

Summary of Conference: Rule of Law and Governance in China at Home and Abroad

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On Tuesday, 15 March 2018, academic scholars from the U.S., China, and Europe gathered together for a conference entitled China's Rule of Law and governance at Home and Abroad. This was a part of three-day series of event *Vanguard Act: A Focus on China at the Dawn of its "New Era"*. Those events include a roundtable discussion, a teach-in, and this conference, guest speakers were invited to explore the recent development in China's rule of law and governance from both the domestic and international perspective. There were two panels in the conference on 15th March in which 6 panelists presented their recent studies and made an interdisciplinary discussion on this issue. The panelists of this discourse consisted of Professor Larry Backer, Professor of Law and International Affairs at the Pennsylvania State University; Dr. Flora Sapiro who currently serves as a board member at the Foundation of Law and International Affairs, Dr Sun Ping, the Vice Researcher at the Center for Rule of Law in China, at the East China University of Political Science and Law; Keren Wang, who studies rhetorical theory and criticism from global perspectives; Dr. Shan Gao who received his SJD from the Pennsylvania State University School of Law in 2017, is a licensed attorney in both China and New York State; Professor Shi Xinzhong from Capital Normal University also participated this roundtable as a special guest. Nicolas Scholz, a Master of Arts in Political Science student and Shaoming Zhu, the president of the Foundation for Law and International Affairs served as commentators. While each participant gave their statements, Miaoqiang Dai, a Master of International Affairs '19 candidate had mediated this discussion. This conference was hosted by Penn State Law; Penn State School of International Affairs; Coalition for Peace and Ethics; Foundation for Law & International Affairs; and Research Career Development Network of Law and International Affairs.

In the opening remarks, Professor Larry Backer briefly refreshed participants and audience with the background and some key concepts based on which the conference is organized. Professor Backer pointed out that China is not only the leading economy in terms of goods and services, it is also a rising leader in investment and infrastructure investments. China has sought to institutionalize such leadership by the One Belt One Road Initiative under which international financial institutions such as Asian Infrastructure Investment Bank is launched. The state's participation in the economy is largely a major characteristic of China's development model which is increasingly appealing for many developing countries. One more development which is less known but equally, if not more, important is the recent development of China's normative and rule structures which lead to a governance system where "power can be put in a cage" and officials perform as examples for party members and even the whole society. Furthermore, the Socialist Rule of Law and Socialist Legality developed in China also provided both conceptual and operational basis for the functioning of state, economy and society in accordance with rules that would guide individuals and officials alike. The 19th CPC National Congress also marked a aggressive move of reforming China's governance system, the amendment to the state's constitution in early 2018 also indicated significance in the evolution. By taking all those factors together, Professor Larry Backer pointed out the necessity to study the development of rule of law and governance in China, including constitutionalism and approaches to legalities of governance.

After a brief introduction of the program, the first panel, *Rule of Law in China at Home*, opened with Professor Sun Ping's presentation entitled *The Key to Understand the "New Era: The Reform of the Party-State Institutions*. The presentation starts with the discussion about

the approach to understanding China's political and public power system. Instead of normative or political approach which respectively focuses on the State Constitution and the Party's Constitution, Professor Sun Ping argued that the right way is to put it into a broader context and observe through the Party-State System which in nature is the Public Power System in China. He also gave several characteristics to define the system, namely supported by public finance, built according to organization rules, make or enforce rules and has the authority on certain public issues. The Party-State System demonstrates a pyramid pattern from the central committee as the top level to the provincial and Primary level. Each level has a similar structure which is consisted of several parallel lines including military, economic and social development, united front work, supervisory work etc. Sometimes conflict between those parallel lines may pose gaming between the rule of the party and the rule of the law but in the New Era, the reform of the Party-State as a whole will strengthen the rule of the party and enhance the check and balance among parallel lines both horizontally and vertically. Professor Sun Ping argues that more work need to be done for defining the leadership of the Party in legal term and making the organization of the Party-State System according to the law.

