Emperors, current Chinese leadership is aware of trade deficit. They have much more to offer to the world, but they have expectations from the other countries as well. In 2013, China's decision to adopt open market strategy is well planned in order to achieve the international consequences of China's rise. If countries along the Belt and Road have nothing to offer but to take from China, the later knows very well how to avoid any trade deficit this time.

During last three decades, China has shown tremendous plausible economic growth. It has successfully brought a large portion of its population out of poverty. It all came into reality because of its carefully designed domestic policies, laws and practices. China attracted foreign investments by facilitating big foreign investors to form joint ventures with Chinese companies and by designing State-Owned enterprises. It would not be possible for China without setting a good image among the world's community. China selected its trade partners which were rich and serious in conducting trade with China such as USA and Chinese government was clever enough to trade Chinese goods in return of U.S. treasury bond. This time Chinese trade voyages were not bringing back giraffes or other useless animals but real profit. China is exploring more trade routes even in Africa where its trade strategy failed in 15th century. Africa is hosting multibillion dollars Chinese infrastructure projects and investments in mining companies. This time China's trade voyages have even crossed African continent and reach to Latin America establishing bilateral trade agreements with several Latin American countries.

China is becoming powerful day by day and it is obvious that it will continue like this for next one decade at least. China's policy makers are doing risk management and feasibility analysis on regular intervals as Chinese foreign investment in general and Belt and Road Initiative are spreading their tentacles.

In recent years, Chinese's foreign investment has been seen diverting from infrastructure development to the community development. China is investing into education, healthcare and other social sectors and this investment is also directing the attention of China's original investment in infrastructure.

Chinese economic achievements have created rivalry among other different economic powers. Chinese are unable to gain the confidence of other states through their investments in infrastructures and results are not promising by now. It is not

⁵¹ China 2030, *supra* note 47.



because China's government to government relations are progressing but there are renowned politicians, academicians and think tanks openly criticizing China's investment strategies. These scholars have influence in academia and ultimately on the policy making process and their opinion cannot be ignored. China's foreign policy of non-intervention is not favoring it at this point because people are too critical of anything with which word "Foreign" is attached and especially Post-Cold War era has made their mind of not trusting anyone. How is it comprehensible that billions of dollars are being donated and loaned just because one country wants economic development in another country? Chinese policy makers know that China should respond to these reactions and a silent is not in its favor.

Secondly, it is very important to observe dynamics of China's domestic issues including its political leadership's attitude towards sustaining the ongoing foreign investment strategy, situation of minorities being highlighted by international media or China's own citizens' reaction towards converting China into a surveillance state etc. These tectonic plates can cause earthquakes whose effects can be felt in the whole world. Chinese will definitely try to paint a better image in advance for the international community and community development projects in other countries can help them for portraying this image.

We also need to accept this reality that liberal democracy as a topic has saturated our academia. There were not many topics to write about for social scientists in general and particularly for political scientists, so as an alternate, we have a new lot of academicians whose bread and butter is to write against liberal democracy. Some of them who didn't want to play more mental acrobats have decided to affiliate themselves with socialism as they have the example of an economically progressed country "China." These scholars are continuously writing about the world in 2050 where China will be dominating power. And for this, they give credit to the socialism on philosophical level. They are treating US foreign and economic policies as static in comparison to Chinese ones. It is obvious that U.S. is also investigating about the China's strategic ambitions, Chinese intentions to sustain the present global order or to introduce a new one, and possible counter strategies if China seems to take a lead.

It became vivid in recent U.S.-China trade war when both countries tried to give a tough time to each other. China had to maintain its political hegemonic status in the region as well as to cushion the domestic trade so that ordinary Chinese citizen couldn't feel the damages of this trade war.

