

## ABHANDLUNGEN / ARTICLES

### A Global Turn in Chinese Legal Ideology?

By *Samuli Seppänen*<sup>\*</sup>

**Abstract:** The Chinese approach to law and development has been perceived in terms of experimentalism and resistance towards globally applicable development models. In recent years, however, Chinese Communist Party (CCP) ideologues and pro-establishment legal scholars have become increasingly ambitious about the global significance of Chinese legal thought. CCP ideologues and Chinese legal scholars' global ambitions are particularly evident in writings on "Xi Jinping Thought on the Rule of Law." According to these ideologues and scholars, Xi Jinping Thought on the Rule of Law is the "height of world history and global thought," and provides a new governance model for developing countries. Yet, while Party ideologues espouse the globally pathbreaking nature of Xi Jinping Thought on the Rule of Law, they are often unconcerned with describing the specific legal theoretical advantages of this form of legal thought in comparison to existing modes of legal thought. This article argues that CCP ideologues' global ambitions and the discrepancy between Party ideologues' ideological and theoretical ambitions should be understood as consequences of domestic Chinese politics. While globally ambitious speech in CCP ideology and pro-establishment legal scholarship reflects China's international aspirations, it does not aim to persuade foreign audiences about the advantages of Chinese legal thought. Instead, this form of ideological speech aims at producing and reproducing political relationships within the Chinese body politic. Insisting on the global relevance of Chinese legal thought is one method for achieving this goal. At least for now, globally ambitious CCP ideology is domestic in its aspirations.

\*\*\*

#### A. Introduction

In the 1990s and early 2000s, the Chinese Communist Party's ("CCP" or "the Party") approach to the globalization of law was primarily defensive. CCP ideologues focused on

\* Associate Professor, The Chinese University of Hong Kong, Faculty of Law. I thank Zheng Silu for his assistance on this article and the two anonymous reviewers for their comments. Research for this article was funded by the Research Grants Council of Hong Kong.

finding intellectual reasons for rejecting Western legal imports into China and guarding the Chinese party-state against Western legal conceptions, such as the liberal separation of powers doctrine and Western notions of judicial independence.<sup>1</sup> The Party's legal ideology has now broken with this ideologically defensive tradition and become noticeably more ambitious about the global significance of Chinese legal thought. The new direction may be seen to constitute a “global turn” in Chinese legal ideology.

CCP ideologues' growing global ambitions are particularly evident in writings on “Xi Jinping Thought on the Rule of Law” (*Xi Jinping fazhi sixiang*, 习近平法治思想), a newly developed ideological framework, which consolidates CCP ideology under the

leadership of President Xi Jinping.<sup>2</sup> CCP ideologues describe Xi Jinping Thought on the Rule of Law as “an epoch-making advancement for human civilization.”<sup>3</sup> A government-endorsed textbook on Xi Jinping Thought on the Rule of Law argues that the

- 1 See *Zhonggong zhongyang zhengfa weiyuanhui* (中共中央政法委员会) [CCP Central Political and Legal Commission], *Shehui zhuyi fazhi linian duben* (社会主义法治理念读本) [The Socialist Rule of Law Concept—A Reader], Beijing 2009 (hereinafter *The Socialist Rule of Law Concept—A Reader*), pp. 31, 106-107; *Shehui zhuyi fazhi linian duben — Fudao Bai Wen* (社会主义法治理念读本—辅导百问) [The Socialist Rule of Law Concept—One Hundred Tutorial Questions], Beijing 2009 (hereinafter *One Hundred Tutorial Questions*), pp. 5-7, 25-26, 75-76; *Zhonggong zhongyang zhengfa weiyuanhui bangongshi* (中共中央政法委员会办公室) [Office of the CCP Central Political and Legal Commission], *Shehui zhuyi fazhi linian xuexi wenda* (社会主义法治理念学习问答) [Questions and Answers on the Socialist Rule of Law Concept], Beijing 2012 (hereinafter *Questions and Answers*), pp. 16-17, 71-72. For a scholarly argument against foreign legal imports, see *Zhu Suli*, *Sending Law to the Countryside*, Singapore 2016, p. xxxv (describing the challenges of legal transplantation). In this article the term “CCP ideologues” refers to persons within CCP organs who are engaged with developing Party ideology. For this ideological work, see *Huang Xianghuai*, *Emphasizing and Strengthening the Party's Ideological Work*, Center for Strategic and International Studies (6 July 2020), <https://interpret.csis.org/translations/emphasizing-and-strengthening-the-partys-ideological-work/> (last accessed 1 September 2022).
- 2 For a definition of Xi Jinping Thought on the Rule of Law, see *Xi Jinping Fazhi Sixiang Gailun* (习近平法治思想概论) [Introduction to Xi Jinping Thought on the Rule of Law] (hereinafter *Introduction to Xi Jinping Thought*) Beijing 2021, p. 75. For early descriptions of Xi Jinping Thought on the Rule of Law, see *Gong Pixiang* (公丕祥), *Xi Jinping fazhi sixiang shu yao* (习近平法治思想述要) [An outline of Xi Jinping Thought on the Rule of Law], *Falü kexue* (法律科学) [Legal Science] 3 (2015/5), p. 3; *Zhang Wenxian* (张文显), *Xi Jinping fazhi sixiang yanjiu (shang)* (习近平法治思想研究 (上)) [Research on Xi Jinping Rule of Law Thought (Part 1)], *Fazhi yu shehui fazhan* (法制与社会发展) [Legal system and social development] 128 (2016/2), p. 5. For a comprehensive literature review on scholarship on Xi Jinping Thought on the Rule of Law, see *Jiang Bixin* (江必新)/*Huang Minghui* (黄明慧), *Xi Jinping fazhi sixiang yanjiu zhi yanjiu* (习近平法治思想研究之研究) [Study on the study of Xi Jinping Thought on the Rule of Law], *Faxue Pinglun* (法学评论) 232 (2022), p. 1.
- 3 *Chen Yixin* (陈一新), *Xue shen wu tou Xi Jinping fazhi sixiang, zuo dao “ba ge shenke bawo”, dadao “wu ge chengxiao”* (学深悟透习近平法治思想,做到“八个深刻把握”,达到“五个成效”) [Learn deeply and understand thoroughly Xi Jinping's Rule of Law Thought; Achieve the “eight profound grasps,” accomplish the “five effects”], *Zhongguo Chang'anwang* (中国长安网) (18 November 2020), [http://www.chinapeace.gov.cn/chinapeace/c100007/2020-11/18/content\\_12415617.shtml](http://www.chinapeace.gov.cn/chinapeace/c100007/2020-11/18/content_12415617.shtml) (last accessed on 11 May 2022).

achievements of Chinese socialism demonstrate “the remarkable superiority and formidable vitality of [China’s] state institutions and its legal system.”<sup>4</sup> Xi Jinping Thought on the Rule of Law is the “height of world history and global thought”; it provides a new governance model for developing countries; and it is capable of generating new forms of international relations for all mankind.<sup>5</sup> A prominent Chinese legal scholar even contends that Xi Jinping Thought on the Rule of Law “will inevitably spread throughout the world and be passed down to future generations because of its universal appeal and prominence.”<sup>6</sup>

