**rule of law/法治(Fǎ Zhì)**

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**Rule of Law: Some Nuance**

Rule of law” in Chinese (法治, *fazhi*) does not exactly mean the same as in English. This short article explains the nuances with three parts: different definitions of law, different relations to ethics, and the term’s different political applications.

**Chinese understanding of “LAW (法/*fa*)”**

In traditional Europe, the term “law” has a connotation “divine” and/or “natural.” Whereas the Chinese character “法,*fa”* means rules or regulative methods to solve current problems. It often combines with another character to form a phrase “办法*, banfa*”, which means method or approach. In short, “*fa*” is neither divine nor natural, but a pragmatic solution, albeit regulating.

In the modern West, people’s representatives make the Law and laws, which replaces the righteousness of the God or natural law with the rights of the common people. However, the Chinese continue to believe that the governing body should make and enforce laws. Due to the tradition of blurred and unstable social cleavages, the Chinese government is supposed to be “neutral” among social strata, not representative to any of them. Class struggle has become an infamous concept particularly after the “Cultural Revolution.” Social solidarity has been a popular and mainstream social value. The target of social criticism focuses on government instead of laws, about whether the government is neutral/fair or selfish/corrupt.

Moreover, as a “method” in China, the law is not a critical concept in politics as that in the West. Chinese tend to understand it as the commercial contract that must observe in a commercial society. Other than commercial area, laws would be more or less a matter of convenience. Therefore, the authority of laws is subject to the severity of law enforcement.

**Chinese understanding of law and ethics**

Law in the West was the root of ethics or major moral principles. Being rather religious, monotheist in particular, might give rise to that. Thus, being a moral person is to abide by law, by the laws of the Bible. Therefore, law enforcement is easier than in China and much less important than law making.

Chinese has become quite secular in very early time, no later than Confucius time of two and half millenniums ago. The Chinese ethics derive mainly from the family ethics, defining the order of the family. Extending the family order to political order makes the government’s moral construct. Therefore, “nation” in Chinese is “国家, *guojia*”, which literally means “a family country” or “a country of families.”

Confucianism displays principles of family ethics. Nevertheless, the family ethics is incompatible with the civil and criminal laws. Thus its counterpart “legalist school” (法家,*fajia*) was born at the same time, and dominated through the “Waring States” (BC 475-BC221) time and until about the start of AD. The confrontation and compromise of the two schools of thoughts have continued until this day. The contradictions’ modern version is that the Chinese Communist leaders talk about “rule by law” one day, and “rule by moral principles” the other day.

The incongruity between the law and the Chinese ethics appears alien to the West. On the one hand, it explains the importance of law making in the contemporary West, and that of law enforcement in China. On the other hand, however, it relates to the need of a supreme court, or a constitutional court, to settle the contradictions between the men-made law and “natural law.”

For Chinese, family ethics are permanent, while laws are changeable and pragmatic approaches for solving problems. For the West, ethics and the LAW are the same thing, because all the men-made laws need to follow the LAW. Therefore, people in the West have a tradition of respecting the authority of law, while Chinese tend to follow laws at convenience unless it is harshly enforced. A “good” Chinese citizen might not be strictly a law-abiding one, but one very loyal to family ethics.

**Chinese understanding of “rule of law”**

In the West, “rule of law” means the utmost importance of law above any person. It is in fact a denial to personal rule, and a support to the principle of “all men are created equal.”

The Chinese sage Mencius（BC385—BC289）had a famous saying: “Acts of kindness are not enough to govern, and laws do not practice by themselves” (徒善不足以为政，徒法不足以自行). Laws cannot rule by itself; persons make and enforce laws. Therefore, the Chinese understanding to this day has been that the governance everywhere is “rule by law” instead of “rule of law.” It is more appropriate in the time of people’s law-making power, or of democracy, so to speak.

The Chinese legislature, the single chamber “People’s Congress,” makes the law. The executive branches propose most of the legal bills, as in Korea and Japan. However, the legislature requires two preconditions to pass the bills: widely consulting stakeholders and referring to the similar laws in the US, Japan, and European nations. Representatives will not vote for or against the bill until the consensus obtained. The formal Congressional meetings for vote in public is mainly to show national solidarity, which is often misunderstood outside China as “rubber stamp.”

The dominance of the Chinese Communist Party in the legislature is obvious. That raises the doubt about “rule of the Party” or “rule by law?”

In fact, the Chinese laws are as “normal” and “professional” as anywhere; and the Party mainly concerns political direction, namely, the solidarity and progress of the nation.

The Chinese legal language is as difficult and vague as that in the U.S. National laws are more principles than details, allowing some malleability for local law enforcement according to local conditions. That appears “federalism with Chinese characteristics.”

What is the relationship between the Party and the law? The avowed governing principle of China is an “organic whole” of three parts, which is taught by constitution-teaching textbooks of all school levels. The three parts include the Party’s leadership, the people as the master of the country and rule by law. Considering the pervasiveness of the market mechanism and of small and medium enterprises, the three-part “organic whole” appear comparable to “liberal democracy” or “social democracy,” despite the palpable emphasis on the unity of the gigantic nation. The Chinese are quite familiar with the Western emphasis on the political rights of individuals and of socially stratified interest groups, but not necessarily eager to buy it.

Law in China is not utmost important in politics as in the West. However, the governing principle does not mean to allow the Party above the law, nor does it reject the equality among the people.

**Summery**

1. The law in China is neither divine nor natural, hence much less authoritative than in the West.
2. While family ethics are permanent, laws are pragmatic and inconstant solutions to maintain order.
3. Practically in China, the law enforcement is much more critical than law making, hence the much less importance of legislature than the executive branch.
4. Rule by law is as “normal” as rule of law albeit the apparent emphasis on the political unity of a huge nation.