China is dealing with its foreign trade and political challenges by two mechanisms. First is by selecting individual trade partners which has no apparent political interference with China. It can be seen in cases of Chinese trade partners in Europe and Latin America. Most of the Chinese trade is not with its immediate neighbors but with countries which are at a distance. There might be a risk of political interference if China wants to increase trade with its immediate neighbors. The second mechanism by which China is sustaining its foreign trade is China's participation in International



and Regional organizations. There are many countries which have political conflicts with China and would not be very friendly in establishing trade relations with China on Chinese terms and conditions. Regional organization provide a chance to China to deal with these individual states, not on an individual state bases but as a member of same regional organization as of China. Through these regional organizations, China not only establish trade relations with those countries which otherwise would not be welcoming Chinese trade offerings but also China become successful in painting a very friendly political image in front of international community.

Chapter 4

4.1. Experimentalism in Chinese Governance System

When it comes to try new things, everyone has a right to experiment and choose best which suits it. Same goes for political and legal systems. If a system ensures good governance in a country, which is object of any political or legal system, then there is no room for criticism on it.

China seems serious about modernization of its government system on pragmatic level and state's governing capacity as a whole on philosophical level. Rule of law, human rights, democratic governance and free and fair elections, legal activism are some terminologies which are widely being used by state officials and Chinese media, now a days.

As China rose to become the world's second largest economy in terms of GDP over the past three decades, new problems have emerged in Chinese society, such as a huge wealth gap, endemic corruption, social instability and a public distrust of the government. All these problems can only be solved with more and deepened structural reforms. But for the modern political reforms, the simple explanation given by academicians is that, China wants to make politics compatible with its economic reforms. But my concern is that even after doing all these political and economic reforms, will West stop its propaganda against Chinese government? What are the extremes of rule of law according to Western parameters?

We think that besides pragmatic importance of these reforms in Chinese context, China is trying to meet the western demands by answering them in the political jargon which is understandable by them. Rule of law, human rights, democratic governance and free and fair elections are liberal connotations which are of highly personalized nature to the west. Why China needs to do such reforms? Or label these reforms with liberal/ western terminologies?

If the purpose is to gain the sympathy or to counter the western propaganda against the Chinese government, then we would say that it's a useless effort. Because china cannot race with liberal philosophies which are being produced on a tremendous rate in western academia. There are generations after generations of human rights and west itself is unable to correlate them with its legal progression. Rule of law in west is static as compared to the dynamic progress of human rights. If China becomes a country



where rule of law is ensured, tomorrow west will introduce a new terminology and start propagating it and will demand from China to introduce it. It will be very difficult for China to use this methodology of “doing reforms based on western terms” as a base for its political reforms. Moreover, If Chinese political reforms are said to be liberal, progressive and democratic then it is also a problem for China. Because China has to accept liberalism and Democracy as a full package. China cannot say that we are liberal in economy, but our legal-political system is conservative.

Secondly, China cannot escape from its claims which it had made on the behalf of socialism. Socialism is attached to the CCP’s identity. Although Chinese refer socialism as “Socialism with Chinese Characteristics” because referring it as “Socialism with Capitalistic characteristics” goes against the Marxists ideology. Socialism has stick to the China and it’s very difficult from any Chinese leader to abandon it.

So, what should be the nature of Chinese political reforms? What kind of reforms China should introduce in legal-political which can satisfy the demands of its own populates, can go hand in hand with its economic policies and meet the demand of the world, emerging from Western propaganda?

In this chapter, we argue that the socialism will not come back in its any of classical forms. Secondly, there are a number of events where Chinese government and CCP has deviated from its historical and established positions and thirdly, it is always possible that CCP can adopt a new version of socialism if they are not willing to abandon it.

We as legal philosophers need to propose some Theoretical-Structural Reform in Legal-Political System which are purely of Chinese in nature and China could defend them without using Western/Liberal terminologies.

4.2. Experimentalism in Classic Socialism

A question, once again being debated by academicians and China is being quoted as a successful example. Not only this, some scholars are so overwhelmed by China’s economic growth that they are even predicting about different types of Chinese models of global governance.