At first sight, these statements are at odds with commonly held views about the Chinese approach to law and development and the globalization of law. Scholars have observed that the Chinese development model amounts to, at most, a process of experimentation, rather than a developmental blueprint.<sup>7</sup> Other scholars have described the Chinese model as “an anti-model,” which comprises rhetorical tools against Western neoliberal development policies and legal institutions.<sup>8</sup> Yet other scholars have explained the Chinese approach to law and development as the recognition of “the limitations of exporting ‘models.’”<sup>9</sup>

Ideological texts on Xi Jinping Thought on the Rule of Law seem to challenge these assessments. While CCP ideology remains critical of Western universalism, it also sets out to provide lessons for other countries for “modernizing” (*xiandaihua*, 现代化) the rule of law.<sup>10</sup> This project is not exclusively defensive and critical, but also contains a promise of Chinese institutional and legal theoretical innovations, which can be successfully exported to foreign countries. Yet, while Party ideologues espouse the globally pathbreaking nature of Xi Jinping Thought on the Rule of Law, they are often unconcerned with explaining what the specific legal theoretical advantages of this form of legal thought are in comparison to existing modes of legal thought. In fact, prominent recent expositions of Xi Jinping

4 Introduction to Xi Jinping Thought, note 2, p. 67. For a similar statement, see *Huang Wenyi* (黄文艺), *Lun Xi Jinping fazhi sixiang de xingcheng fazhan, xianming tese yu zhongda yiyi* [论习近平法治思想的形成发展、鲜明特色与重大意义] [On the formation and development of Xi Jinping thought of the rule of law, its distinctive characteristics and significance], *Henan daxue xuebao (shehui kexue ban)* (河南大学学报 (社会科学版)) [Journal of Henan University (Social Sciences)] 61/5 (2021), p. 22.

5 Introduction to Xi Jinping Thought, note 2, pp. 63, 112-114.

6 *Huang*, note 4, p. 21. Huang is director of a research center on Xi Jinping Thought on the Rule of Law. See *Huang Wenyi: Dang lingdao fazhi jianshe de ba ge jianchi* (黄文艺: 党领导法治建设的八个坚持) [*Huang Wenyi: The Eight Upholds in the Construction of the Rule of Law through Party Leadership*], RUC News (23 June, 2021), <https://news.ruc.edu.cn/archives/332627> (last accessed on 11 May 2022).

7 For a description of this argument, see *Michael W. Dowdle/Mariana Mota Prado*, *Dialogus de Beijing Consensus*, in: *Weitseng Chen* (ed.), *The Beijing Consensus?: How China Has Changed Western Ideas of Law and Economic Development*, Cambridge 2017, pp. 34-35.

8 *Jedidiah Kroncke*, *Imagining China: Brazil, Labor, and the Limits of an Anti-model*, in: *Chen*, note 7, p. 54.

9 *Matthew S Erie*, *Chinese Law and Development*, *Harvard International Law Journal* 62 (2021), pp. 55-56.

10 Introduction to Xi Jinping Thought, note 2, pp. 65-67, 112-113.

Thought on the Rule of Law provide fewer legal theoretical explanations for the supremacy of Chinese legal thought than some ideological texts on the socialist rule of law conception from the Hu Jintao era (2002-2012).

This article examines the discrepancy between Party ideologues and legal scholars' growing global ambitions and their more modest legal theoretical contributions. It argues that the discrepancy between the two should be understood in the context of domestic Chinese politics.<sup>11</sup> The Party's ideological texts on the socialist rule of law conception and Xi Jinping Thought on the Rule of Law are primarily directed at domestic Chinese audiences. While globally ambitious speech in CCP ideology and pro-establishment legal scholarship reflects China's international aspirations, it does not aim to persuade foreign audiences about the advantages of Chinese legal thought.<sup>12</sup> Instead, this form of ideological speech – which can be called “ceremonial” – aims to produce and reproduce political relationships and value conceptions within the Chinese body politic.<sup>13</sup> Insisting on the global relevance of Chinese legal thought is one method for achieving this goal. To be sure, statements about the global relevance of Xi Jinping Thought on the Rule of Law also encourage Chinese elites to take a more active role on the global stage.<sup>14</sup> Nevertheless, at least for now, globally ambitious CCP ideology is primarily domestic in its aspirations.

The theoretical and methodological basis of this article is formed by rhetorical theory, which focuses on the context, functions and social effects of ideological and legal theoretical speech (including terms such as “the rule of law” and “legal formalism”).<sup>15</sup> Its sources include speeches from the Chinese leadership on the socialist rule of law conception and

- 11 For scholarship on China's attempts to establish soft power – or discourse power – in foreign countries, see e.g., *Erie*, note 9; *Paul Nantulya*, Strategic Application of the Tao 道 of Soft Power: The Key to Understanding China's Expanding Influence in Africa, *The African Review* 47 (2020), p. 481; *Samuli Seppänen*, Chinese Legal Development Assistance: Which Rule of Law? Whose Pragmatism?, *Vanderbilt Journal of Transnational Law* 51 (2018), p. 101; *Yun Zhao* (ed.), *International Governance and the Rule of Law in China Under the One Belt, One Road Initiative*, Cambridge 2018.
- 12 Chinese pro-establishment scholarship supports the country's political status quo through the Party's ideological concepts.
- 13 For the ceremonial genre of speech in rhetorical theory, see *Aristotle*, *On Rhetoric: A Theory of Civic Discourse*, Oxford 2007, pp. 47-48; *Chaim Perelman*, *The New Rhetoric: A Treatise on Argumentation*, Notre Dame 1969, p. 331.
- 14 For the development aspects of China's foreign legal relations, see *Matthew S. Erie/Hai Ha Do*, Law and Development Minus Legal Transplants: The Example of China in Vietnam, *Asian Journal of Law and Society* 8 (2021), p. 1; *Erie*, note 9, p. 51. For Chinese legal development cooperation with other countries, see *Seppänen*, note 11, p. 104.
- 15 For background, see *Aristotle*, note 13; *Peter Goodrich*, *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis*, New York 1987; *Perelman*, note 13. I have discussed and made use of this theoretical approach elsewhere. See *Samuli Seppänen*, *Ideological Conflict and the Rule of Law in Contemporary China: Useful Paradoxes*, Cambridge 2016; *Chinese Legal Thought on the Global and the Domestic Stage: A Rhetorical Study*, *Asian Journal of Comparative Law* (forthcoming).