The second speaker in this panel, Professor Flora Sapio's presentation entitled *Regulation with Socialist Characteristics in the New Era: The Role of Groups of the Communist Party of China in Chinese MNC's Corporate Social Responsibility* provided us with her insight from the perspective of the role of the Party and the corporate social responsibility (CSR) in Chinese multinational state-owned corporations. Professor Sapio first compared the current focus of western and Chinese studies of CSR and pointed out that the dimension of the Party as the most important non-state actor is usually missed in researchers and observations of CSR in China. The party significantly affect Chinese MNC's CSR by regulation, party groups, inspection tours, etc. To elaborate this point in a larger context of the Party-State System, Professor Sapio discusses the provisions of both state legal system and the Party's regulatory system. Then Professor Sapio gave a detailed description of how Party groups and the Party's inspection tours promote the CSR practice of MNCs especially state-owned ones. Professor Sapio also pointed out that in the New Era, the mechanisms of CSR include the Party's internal evaluation and ranking mechanisms, domestic guidelines and standards, computation of "Social Credit Scores" and blacklisting. At last, Professor Sapio presented opportunities and challenges of CSR in the New Era.

Dr. Keren Wang, the third and last speaker in the first panel presented *Apologetics of 2018 Constitutional Revision* after Professor Sapio. His presentation offered us a unique perspective of rhetoric methodology and political communication to understand the amendment to Chinese constitution and current development of Chinese rule of law. Dr. Wang starts his presentation by introducing *Apologia*, a forensic mode of persuasion passed down from Plato which means a formalized defense of a doctrine or public teaching, in other words, the affirmation of "good judgment". The "Good" that apologetics argue an abstract, transcendent other that is not subjected to the positive confirmation or negation via empirical reality. By applying an analysis based on those rhetoric terminologies to expressions and comments on the constitution amendment in China, Dr. Wang attempted to consider the methods by which the Party-State system posited and defended the recent amendments to the Chinese State Constitution. Dr. Wang suggested the scope of the use of traditional rhetorical styles to build a rhetorical web in defense of the most controversial aspects of the amendments.

In Commenting and Q&A session, Shaoming Zhu raised a question about the difference between rule of law in China and the west because it seems like the Party's policy could also

be a source of law in China which is hard to understand in the western legal system. Professor Sapio thinks that the answer is both yes and no, it is necessary for us to make a distinction because the policy of the Party needs a formal procedure to become the regulation of the Party and even the state. And to answer this question, Professor Sapio argued, we need to think about the question of “what is law?”, if “soft law” exists, the answer to the question is definitely yes. To add on that, Shaoming Zhu also raised the question that if Party’s policy could be a source of law in some way, where should the current judicial system lay in China’s Parallel Lines system as coined by Professor Sun Ping. Professor Sun Ping also thinks that “what is law in China” is a prerequisite because the reality or practice in China is to some extent different from what’s written in the textbook. Professor Sun Ping thinks that as shown in recent constitutional reforms in China reveals, the Party’s internal rules actually work with the law of state together and generally serve as law in China. For the position of the current judicial system, it is under the parallel line of political and law but this line is downgraded in recent reforms. Also, for Dr. Wang, Shaoming asked that what’s the most significant difference between the West and Chinese understanding of rule of law. Dr. Wang thinks that the understanding of censorship and the definition of normal and abnormal is of the critical difference between the West and China. Sometimes personal habit or self-censorship is regarded by “outsiders” as the product of coercing from the censoring authority but it’s not true. The habit of avoiding explicit countering expression or speech is regarded as normal in some society like China and Japan but it’s definitely not the product of censorship as many western people views. Moreover, Dr. Wang also said that implicit messages and dissent are also important for us to understand Chinese mindset of rule of law.

After a short break, the second panel, Governance in China and Abroad, opened with Professor Larry Backer’s presentation *China’s One Belt One Road (OBOR) Initiative and the New Communist International*. In this presentation, Professor Backer pointed out that the New Era thinking is reframing the normative economic relationship in China externally and there is a strong relationship between China’s New Era forms of internationalization and the previous Communist International (Comintern), or we can even understand the internationalization of New Era as the Fourth Comintern. Then Professor Backer briefly introduced the third Comintern and highlighted that it produced a powerful template for the internationalization of ideology and its discipline by central authority. Professor Backer argued that the pattern of internationalization in the third Comintern is now being picked up by China in its New Era. Professor Backer explored the relationship between the OBOR initiative and the above mentioned fourth Comintern and argued that this time, the internationalization is grounded in economics and markets based coordinated power instead of politics and revolution. Professor Backer also briefly reviewed the different patterns of internationalization that are adopted among countries such as U.S., French, Russia and then made it clear that the new pattern of internationalization in China’s New Era is not fundamentally different or odd. The Chinese internationalization, as Professor Backer pointed out, aims at creating space for Chinese approach to economic, social and political model and also provide leadership in domestic governance and global engagement. The ways to achieve those goals are OBOR initiative and engagement in international community including international organizations and international financial institutions.