Recently, George Eaton of Newstatesman has published an interview of Francis Fukuyama, the American political theorist, who in 1992, at the height of post-Cold War liberal exuberance, wrote in “The End of History and the Last Man”:

What we may be witnessing ... is the end point of mankind’s ideological evolution and the universalisation of Western liberal democracy as the final form of human government.

Fukuyama said to George,

What I said back then [1992] is that one of the problems with modern democracy is that it provides peace and prosperity but people want more than that ... liberal democracies don’t even try to define what a good life is,



it's left up to individuals, who feel alienated, without purpose, and that's why joining these identity groups gives them some sense of community.

According to Fukuyama, he did mention about potential threats to democracy at the end of his book [The End of History] which his critics might have not read.⁵²

Fukuyama said that if socialism is just ownership of means of production then it is not going to work but if socialism means redistributive programs that try to redress balance between incomes and wealth then there is a possibility of resurgence of the socialist left in the UK and the U.S. He said about this type socialism, "I think not only can it come back, it ought to come back." In his reasoning, he said

In social equality, it's led to a weakening of labour unions, of the bargaining power of ordinary workers, the rise of an oligarchic class almost everywhere that then exerts undue political power. In terms of the role of finance, if there's anything we learned from the financial crisis it's that you've got to regulate the sector like hell because they'll make everyone else pay. That whole ideology became very deeply embedded within the Eurozone, the austerity that Germany imposed on southern Europe has been disastrous.

At this juncture, it seems to me that certain things Karl Marx said are turning out to be true. He talked about the crisis of overproduction ... that workers would be impoverished and there would be insufficient demand.

Yet the only plausible systemic rival to liberal democracy, Fukuyama said, was not socialism but China's state capitalist model.

The Chinese are arguing openly that it is a superior one because they can guarantee stability and economic growth over the long run in a way that democracy can't ... if in another 30 years, they're bigger than the U.S., Chinese people are richer and the country is still holding together, I would say they've got a real argument.

But he cautioned that "the real test of the regime" would be how it fared in an economic crisis. According to the George, Fukuyama is troubled by the potential for a U.S.-China war ("the Thucydides trap," as Harvard academic Graham Allison has called the clash between an established power and a rising one).

I think people would be very foolish to rule that out, I can think of lots of scenarios by which such a war could start. I don't think it would be a deliberate attack by one

⁵² George Eaton, *Francis Fukuyama interview: "Socialism ought to come back,"* New Statesman, 17 October 2018 (Jul. 10, 2020), available at <https://www.newstatesman.com/culture/observations/2018/10/francis-fukuyama-interview-socialism-ought-come-back>.



country on the other – like Germany invading Poland in 1939 – it’s more likely to come out of a local conflict over Taiwan, over North Korea, possibly a confrontation in the South China Sea that escalates[,]

Fukuyama said.

A lot of media outlets and scholars are quoting this interview and Fukuyama’s reversion from its original position mentioned in his book, but no one has tried to analyze the context in which Fukuyama has said all this. Fukuyama has defined the socialism before making his claim on the return of socialism. It is the demand of academic integrating and sympathy towards the emotions of liberal democrats to rightly present the Fukuyama’s statements in their original context. Fukuyama’s socialism and his reference about China, doesn’t indicate that he is in favor of somethings what Karl Marks said about the socialism as a system and Fukuyama is not accepting socialism as a full package in its classic form.

Well, China is becoming powerful day by day and it is obvious that it will continue like this for next one decade at least. I am confident that Chinese are doing risk management and feasibility analysis on regular intervals as Belt and Road Initiative is spreading its tentacles.

We think that very soon, we will see Chinese’s foreign investment diverting from infrastructure development strategy to the community development strategy. We will soon see China investing into education, healthcare and other social sectors and this investment will direct the attention of its original investment in infrastructure.