Xi Jinping Thought on the Rule of Law;<sup>16</sup> prominent CCP textbooks on the socialist rule of law conception and Xi Jinping Thought on the Rule of Law,<sup>17</sup> and pro-establishment Chinese legal scholarship on the global relevance of Chinese legal thought.<sup>18</sup> These texts are the most substantive, publicly available sources on the meaning of the socialist rule of law conception and Xi Jinping Thought on the Rule of Law in CCP ideology. CCP textbooks on the socialist rule of law conception were published by the Party's Central Political and Legal Commission, a CCP organ in charge of Chinese legal institutions, and they were intended to be used in ideological education within the Party.<sup>19</sup> The textbook on Xi Jinping Thought on the Rule of Law was published by the CCP Central Propaganda Department.<sup>20</sup> This textbook is part of the Chinese government's Marxist textbook series, which seeks to counter the influence of "Western values" in Chinese universities.<sup>21</sup> Some pro-establishment Chinese legal scholars cited in this article have been directly involved in the development of Party ideology, whereas others are part of wider establishment discourse.<sup>22</sup> This article does not discuss Chinese dissident scholarship.<sup>23</sup>

The rest of this article is structured as follows. Part B describes CCP ideologues' approach to the global role of socialist legal thought during the Hu Jintao era. Part C describes the global ambitions of Xi Jinping Thought on the Rule of Law. Part D places statements on the global relevance of Xi Jinping Thought on the Rule of Law into the context of domestic Chinese politics and ideological speech. Part E concludes.

16 See, e.g., *Xi Jinping*, Compilation of Xi Jinping's Expositions on Rule of Law, Chinese Law & Government 48 (2016), p. 468; *Xi Jinping*, The Governance of China, Beijing 2014.

17 See The Socialist Rule of Law Concept—A Reader, note ; Questions and Answers on the Socialist Rule of Law Concept, note ; One Hundred Tutorial Questions, note . For a recent CCP-endorsed textbook on Xi Jinping Thought on the Rule of Law, see Introduction to Xi Jinping Thought, note 2.

18 See, e.g., *Chen*, note 3; *Gong*, note 2; *Huang*, note 4; *Jiang/Huang*, note 2; *Zhang*, note 2.

19 See The Socialist Rule of Law Concept—A Reader, note ; Questions and Answers on the Socialist Rule of Law Concept, note .

20 Introduction to Xi Jinping Thought, note 2; "Xi Jinping Fazhi Sixiang Gailun" chuban faxing (《习近平法治思想概论》出版发行) ["Introduction to Xi Jinping Thought on the Rule of Law" Published], Xinhua (8 September 2021), [http://www.gov.cn/xinwen/2021-09/08/content\\_5636262.htm](http://www.gov.cn/xinwen/2021-09/08/content_5636262.htm) (last accessed on 16 August 2022).

21 For the Marxist textbook series, see *Zhou Yu*, Chinese university revives research on official ideology to head off suspicious values, Global Times (1 June 2015), <https://www.globaltimes.cn/content/924726.shtml> (last accessed on 16 August 2022).

22 For instance, Professor Zhang Wenxian, an editor of the textbook on Xi Jinping Thought on the Rule of Law, is an established legal scholar and a long-time participant in the development of CCP ideology. See *He Qinhua et. al.*, 60 Leading Figures of Law in China over Past 60 years, China Law 6 (2009), p. 76; Introduction to Xi Jinping Thought, note 2; Zhang Wenxian, School of Law Jilin University, <https://law.jlu.edu.cn/info/1372/16819.htm> (last accessed on 11 May 2022). This article also cites more academically orientated Chinese scholars in order to illustrate legal theoretical arguments in Chinese legal academy. See note 57.

23 For such scholarship, see e.g. *Eva Pils*, Human Rights in China: A Social Practice in the Shadows of Authoritarianism, Cambridge 2018.

## B. The Socialist Rule of Law Conception

In the Hu Jintao era and during the first few years of Xi Jinping administration, Party ideologues defined the CCP's ideological goals in the field of law through “the socialist rule of law” (*shehui zhuyi fazhi*, 社会主义法治) conception. The “core and soul” of this conception comprised Party leadership, popular sovereignty, and the rule of law principle.<sup>24</sup> CCP ideology in the Hu Jintao era also regarded the globalization of law predominantly as a negative phenomenon. A textbook on the socialist rule of law conception, published in 2012 by the Party's Central Political and Legal Commission, criticized the efforts of “the U.S.-led Western forces … to export the rule of law to developing countries.”<sup>25</sup> According to the textbook, Western forces “assisted developing countries in enacting legislation, trained legal talent, provided legal advice and assistance, established research themes on the rule of law, designed and implemented judicial reform programs and, most importantly, emphasized the universality of the Western rule of law conception in the name of ‘building a global consensus.’”<sup>26</sup> The textbook argued that these efforts had caused “tragic consequences, such as social unrest, political instability, developmental stagnation and regression” in developing countries.<sup>27</sup>

Instead of promoting the socialist rule of law conception on the global stage, Party ideology in the Hu Jintao era focused on defending China's socialist rule of law against “the challenge” of Western ideology.<sup>28</sup> The above-mentioned textbook on the socialist rule of conception argued that, in the world, there had never existed, and could never exist, a standardized rule of law model.<sup>29</sup> In the textbook authors' view, China had to stand against Western rule of law ideology, which was being imported to non-western countries on the back of slogans such as “modernization” and “globalization.”<sup>30</sup> At the same time, CCP ideologues accepted that “the rule of law” (*fazhi*, 法治) itself was a universal value, and recognized as such by the CCP.<sup>31</sup> Party ideologues sought a middle ground between universalism and particularism, arguing that the rule of law ideal was neither “necessarily

24 For “the core and soul” of the socialist rule of law conception, see Questions and Answers, note , p. 15. The same doctrine is described in The Socialist Rule of Law Concept—A Reader, note , pp. 9-10; One Hundred Tutorial Questions, note , pp. 20-21.

25 Questions and Answers, note , p. 7.

26 Ibid.

27 Questions and Answers, note , p. 6.

28 For this formulation, see Questions and Answers, note , p. 7. See also The Socialist Rule of Law Concept—A Reader, note , p. 29; One Hundred Tutorial Questions, note , p. 5.

29 Questions and Answers, note , p. 5.

30 Questions and Answers, note , p. 6.

31 The Socialist Rule of Law Concept—A Reader, note , p. 7; Questions and Answers, note , pp. 167-168.

Questions and Answers, note , p. 18.

related to the capitalist system” nor synonymous with “liberal rule of law,” but something that could be realized within a socialist one-party state.<sup>32</sup>