After Professor Backer is Dr. Shan Gao’s presentation entitled *Glimpse of Different strings Tied to the Cage of Power in China: From Disciplinary to Judiciary and Beyond*. The whole presentation is around three main constraints, namely political, judicial and social constraints in making a cage for power in China. Dr. Gao pointed out that in terms of political constraints, there are many criticisms such as informal, lack of transparency and basis, but on the other hand, there are also some reforms such as institutionalization of supervision system and

building of self-reporting mechanism. In terms of judicial constraints, Dr. Gao stated that the nature of judicial apparatus is to serve as the framework for private citizen against the defined conducts by a government body, administrative litigation by a private citizen is a good example to this point. Then Dr. Gao compared the administrative litigation in the U.S. and China and then reminded the audience that even though the Supreme People's Court's interpretation, along with the Administrative Procedure Law of P.R.C, is the jurisdiction for citizen to file litigation against the government, the Supreme People's Court's interpretation is actually an internal judicial guideline rather than the highest law of the land. Dr. Gao also presented some recent development of the judicial constraints including refined procedures and the mandatory defendant attendance arrangement. In terms of social constraints, Dr. Gao raised the case of the reality TV show demanding the government officials' accountability as an example of the case study of social constraints.

The last speaker of the conference Professor Nicholas Rowland presented *The Future of the State* after Dr. Shan Gao. He first talked about the OBOR initiative and raised the question of understanding One Belt and One Road at the very beginning of the initiative. Professor Rowland pointed out that even though the initiative is launched by China, China is not the absolute center of the whole initiative, actually, it is both the center and decanter of the enormous project. From a certain perspective, China is also merely a piece of the vision of OBOR initiative. Beyond that, Professor Rowland argued that the infrastructure is effectively the One Road component of the initiative and many corporations such as China International Capital Corporation, KraneShare, and even NYSE could also be important parts of the initiative. By several examples of infrastructure projects and railway transportation projects, Professor Rowland argued that China's position in the initiative is not overwhelming but rather subtle cooperation with other participants. Then Professor Rowland introduced the discussion of leaders in the presentation, arguing that the interactions between leaders of OBOR countries are also critical objects for us to observe. In terms of the multi-facet mega project of OBOR, Professor Rowland pointed out the cognitive gap between the Western perspective and the Chinese one regarding the significance of the initiative. Above points being made, Professor Rowland argued that the inevitable but manageable future of the state as both one actor and a network will become complicated as the OBOR initiative's nature of multiplicity gradually unfolds. At last, Professor Rowland shared with the audience with the term of socio-technical imagination and political imagination which means, respectively, the state uses the technical method to create desirable future and the imagination necessary for politics to exist. OBOR, in Professor Rowland's view, is actually leading to an inevitable future of imagined political space where no alternative other than the initiative itself is possible.

In Commenting and Q&A session, Nicolas Scholz raised several questions to speakers in this panel. The first one is pointed to Professor Backer and it's about the Chinese history's impact on the fourth internationalization or Comintern as Professor Backer mentioned. The question is whether there is some connection between the internationalization in the New Era and the past of China which may have some significant implication on the current trend. To answer this question, Professor Backer raised the example of the city Xi'an which is a combination of the great relics of history and modern reconstruction and the city transformed the heritage of the history into a modernized city with cultural and historical deposits. The fourth international or Comintern is also transforming the Chinese history of the Silk Road and previous glories into a new pattern of internationalization with Marxist-Leninist characteristics. The second question is how can Europeans or Americans conceive the OBOR initiative and take advantage of it. Is it a challenge or opportunity? As a response to this question, Professor Backer pointed out that the fourth internationalization based on the market,

which is embodied by OBOR Initiative, is avoided by the West since 2006. But what's interesting is that American under the Trump Administration is actually doing their own version of OBOR, the America First Campaign grounded in the bi-lateral approach of internationalization built in the current multilateral international system. So actually, the response from the Europe and U.S. to OBOR is already happening. Nicolas Scholz also commented that the difference between the Western culture and the Chinese culture might be that in the Confucian tradition, people tend to have a holistic perspective of observation while the Western cultural tradition tends to distinguish and categorize objectives for observation. Moreover, he also highlighted that in the 21 century, the export of algorithm from China as a critical part of governance deserves more attention.

Then the floor was open to everyone and after an intensive open discussion, Professor Backer gave a brief concluding remark with gratitude to all speakers and Penn State Law; Penn State School of International Affairs; Coalition for Peace and Ethics; Foundation for Law & International Affairs; and Research Career Development Network of Law and International Affairs and all other co-sponsoring organizations.