It is simply because of two reasons. First, Chinese are unable to gain the confidence of other states through their investments in infrastructures and results are not promising by now. It is not because China’s government to government relations are progressing but there are renowned politicians, academicians and think tanks openly criticizing China’s investment strategies. These scholars have influence in academia and ultimately on the policy making process and their opinion cannot be ignored. We think that China’s foreign policy of non-intervention is not favoring it at this point because people are too critical of anything with which word “Foreign” is attached and especially Post-Cold War era has made their mind of not trusting anyone. How is it comprehensible that billions of dollars are being donated and loaned just because one country wants economic development in another country? China should respond to these reactions and a silent is not in its favor.

Secondly, it is very important to observe dynamics of China’s domestic issues including its political leadership’s attitude towards sustaining the ongoing foreign investment strategy, situation of minorities being highlighted by international media or China’s own citizens’ reaction towards converting China into a surveillance state etc. These tectonic plates can cause earthquakes whose effects can be felt in the whole world. Chinese will definitely try to paint a better image in advance for the international community and community development projects in other countries can help them for portraying this image.



If China's investment strategy in future will be as we are thinking, then there is no question of the return of socialism. How can China compromise on domestic socialism on the price of global socialism (by investing in international community development projects)?

We also need to accept this reality that liberal democracy as a topic has saturated our academia. There were not many topics to write about for social scientists in general and particularly for political scientists, so as an alternate, we have a new lot of academicians whose bread and butter is to write against liberal democracy. Some of them who didn't want to play more mental acrobats have decided to affiliate themselves with socialism as they have the example of an economically progressed country "China." These scholars are continuously writing about the world in 2050 where China will be dominating power. And for this, they give credit to the socialism on philosophical level. But we don't think that these scholars are demonstrating any academic integrity. They are treating U.S. foreign and economic policies as static in comparison to Chinese ones. We are sure that U.S. is also investigating about the China's strategic ambitions, Chinese intentions to sustain the present global order or to introduce a new one, and possible counter strategies if China seems to take a lead.

We think that the more important question is to study the gradual change in China at all levels. Will Chinese political system favor its current economic policy by 2050? Or we will see a new Chinese economic policy shaping its politics? Either way, we don't think that socialism will survive in any of its classic forms. And the contemporary form of Socialism with Chinese Characteristics is something which demands its rebranding.

4.3. Experimentalism in Chinese Foreign Policy

In his Washington Post article Robert J. Samuelson has analyzed how the USA is going to lose its trade war with China. He refers to the Peter Navarro, director of the White House National Trade Council, who wrote in the Wall Street Journal:

The Chinese government ... [has] audacious plans to dominate emerging technology industries. Many of these targeted sectors, such as artificial intelligence and robotics, have clear implications for defense. China seeks to achieve its goal of economic and military domination in part by acquiring the best American technology and intellectual property.

Robert said, by referring to the Michael Wessel of the U.S.-China Economic and Security Review Commission, a Congressional watchdog agency,

Hardly anyone doubts that China is on the hunt for advanced technologies by legal means if possible, and illegal means, if necessary.

China has experienced wars with the British Empire over the trade of opium. The British East India Company was smuggling opium from India into China through



various means and became the leading suppliers by the end of 18th century. This drug trade resulted in millions of Chinese addicts and devastated especially the large coastal Chinese cities. Now at this point, the Chinese know that they should not let anyone exchange giraffe or opium for their worthy exports. The countries along the Belt and Road claim that it is a win-win project for them. But at least for China, it is a win-win project even after investing billions of dollars in infrastructure of the relevant countries.

The China-Pakistan Economic Corridor which is the flagship project of Belt and Road Initiative will span the length and breadth of Pakistan. It will decrease the distance for China to reach to the Arabian sea through Gwadar Port, which is officially leased to China for 43 years or until 2059. Will it bring any benefit to Pakistan? One can predict, yes but we are not sure if its long-term benefits will be shared by both, Pakistan and China. In Central Asia, critics are openly writing about their concerns that the trains routes planned to be built by China will just go through Central Asia and bring Chinese goods to Europe or will help Central Asian economies as well?