In order to counter the West’s ideological advocacy efforts in China, Party ideologues in the Hu Jintao era called for theoretical clarity about the socialist rule of conception.<sup>33</sup> The need for such clarity was evident from the Party’s ideological texts. Party ideologues described the meaning of the socialist rule of law conception through a diverse collection of doctrines and slogans, whose conceptual and hierarchical relations were often unclear.<sup>34</sup> For instance, CCP literature in the Hu Jintao era required that law application and enforcement must “serve the overall situation” (*fuwu daju*, 服务大局).<sup>35</sup> This requirement instructed officials to take into consideration a variety of factors in law application other than the formal legal rule.<sup>36</sup> Such considerations included, among other things, fighting crime, promoting social justice and advancing social harmony and stability.<sup>37</sup> In addition to emphasizing the need to “serve the overall situation,” CCP ideologues also distinguished between the “political and social effects” (*zhengzhi xiaoguo, shehui xiaoguo*, 政治效果, 社会效果) and the “legal effects” (*falü xiaoguo*, 法律效果) of a judicial decision.<sup>38</sup> Being concerned about the political and social effects of a legal decision meant “following the major policies of the Party and the state, complying with the desires and needs of the great majority of the people, promoting social progress and development, and protecting social stability and order.”<sup>39</sup> Advancing the legal effects of a judicial decision, in contrast, meant “complying with the procedural and substantive norms of laws and regulations.”<sup>40</sup> According to a CCP textbook on the socialist rule of law conception published in 2009, the legal effect of a decision was of “primary importance,” whereas the “political and social effects” provided the “ultimate criterion” for law enforcement.<sup>41</sup> While it was not possible to serve the overall situation by violating the law, “complying with the procedural and substantive norms of laws and regulations” was not the ultimate criterion for law enforcement.<sup>42</sup> The above-mentioned CCP textbook on the socialist rule of law conception, published in 2012,

32 For these citations, see Questions and Answers, note , p. 23. See also *The Socialist Rule of Law Concept—A Reader*, note , p. 29; *One Hundred Tutorial Questions*, note , p. 5.

33 Questions and Answers, note , p. 7.

34 For instance, a textbook on the socialist rule of law conception from 2012 discussed dozens of ideological concepts through one hundred subheadings. See *One Hundred Tutorial Questions*, note .

35 Questions and Answers, note 1, p. 6; *The Socialist Rule of Law Concept—A Reader*, note 1, p. 99.

36 *The Socialist Rule of Law Concept—A Reader*, note 1, p. 99.

37 *The Socialist Rule of Law Concept—A Reader*, note 1, pp. 104-106.

38 Questions and Answers, note , p. 6; *The Socialist Rule of Law Concept—A Reader* note 1, p. 110; *Introduction to Xi Jinping Thought*, note 2, p. 92.

39 Questions and Answers, note , p. 189.

40 *Ibid.*

41 *The Socialist Rule of Law Concept—A Reader* note 1, p. 110.

42 *Ibid.*

also insisted on the unity of legal and social effects in law application, while criticizing the “Western liberalist tradition” for ignoring the social objectives of the rule of law.<sup>43</sup>

In the Hu Jintao era Party ideologues associated some Western rule of law conceptions with outmoded forms of legal thought.<sup>44</sup> The above-mentioned CCP textbook on the socialist rule of law, published in 2012, maintained that “the Western concept of the rule of law, in particular, the positivist or the formalist school of law prevailing in the mid-nineteenth century, held that judges must absolutely adhere to the law in order to insulate the judiciary from political influence and to prevent judges from acting arbitrarily.”<sup>45</sup> According to the textbook, the “formalist” approach to adjudication was mistaken because “the experience of the rule of law in every country demonstrates that law, being a tool of social governance, should not seek to, and indeed is unable to, transcend political requirements.”<sup>46</sup> The textbook also accused Western countries of adhering to double standards in rule of law advocacy. Whereas Western countries advocated the traditional, formalist rule of law concept aboard, they applied a far more instrumentalist version of law at home.<sup>47</sup> The textbook authors argued that “realism, pragmatism, sociological jurisprudence and Critical Legal Studies … had profoundly altered traditional Western theories about the rule of law, especially as regards the functions and role of law.”<sup>48</sup> According to the Party ideologues, Western legal theorists agreed in domestic contexts that: (i) “law could not sever its connection with society”; (ii) that “law was essentially a tool for the ruling class or the ruling group to exercise social domination”; (iii) and that “law had to adapt to the requirements of social domination and development.”<sup>49</sup>

The association of Western legal thought – or legal thought promoted by Western countries in non-Western contexts – with intellectually outdated formalism told a politically useful story about the historical development of Chinese law. According to CCP historiography, the Party’s anti-formalist legal thought marked a significant development to capitalist legal formalism.<sup>50</sup> The critique of legal formalism also allowed Party ideologues to warn CCP cadres against “a paranoid and absolutist approach to legal principles and

43 Questions and Answers, note , pp. 189-191.

44 Western forms of legal thought were variously called as “legal formalism” (*falü xingshi zhuyi*, 法律形式主义), “positivism” (*shizheng zhuyi*, 实证主义) and “legal dogmatism” (*fatiao zhuyi*, 法条主义). See Questions and Answers, note , p. 19; The Socialist Rule of Law Concept—A Reader, note , p. 30.

45 Questions and Answers, note , p. 19.

46 Ibid.

47 Questions and Answers, note , p. 175

48 Questions and Answers, note , pp. 174-175.

49 Questions and Answers, note , p. 175.

50 Questions and Answers, note , pp. 20, 24-25. A more academic version of this narrative – as set out by the conservative Professor Jiang Shigong of Peking University, among others – holds that the CCP replaced the old “method of strictly observing formal logic” with the Marxist and Maoist approach of “penetrating the phenomenon to see the essence” of the matter. *Jiang Shigong* (强世功), *Chengfa yu fazhi: Dangdai fazhi de xingqi 1976-1981* (惩罚与法治:当代法治的兴起

... rules.”<sup>51</sup> This was useful for ensuring the Party leadership’s extra-legal influence in the Chinese judiciary.<sup>52</sup> Finally, the critique of Western legal formalism produced an idealized image of China’s socialist rule of law conception. Party ideologues insisted that Chinese legal thought was committed to “substantive” justice;<sup>53</sup> it fit contextual social realities better than the capitalist rule of law;<sup>54</sup> it served the people’s needs better than the Western approach;<sup>55</sup> and it facilitated pragmatist and informal solutions better than the Western judicial institutions.<sup>56</sup>

The idealized image of Chinese legal thought reproduced in Hu Jintao era ideology resonated, and continues to resonate, among pro-establishment Chinese legal scholars. For instance, Professor Huang Zongzhi of Renmin University has drawn a sharp distinction between supposedly “formalist” Western legal system and China’s more advantageous “substantive” justice system and argued that China’s justice system rests on traditional informal, and substantively just, dispute resolutions institutions.<sup>57</sup> Nevertheless, the idealized image of Chinese legal thought was mostly articulated as a response to the threat of Western ideological advocacy, and did not reflect the entirety of the Party’s legal construction project. The same Party documents, which criticized legal formalism and instructed Party cadres to prioritize positive social and political consequences of a legal decision, also required Party cadres to apply the law “strictly” and work towards perfecting China’s formal legal system.<sup>58</sup>

While the Party’s ideological texts in the Hu Jintao era praised the “outstandingly innovative” nature of the socialist rule of law conception in the “history of human civiliza-

(1976-1981) [Punishment and the rule of law: The rise of contemporary rule of law in 1976-1981], Beijing 2009, p. 48.

51 Questions and Answers, note , p. 21.

52 For such influence, see *Kwai Hang Ng/Xin He*, *Embedded Courts: Judicial Decision-Making in China*, Cambridge 2017, pp. 123-124; *Ling Li*, *The Chinese Communist Party and People’s Courts: Judicial Dependence in China*, *American Journal of Comparative Law* 64 (2016), p. 74.

53 Questions and Answers, note , p. 19; *The Socialist Rule of Law Concept—A Reader*, note , p. 30.

54 Questions and Answers, note , pp. 19-20; *Socialist Rule of Law Concept—A Reader*, note , pp. 30-31.

55 Questions and Answers, note , pp. 31-32, 70; *Socialist Rule of Law Concept—A Reader*, note , pp. 73-75.

56 Questions and Answers, note , p. 93; *Socialist Rule of Law Concept—A Reader*, note , pp. 30-31. For foreign studies on pragmatism in Chinese law, see *Yu Xingzhong*, *Legal Pragmatism in the People’s Republic of China*, *Journal of Chinese Law* 3 (1989), pp. 39-40; *Taisu Zhang*, *The Pragmatic Court: Reinterpreting the Supreme People’s Court of China*, *Columbia Journal of Asian Law* 25 (2012), p. 11.

57 *Huang Zongzhi* (黄宗智), *Zhongguo de xinxing zhengyi tixi: Shijian yu lilun* (中国的新型正义体系 : 实践与理论 正义体系 黄宗智著) [China’s new justice system: Practice and theory], Beijing 2020, pp. 262-267.

58 *The Socialist Rule of Law Concept—A Reader*, note 1, p. 109. See also Questions and Answers, note 1, p. 170.

tion,”<sup>59</sup> such statements were not part of a greater plan to globalize China’s socialist rule of law conception. Instead of appropriating globalization of law for the socialist project, Party ideologues in the Hu Jintao era described the globalization of law as a western-led, predominantly negative, phenomenon.<sup>60</sup> In actual legislative practice Hu Jintao era saw China’s increasing integration with international regimes.<sup>61</sup> In the early 2000s, mainstream Chinese legal scholars were also receptive to importing (politically suitable) Western legal concepts.<sup>62</sup> Nevertheless, that the rhetorical scope of CCP ideologues’ theoretical ambitions was more modest and domestically focused in the Hu Jintao era than today.

### C. Xi Jinping Thought on the Rule of Law

While recent texts on Xi Jinping Thought on the Rule of Law retain some of the defensiveness of the earlier Party literature, they advance more ambitious arguments about the global role of Chinese legal thought than texts from the Hu Jintao era. Texts on Xi Jinping Thought on the Rule of Law also set out an ambitious agenda for improving Chinese jurists’ “ability to struggle abroad.”<sup>63</sup> At the same time, prominent expositions of Xi Jinping Thought on the Rule of Law abstain from the kind of legal theoretical critique that marked the Hu Jintao era texts on the socialist rule of law conception described in Part B above.

Chinese pro-establishment scholars began promoting Xi Jinping Thought on the Rule of Law shortly after Xi ascended to Party leadership in 2012.<sup>64</sup> Xi Jinping Thought on the Rule of Law has been discussed in academic conferences, and research institutes have been established to advance studies of this concept.<sup>65</sup> Early texts on Xi Jinping Thought on the Rule of Law were relatively modest about the global importance of this form of legal thought, emphasizing the need for intercultural learning and stressing the idiosyncratic nature of Chinese legal thought and China’s development path.<sup>66</sup> This attitude appears to have changed in 2020-2021.<sup>67</sup> Today Party ideologues maintain that Xi

59 Questions and Answers, note , p. 258. See also The Socialist Rule of Law Concept—A Reader, note , p. 8.

60 Questions and Answers, note , p. 7.

61 Pitman P. Potter, China and the International Legal System: Challenges of Participation, *China Quarterly* 191 (2007), p. 700.

62 Liang Zhiping, The Vernacularization and Localization of Civil Law in China, *Ancilla Iuris* (2021), p. 195 (discussing the use of European legal theoretical concepts in Chinese legal historiography).

63 Introduction to Xi Jinping Thought, note 2, p. 218.

64 See Gong, note 2, p. 3; Zhang, note 2, p. 5.

65 See e.g. Jiang/Huang, note 2, p. 2; RUC News, note 6.

66 Gong, note 2, p. 15; Zhang, note 2, pp. 12-13.

67 All statements on the global relevance of Xi Jinping Thought on the Rule of Law cited in the above-mentioned literature review on this doctrine are from 2020-2021. See also Jiang/Huang, note 2, p 9.

Jinping thought “profoundly addresses the issues that have emerged in the development of contemporary political civilization.”<sup>68</sup> Xi Jinping thought is “original on the global scale,”<sup>69</sup> and “an epoch-making advancement in human civilization.”<sup>70</sup> China’s management of the COVID-19 pandemic, in particular, demonstrates that its socialist system “possesses obvious systemic superiority” compared to other systems of governance.<sup>71</sup> Party ideologues and pro-establishment scholars argue that Xi Jinping Thought on the Rule of Law provides “a Marxist rule of law theory for the 21st century … which stands at the height of world history and global thought.”<sup>72</sup> As “a scientific theory” Xi Jinping Thought is “influential across countries and time.”<sup>73</sup> Xi Jinping Thought also offers the world “a new form of international relations” and “a solution for global governance.”<sup>74</sup> It accounts for “the multipolarity” of the world and promotes “fairness and justice” (*gongping zhengyi*, 公平正义) in international relations.<sup>75</sup> Under Xi Jinping Thought on the Rule of Law countries will “treat each other as equals … without arrogantly instructing other countries and interfering in their internal affairs.”<sup>76</sup> Party ideologues and pro-establishment scholars finally hope to cultivate legal personnel specializing in foreign-related matters, to promote Chinese talents in international organizations, and to strengthen “theoretical research on global governance.”<sup>77</sup>

In addition to such global ambitions, an obvious difference between Hu Jintao era texts on the socialist rule of law conception and texts on Xi Jinping Thought on the Rule of Law concerns the emphasis on Xi Jinping’s leadership. Xi’s leadership is manifested on the policy-level rather than in the institutional designs of the Chinese judiciary. Party ideology asserts the importance of adhering to the political thought of “the CCP Central Committee and Comrade Xi Jinping in its core.”<sup>78</sup> Xi Jinping’s person also acts as a unifying theme for Party ideology on the rule of law. Whereas the earlier socialist rule of law conception was

68 Introduction to Xi Jinping Thought, note 2, p. 63.

69 *Fu Zitang* (付子堂)/*Cui Bo* (崔博), *Xi Jinping fazhi sixiang de shijian yaoqiu* (习近平法治思想的实践要求) [The practical requirements of Xi Jinping thought on the rule of law], *Lilun Zhongguo* (理论中国) [Theoretical China] (8 January 2021), <http://www.theorychina.org/c/2021-01-08/1327819.shtml> (last accessed on 11 May 2022).

70 *Chen*, note 3.