When such questions emerge, the Chinese side refers to its foreign policy principle of non-interference in other country's domestic politics and strategy of not indulging themselves into any dispute. The Chinese Communist Party which took over power from feudalism through revolution proudly follows the Marxist ideology. But Karl Marx in "A Contribution to the Critique of Political Economy" clearly referred to "the economic structure of society, as the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness." Moreover, throughout the Chinese history, Confucians preferred to avoid conflicts. It was Confucius who considered that "taking legal actions against neighbors is a result of an incapacity to work things out in negotiations." Bobby K.Y. Wong in his article "Dispute Resolution by Officials in Traditional Chinese Legal Culture" states that Confucians were not mere theorists. They took it as their mandate to create a Confucian utopia on earth. Whenever possible, they would put theory into practice. In handling disputes brought before them, the concern of Confucian officials was not to decide which party was right or wrong. Rather, the process was, as a means to achieve other more important objectives, given much more attention. The main objective was to keep society in harmony, the central theme of Confucianism and the traditional Chinese culture. Dispute resolution was never as important as dispute prevention. It was often used to teach the disputants the importance of keeping good relationships with others.

In conclusion, we can say that if Chinese foreign policy is following the principle of avoiding disputes in their dealings then it is not something which they have specially designed as a welcoming tactic for the Belt and Road countries. But it is the part of Chinese intrinsic legal system which is an integral part of their subconsciousness. In 2013, however, China deployed combat troops for the first time in its history in Mali. Its extensive economic investments have brought about the need to protect



its investments and ensure the security and political stability of host countries. It is still a question whether it was Chinese dispute prevention strategy or dispute resolution tactic?

China also needs not to interfere directly into a country's domestic politics. According to Marxist ideology, economy runs politics and as a part of Chinese foreign investment strategy, it is working very well.

China was the Middle Kingdom and China's foreign policy increasingly looks like an effort to win back for itself an imagined position where China was the center of East Asia and other nations largely submitted to its will. The key for the current Chinese leader is to give itself and Chinese people the sense that China is back in its natural place in the world order, which means as the regional hegemon and at least one of the top few countries in the world.

History, arts and literature provide a reasonable underlying context for the contemporary events. They help us understand the underline philosophies and articulations of the events including political and economic policies made by a country. If a country's policies are not following the ideological footprints of their forefathers, one can observe a deviation and then try to explore the reason behind this deviation. History can be a good source of reference for comparison as well. Chinese economic and foreign policies are a hope for the world. In many markets, China is representing more than 50 percent of global demand. Therefore, China's policies will impact on the rest of the world and especially on its neighboring countries. Even Africa and Latin America are very hopeful for long term consequences of Belt and Road Initiative. There is a hope that potential effects of this initiative will be positive not only for China but for these countries as well.

We can say that China has significantly deviate from its historical practices and they are for good. Moreover, it proves that China has confidence to absorb, accommodate and prepare unprecedented modernization.

4.4. Experimentalism in Chinese Domestic Policies

The interplay between rule of law and political governance, the social demands and maintenance of public order, providing good and services and balancing the economic resources, etc., all require a strong managerial system which should be powerful and legitimized. In China, the governance system appears to be efficient and legitimate because there is an apparent consensus of populates on the selection of the public representatives. Moreover, China is able to justify its position related to its political system in contrary to western concerns that Chinese government does what it wants to do. I would say that Chinese government does what is required to do in Chinese context. China has its own customized system of governance which very well goes hand in hand with the demands of populates.

Keping Yu, deputy director of the Compilation and Translation Bureau of the Central Committee of the Chinese Communist Party had written in 2014 that the



modernization of state governance will require a change in the current relationship between the government, the market and the society. From a western perspective, during last three decades, we cannot see a change in terms of multiparty competition, general elections and separations of powers between different institutes. But as for state governance is concerned, there have been vivid changes. There is a significant improvement in the situation of rule of law, public participation, democratic decision making, social governance, public services, government accountability, political transparency, administrative efficiency, government approval procedures, decentralization and the development of social organizations.