71 Introduction to Xi Jinping Thought, note 2, p. 114.

72 Introduction to Xi Jinping Thought, note 2, p. 63.

73 Introduction to Xi Jinping Thought, note 2, p. 63.

74 Introduction to Xi Jinping Thought, note 2, pp. 66, 69.

75 Introduction to Xi Jinping Thought, note 2, pp. 69-70.

76 Introduction to Xi Jinping Thought, note 2, p. 71. The PRC has emphasized sovereign equality and the principle of non-intervention since its founding in 1949, as have other developing countries since the decolonization movement. See *Samuel S. Kim*, Sovereignty in the Chinese Image of World Order, in: *Ronald St. John Macdonald* (ed.), *Essays in Honour of Wang Tieya*, Boston 1994, p. 428.

77 Introduction to Xi Jinping Thought, note 2, pp. 218-219.

78 Introduction to Xi Jinping Thought, note 2, p. 264.

defined by various doctrines launched by China's previous leaders, including Hu Jintao, the socialist rule of law conception itself is now an element of Xi Jinping Thought on the Rule of Law.<sup>79</sup> Party ideologues define the policies advocated under Xi Jinping Thought on the Rule of Law through the so-called “Eleven Upholds,” a collection of (eleven) policy objectives.<sup>80</sup> With the exception of the above-described foreign-related activities, the “Eleven Upholds” generally restate the attributes and policy objectives of the earlier socialist rule of law conception.<sup>81</sup>

Despite its emphasis on the leadership of a single individual, recent texts on Xi Jinping Thought on the Rule of Law are less critical of legal formalism than earlier Party texts on the socialist rule of law conception. In contrast to the Hu Jintao era texts on the socialist rule of law conception, the 2021 textbook on Xi Jinping Thought on the Rule of Law – a landmark text on the new doctrine – does not attack legal formalism.<sup>82</sup> The textbook also no longer emphasizes the above-described doctrine of “serving the overall situation.”<sup>83</sup> The

79 Introduction to Xi Jinping Thought, note 2, p. 67.

80 Ibid. For an earlier definition of Xi Jinping Thought on the Rule of Law, see *Chen*, note 3.

81 Xinhua, the Chinese state news agency, describes the “Eleven Upholds” as follows: (i) upholding Party leadership on overall law-based governance; (ii) taking a people-centered approach; (iii) staying on the path of the socialist rule of law with Chinese characteristics; (iv) adhering to constitution-base governance; (v) promoting the modernization of China's governance system and capacity along the path of the rule of law; (vi) adhering to a system of the socialist rule of law with Chinese characteristics; (vii) pursuing coordinated progress in law-based governance, law-based exercise of state power, and law-based government administration, and promoting the integrated development of the rule of law for the country, the government and the society; (viii) ensuring sound law-making, strict law enforcement, impartial administration of justice, and the observance of the law by everyone; (ix) taking a coordinated approach to promoting the rule of law at home and in matters involving foreign parties; (x) fostering a high-quality team of professionals with both integrity and ability for legal work; (xi) ensuring that leading officials at various levels faithfully implement major decisions and plans made by the CCP Central Committee on overall law-based governance. See *Xi Focus: Xi Jinping Thought on the Rule of Law guides law-based governance in China*, Xinhua (10 December 2020), [http://www.xinhuanet.com/english/2020-12/10/c\\_139578646.htm](http://www.xinhuanet.com/english/2020-12/10/c_139578646.htm) (last accessed on 11 May 2022). Except for item (ix) relating to foreign parties, the earlier definition of the socialist rule of law comprises all these elements. See *Questions and Answers*, note , (i) p. 209 (regarding Party leadership); (ii) pp. 65, 210 (regarding the people-centered approach); (iii) p. 209 (regarding the socialist rule of law with Chinese characteristics); (iv) p. 18 (regarding constitutional governance); (v) p. 59 (regarding the modernization of the legal system); (vi) p. 209 (regarding the adherence to the socialist rule of law with Chinese characteristics); (vii) p. 66 (regarding law-based governance); (viii) pp. 234-235 (regarding strict law enforcement); (x) pp. 91, 211 (regarding legal personnel); and (xi) p. 185 (regarding obedience to central Party and state authorities). Some scholars point out that Xi Jinping Thought on the Rule of Law is not reducible to the “Eleven Upholds” alone. See note 117 below.

82 For critiques of legal formalism in earlier CCP literature, see *The Socialist Rule of Law Concept—A Reader*, note , p. 30; *Questions and Answers*, note , p. 19.

83 The Hu Jintao era textbooks on socialist rule of law conception included lengthy sections on “serving the overall situation.” See *The Socialist Rule of Law Concept—A Reader*, note , chapter 8; *One Hundred Tutorial Questions*, note , questions 64-71, pp. 67-73; *Questions and Answers*, note , chapter 5.

textbook still makes use of the distinction between the legal, political and social effects of a judicial decision.<sup>84</sup> The textbook urges Party cadres to achieve “the best legal effects, political effects and social effects” of a judicial decision, without suggesting (or acknowledging) that there exists a normative hierarchy between these considerations.<sup>85</sup> At the same time, the textbook continues to emphasize Party leadership. All six elements of the textbook’s definition of the socialist rule of law conception relate to “Party leadership.”<sup>86</sup> The textbook also stresses the importance of “political” considerations in law application, and states that “the rule of law cannot be separated from politics.”<sup>87</sup> The textbook even introduces new pragmatist adjudicative criteria, urging Party cadres to conduct “risk assessments” and legal compliance reviews before taking major decisions.<sup>88</sup>

Despite their more global outlook, texts on Xi Jinping Thought on the Rule of Law reproduce the earlier critiques of Western universalism. The textbook on Xi Jinping Thought on the Rule of Law attacks the conception promoted by “some Western countries … that there is only one mode for the rule of law, the mode applied by them.”<sup>89</sup> The textbook points out that “only the person wearing a shoe knows whether it fits their foot or not.”<sup>90</sup> Building on this figure of speech, the textbook argues that determining “whether a social system is scientific and advanced depends primarily on whether this system conforms to the national characteristics of a country, whether it is effective and useful, and whether it is endorsed by the people.”<sup>91</sup> At the same time, the textbook also asserts the universal applicability of Xi Jinping Thought – at least to socialist countries – contending that the “socialist rule of law with Chinese characteristics is the only correct way to build a socialist country ruled by law.”<sup>92</sup>

Xi Jinping Thought on the Rule of Law is sometimes discussed in more modest terms. For instance, a scholarly article on “the original innovations of Xi Jinping Thought on the Rule of Law” places these innovations within Sinified Marxism rather than on the level of global legal thought, and states that China “will never ‘export’ its model” to other

84 Introduction to Xi Jinping Thought, note 2, p. 92.

85 Ibid. As mentioned above, the same was true of a textbook on socialist rule of law conception published in 2012. See Questions and Answers, note , pp. 189-191.

86 Introduction to Xi Jinping Thought, note 2, pp. 78-80.

87 Introduction to Xi Jinping Thought, note 2, p. 257. See also *Fu/Cui*, note 69.

88 Introduction to Xi Jinping Thought, note 2, p. 88. Such statements may intend to improve legal compliance, but they may also support the erosion of rule-based legal boundaries. See *Dimitri Van Den Meerssche/Geoff Gordon*, A ‘New Normative Architecture’: Risk and Resilience as Routines of Un-Governance, *Transnational Legal Theory* 11 (2020), p. 285 (explaining that within the World Bank, the introduction of legal risk management envisaged “a ‘paradigm shift’ in legal practice where ‘boundaries’ [were] traded for ‘risk categories’ and ‘prohibitions’ for ‘management strategies’”).

89 Introduction to Xi Jinping Thought, note 2, p. 122.

90 Introduction to Xi Jinping Thought, note 2, p. 125.

91 Introduction to Xi Jinping Thought, note 2, p. 125.

92 Introduction to Xi Jinping Thought, note 2, pp. 78, 112-113.

countries.<sup>93</sup> Zhang Wenxian – an editor of the above-described textbook on Xi Jinping Thought on the Rule of Law – has acknowledged elsewhere that the innovations of Xi Jinping Thought are forthcoming rather than readily exportable.<sup>94</sup> Nevertheless, on a whole, Party ideologues and pro-establishment legal scholars have become more assertive about the global importance of Chinese legal thought during the past few years.

#### D. The domestic context of CCP ideologues' global ambitions

The previous sections have sought to demonstrate that the descriptions of Xi Jinping Thought on the Rule of Law generally envision a greater global role for Chinese legal thought than Hu Jintao era texts on the socialist rule of law conception. At the same time, previous sections have suggested that Party ideology appears to be less concerned with providing legal theoretical arguments for the specific advantages of Chinese legal thought. This section demonstrates that the CCP ideologues' global ambitions and the discrepancy between Party ideologues' ideological and theoretical ambitions become understandable when they are studied within the context of domestic Chinese politics and ideological speech.

The choice of language is the most obvious sign of the domestic scope of the Party's ideological speech. The above-described statements on the global relevance of Xi Jinping Thought on the Rule of Law have been made in Chinese language documents.<sup>95</sup> These texts have not been translated into foreign languages and, consequently, cannot be assumed to have been intended, at least primarily, for foreign audiences. The Chinese government also publishes English language whitepapers, which describe its development policies to foreign audiences.<sup>96</sup> These whitepapers are noticeably more reserved about their ideological claims than the Party's Chinese language literature on Xi Jinping Thought on the Rule of

93 *Zhai Guoqiang* (翟国强), *Xi Jinping fazhi sixiang dui Makesi zhuyi fazhi lilun de yuanlixing chuangxin* (习近平法治思想对马克思主义法治理论的原理性创新) [Original innovations of Xi Jinping Thought on the Rule of Law for Marxist theory on the rule of law], *Chongqing daxue xuebao (shehui kexue ban)* (重庆大学学报( 社会科学版)) [Journal of Chongqing University ( Social Science Edition)] 27 (2021), p. 6.

94 *Zhang Wenxian* (张文显), *Xi Jinping fazhi sixiang de lilun tixi* (习近平法治思想的理论体系) [The theoretical system of Xi Jinping thought on the rule of law], *Quanguo zhixue shehui kexue gongzuo bangongshi* (全国哲学社会科学工作办公室) [National Office for Philosophy and Social Sciences], <http://www.nopss.gov.cn/n1/2021/0111/c219544-31996155.html> (last accessed on 11 May 2022).

95 It should be noted that some statements attesting to the global importance of Xi Jinping Thought have been translated into foreign languages, for instance, as part of news reporting. See *Xi Focus: Xi Jinping Thought on the Rule of Law guides law-based governance in China*, *China Daily* (10 December 2020), <https://www.chinadaily.com.cn/a/202012/10/WS5fd1c396a31024ad0ba9b10f.htm> (last accessed on 11 May 2022).

96 The State Council Information Office of the People's Republic of China, *China's International Development Cooperation in the New Era* (January 2021) (hereinafter *China's International Development Cooperation in the New Era*), <http://english.www.gov.cn/archive/whitepaper/202101/10/>

Law. For instance, the Chinese government's whitepaper *China and the World in the New Era*, published in 2019, contends that the Chinese development model is "a path of reform and innovation," which is "based on China's actual conditions."<sup>97</sup> Instead of detailing a specifically Chinese form of rule of law or legal thought, the whitepaper defines the rule of law in general terms as the "law-based governance of the country, law-based exercise of state power and law-based administration in the government."<sup>98</sup> In contrast to Chinese language advocacy materials, the whitepaper mentions Xi Jinping Thought only once in the context of China's idiosyncratic development path.<sup>99</sup> Similarly, a Chinese government whitepaper on *China's International Development Cooperation in the New Era*, published in 2021, outlines various activities in "law-based governance" and policy making in China's development cooperation.<sup>100</sup> The whitepaper does not, however, identify or advance specific lessons or models on the rule of law or legal development policies.<sup>101</sup> While the whitepaper applauds president Xi Jinping's actions on the global stage, it neither discusses nor promotes Xi Jinping Thought on the Rule of Law.<sup>102</sup>

The intended audience for statements about the globally pathbreaking nature of Chinese legal thought is, therefore, mostly domestic. Even in their domestic context, Party ideologues and pro-establishment scholars' recent texts on Xi Jinping Thought on the Rule of Law seem unconcerned with intellectual persuasion.<sup>103</sup> While Party ideologues and pro-establishment scholars can choose to emphasize different themes in Xi Jinping Thought on the Rule of Law,<sup>104</sup> texts on this doctrine typically follow a closely structured, almost liturgical form, which uses near-identical terms to describe ideological doctrines.<sup>105</sup> These

content\_WS5ffa6bbbc6d0f72576943922.html (last accessed on 11 May 2022); The State Council Information Office of the People's Republic of China, *China and the World in the New Era* (27 September 2019) (hereinafter *China and the World in the New Era*), [http://english.www.gov.cn/archive/whitepaper/201909/27/content\\_WS5d8d80f9c6d0bcf8c4c142ef.html](http://english.www.gov.cn/archive/whitepaper/201909/27/content_WS5d8d80f9c6d0bcf8c4c142ef.html) (last accessed on 11 May 2022).

97 *China and the World in the New Era*, note 96, section I.4.

98 Ibid. The whitepaper's definition of the rule of law neither includes nor excludes rights and principles from the rule of law. Elsewhere the whitepaper states that China promotes "peace, development, equity, justice, democracy, freedom and other common human values." *China and the World in the New Era*, note 96, section IV.6.

99 *China and the World in the New Era*, note 96, section IV.1.

100 *China's International Development Cooperation in the New Era*, note 96.

101 Ibid.

102 Ibid.

103 A review of scholarship on Xi Jinping Thought on the Rule of Law acknowledges that Chinese legal scholars should move from "propaganda" to "scientific" research. See *Jiang/Huang* note 2, p. 12.

104 *Jiang/Huang*, note 2, p. 5 (noting that texts on Xi Jinping Thought on the Rule of Law can choose to emphasize: (i) the importance of building the rule of law in China; (ii) the nature of the Chinese rule of law; or (iii) the methods of building the rule of law).