He further said:

State governance fails if the government becomes too powerful and also if it becomes too weak. However, the allotment of powers between the government, the market and society in state governance should be expected to vary between different countries and within the same country at different stages when national conditions differ. Today, in China, the CCP and the government play an overwhelming role in the country's governance.

In short, the best of form of government is that which tries to maximize the public interests. State, market and society should harmonize which is essential for the progression of social and political lives. However, governments have always been without question by far the most powerful segment of society, and no other can be considered their equal. Therefore, in modern state governance, the government, still plays a larger role than the market and society. In other words, the key to good governance is good government, and if you want to have good governance you must first have good government. This position is the exact position of the CCP, the state officials and Chinese academicians that "we are feeling the riverbed while crossing the river."

Previously in China, there was no consensus between powerful decision makers on political reforms which lead to corruption and emergence of different interest groups. According to the Global Times China, in 2016, President Xi presided over the 25th meeting of the Central Leading Group for Deepening Reform Comprehensively. One line from a statement released after the meeting was very eye-catching:

Reform is a revolution that aims to rectify the system and challenge vested interests. There is no way to do it other than using real swords and spears.

The seriousness of the matter can be estimated from this fact that these reforms are not less than a revolution itself. Current reform which are in process are striving to make political system accommodating a smooth transitional process towards economic development while eliminating the class struggle. Socialism is being rethought to



make it more pragmatic rather than a conceptual fairytale. The role of mercantile class in the politics and separation of government from business and management is also under consideration. Whereas one of the most important political reforms would be the role of socialist party itself. In addition to that, rule of law, democracy, decentralization of state services, protection of human rights and to contextualize these reforms in the contemporary global demands, cannot be neglected.

So, what should be the nature of Chinese political reforms? What kind of reforms China should introduce which can satisfy its own population and meet the demand of the world, emerging from Western propaganda?

We think that China should introduce its own version of political and economic expressions. Chinese version is already unique, but China should project it to the world with new terminologies. There is no need to be apologetic about it if West doesn't consider China to be non-democratic or conservative. China has capacity to build its own model, parallel to the western political and economic models. One of the greatest examples is the Chinese Belt and Road Initiative. World has never seen such a huge investment and economic tactic by any other country which spreads its tentacles on the whole world. Interestingly, this is against the Chinese classic understandings of foreign investment. Never in history, China took such a giant step of this sort. It also proves that China can come up with its own version of any policy and can implement it.

We see China standing at that point of history where any classic philosophical terminology cannot completely comprehend the Chinese version of political and economic system. China has reached to the era of "Ultra-Sinoism." China need not to say that we are getting rid of socialism, rather can claim to revolutionize the old socialism in the new of Ultra-Sinoism. Under the umbrella of Ultra-Sinoism, China can do its political reforms and it has no need to justify in front of anyone that why are they doing so? Chinese government can simply say that it is Chinese new version of political system. China also need not to put itself in someone's else philosophical or ideological shoes but should come up with a completely new concept to set an example for others.

In 2015, while studying at American University of Central Asia, I got a chance to meet with the U.S. Assistant Secretary Nisha Biswal and I asked her the question that why U.S. is so aggressively ignoring the feeling of ordinary people of countries with which it deals? And she said that we have shown to the world that our system is functional, and we have demonstrated it many times that it works very well. U.S. wants liberty and freedom for everyone as it wants for its own citizens. So, China should also introduce its own system (which it already has) with its new customized terminologies and show to the world that it is functional as well.

If China will stick to the old terminologies, then it will never be able to fulfil the demands of these philosophies. But if it introduces its own legal-political jargons to explain its personalized versions of classic ideologies and to elaborate its political



reform and implement them in China and show to the world that they are functioning then no one would dare to criticize on Chinese government. That is appreciable that China is very serious about its political reforms, but It should take full credit of it. It shouldn't be for the sake of satisfying the demands of so called liberal and progressive philosophies. And it is only possible when Chinese government will introduce these modern reforms in customized modern terminologies personalized with China.

For example, instead of refereeing its political-legal reform as "Socialism with Chinese Characteristics," CCP can refer it as "Ultra-Sinoism." This term explains that China's ideological framework is personalized to China. As an explanation, it can be said that the China is at a transitional stage from Socialism to Communism and this transitional stage of "Ultra-Sinoism" demands the government to make final adjustment before gaining its idealized form of communism.

Besides this theoretical tactic, we strongly believe that on pragmatic level, the era of Socialism, Socialism with Chinese Characteristics, Post Socialism or Sino-Socialism has passed, and world is waiting for Ultra-Sinoism.

At present, the rationale behind Chinese Political-Legal Reforms can be enshrined in two explanations. First, Chinese political-legal reforms have pragmatic importance and they are the demand of modern China's proper and smooth functioning of state chores. Secondly, some reforms are purely of theoretical nature through which CCP wants to project a liberal, democratic and progressive image of the party. In both cases, CCP has deviated a lot from the classic Marxist and Socialist ideology. Moreover, CCP cannot completely withdraw its claim of being a socialist party, that's why they are using a term "Socialism with Chinese Characteristics." The sole purpose of this term is to legitimize the deviations which they have done from the original socialism.

We claimed that the return of socialism seems impossible and CCP has already deviated a lot from its original positions and claims which they had made on the name of socialism. Moreover, Chinese society and market have more tendency to adopt western style market, political and legal systems.

It would be better for CCP to introduce a new ideological connotation. This can provide an explanation to the current CCP's practices and a justification within the framework of Classic Socialism.

Conclusion

The current or transitional state of Chinese Political-Legal System is a very strong and structured realization of Rule of Law. I think that the Law and Rule of law are the same in China whereas West uses the "rule of law" to criticize Chinese legal progression. Chinese rule of law which Chinese leadership refers as "Socialist Rule of Law" actually derives its legality from the nature of rules which are relative to the Chinese society. Rule of Law in China fulfils all the criteria of being a model rule of law in any legal system set by Western legal scholars themselves for example: laws



must be set forth in advance, they must be general, they must be publicly stated, they must be applied to everyone according to their terms, and they cannot demand the impossible.

If we talk about the planning of legal system, in Chinese context, the fundamental aim of the law is to meet a moral demand of establishing a harmonious socialist society in an efficient manner. This moral demand is for which all Chinese populates, and leadership is striving. By providing a highly nimble and durable method of social planning, the law enables Chinese leadership to solve the numerous and serious problems that would otherwise be too costly or risky to resolve in a society of more than one billion people.

The size of Chinese population demands justifiable allocation of resources which requires a strong commitment to bureaucratic legalization. This is possible either by recognizing some version of de-factor federalism in China or to combat local corruption and abuse of power at all levels. With the recent political turn away from decentralized administration, the Party Leadership has pursued the strategy of combating corruption and abuse of power. This is done by investing in legality which was wholeheartedly welcomed by the Chinese population because Chinese people historically attach sociopolitical legitimacy to law and legality. Legal activity is not something which is a completely alien to the Chinese people, but it is the outcome of China's own social dynamics.

From the Chinese leadership perspective, everyone has a right to experiment. Everyone is the best judge of its own capabilities and thus, takes responsibilities of its actions. I think that the good governance is more important than the legal or political system and Chinese leadership is result oriented while making new laws or introducing new amendments in the constitution. Results are tremendous economic progress of China during last decade, which justifies that why law and politics are the same in China. This not only minimizes the conflicts and contradictions between two powers but makes a single power more responsible.

The legality of rule of law or Law in China is indeed an important progress which was required for the institutional innovation in China. It also fulfils all the criteria of the morality of the law and justifies the authority of the law. Moreover, legal progression in China during last decade, perfectly fit into the framework of "Socialism with Chinese Characteristics" and is very crucial for building a harmonious socialist society. Chinese experiments with its domestic and foreign policies and ideological innovations are a very successful example of legal experimentalism and other states must learn from Chinese experiences.

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