105 One commonly seen statement asserts that Xi Jinping Thought on the Rule of Law contributes "Chinese wisdom" to the world. See e.g. Chen, note 3; *China Daily*, note 95; *Jiang Bixin* (江

texts make little use of argumentative tools, such as analytic distinctions, comparisons and arguments about causation, which are typical of deliberative texts in China and abroad,<sup>106</sup> and which were partly apparent in earlier texts on China's socialist rule of law conception.<sup>107</sup> The above-mentioned texts on Xi Jinping Thought on the Rule of Law present few legal theoretical arguments about what constitutes "an epoch-making advancement" in Xi Jinping thought,<sup>108</sup> and what makes this form of legal thought "original."<sup>109</sup>

To be sure, texts on Xi Jinping Thought on the Rule of Law sometimes seek to persuade their audiences about the superiority of Xi Jinping Thought through reasoned arguments. For instance, the above-described textbook on Xi Jinping Thought on the Rule of Law aspires to reach academic audiences and be seen as a theoretically relevant piece of scholarship.<sup>110</sup> Among other things, the textbook describes legal reforms in many developing countries as a Eurocentric, top-down process.<sup>111</sup> The textbook argues that Xi Jinping Thought is based neither on top-down reforms nor on bottom-up action, but on the organic unity of these two extremes.<sup>112</sup> This argument not only asserts the superiority of Xi Jinping Thought on the Rule of Law, but also provides reasons for this claim through dialectical argumentation.<sup>113</sup> Similarly, a scholarly article on Xi Jinping Thought on the Rule of Law and human rights protections argues that Xi Jinping Thought represents "a new development in

必新)/*Jiang Qinghua* (蒋清华), Xi Jinping fazhi sixiang dui xianfa lilun he shijian de fazhan chuangxin (习近平法治思想对宪法理论和实践的发展创新) [The developments and innovations of Xi Jinping thought on the rule of law for constitutional theory and practice], *Faxue pinlun* (法学评论) [Law Review] 226 (2021), p. 14.

106 Perelman, note 13, pp. 214-215, 242, 267 (describing deliberative rhetorical tools). For an example of non-deliberative pro-establishment scholarship, see e.g. *Zhang Wenxian* (张文显), Xi Jinping fazhi sixiang de xin pianzhang (习近平法治思想的新篇章) [A new chapter in Xi Jinping Thought on the Rule of Law], *Faxue shiping* (法学时评) [Law Review] (2022), <https://www.pkulaw.com/qikan/f993db26413d26aa1f8bea950fcbe944bdfb.html> (last accessed on 11 May 2022).

107 Questions and Answers, note , pp. 19-20; One Hundred Tutorial Questions, note , p. 26; Socialist Rule of Law Concept—A Reader, note , pp. 30-32.

108 Chen Yixin describes the epochal nature of Xi Jinping Thought on the Rule of Law as the consequence of the Chinese leadership's willingness to "take into account domestic and international situations," "the openness, cooperation and mutual beneficiality" of China's foreign policy, and China's resistance towards "the law of the jungle" in international relations, among other things. See *Chen*, note 3.

109 Fu Zitang and Cui Bo describe Western legal theory as a "trap," and argue that the debate about Western constitutionalism has been put to rest by Xi Jinping's assertion that "there is no rule of law that is separate from politics." See *Fu/Cui*, note 69.

110 Introduction to Xi Jinping Thought, note 2, pp. 16, 217.

111 Introduction to Xi Jinping Thought, note 2, p. 67.

112 Ibid.

113 This argument is dialectical in both meanings of the word: first, it engages in reasoning with an (imagined) opponent; second, it identifies two opposing forces and provides a rhetorical synthesis of these forces. See Perelman, note 13, pp. 109, 440.

human rights theory.”<sup>114</sup> Among other things, this article argues that Xi Jinping Thought on the Rule of Law cuts through the Western practice of focusing on the empty shell of human rights – “such as freedom” – at the expense of promoting “the happiness of the people, which is the greatest human right.”<sup>115</sup> Whatever its merits, this article attempts to convince its audience about its propositions through reasoned arguments.<sup>116</sup> Finally, there is some amount of discussion, and even deliberation, among pro-establishment Chinese scholars about the correct description of Xi Jinping Thought, even if these debates do not reflect substantive academic disagreements. For instance, some scholars argue that Xi Jinping Thought on the Rule of Law is not reducible to the above-described “Eleven Upholds.”<sup>117</sup> While the “Eleven Upholds” form the “core message” (*hexin yaoyi*, 核心要义) of the policy considerations promoted through Xi Jinping Thought on the Rule of Law, a correct understanding of this doctrine needs to consider all the teachings of Xi Jinping in a comprehensive manner.<sup>118</sup> Chinese pro-establishment scholars have also discussed the correct way to subdivide the “Eleven Upholds.”<sup>119</sup>

Texts on Xi Jinping Thought on the Rule of Law, therefore, sometimes follow the genre conventions of scholarly deliberation, which comprises reasoned arguments made to persuade audiences about specific intellectual propositions.<sup>120</sup> The choice of rhetorical forms suggests that intellectual persuasion has a role to play in illiberal ideology. After all, persuasion is necessary only when the speaker believes that an audience has a choice about the topic under discussion – even if such a choice extends no further than to one’s privately held beliefs.<sup>121</sup> The use of deliberative tools in CCP ideology is, therefore, revealing of CCP ideologues’ aspiration to develop an intellectually persuasive ideology.<sup>122</sup> It should also be noted that Chinese people’s courts make much use of persuasive argumentation in

<sup>114</sup> Liu Hainian (刘海年), *Xi Jinping fazhi sixiang yu renquan baozhang zhidu jianshe* (习近平法治思想与人权保障制度建设) [Xi Jinping thought on the rule of law and the construction of a human rights protection system], *Renquan yanjiu* (人权研究) [Human Rights Studies] (2021), p. 2.

<sup>115</sup> *Ibid.*

<sup>116</sup> The article itself acknowledges that Xi Jinping Thought on the Rule of Law builds on international human rights conventions, which casts doubt on the originality of Xi Jinping Thought. *Ibid.*

<sup>117</sup> *Jiang/Huang*, note 2, pp. 5-7.

<sup>118</sup> *Ibid.*

<sup>119</sup> Some scholars divide Xi Jinping Thought on the Rule of Law into two subcategories, whereas others split it into three subcategories. Yet others advance a four-fold division, while some have split the doctrine into five subcategories. There are even those who propose to understand Xi Jinping Thought on the Rule of Law through nine subcategories. *Ibid.*

<sup>120</sup> For deliberation in argumentation, see *Perelman*, note 13, p. 14.

<sup>121</sup> *Kenneth Burke*, *A Rhetoric of Motives*, Berkeley 1969, p. 50.

<sup>122</sup> For an explicit recognition of such an aspiration, see Xi stresses philosophy, social sciences for socialist development, highlights Chinese characteristics, *China Daily* (17 May 2016), [https://www.chinadaily.com.cn/china/2016-05/17/content\\_25331875.htm](https://www.chinadaily.com.cn/china/2016-05/17/content_25331875.htm) (last accessed on 17 August 2022).

order to convince litigants – and government officials – about the correct resolution of legal disputes.<sup>123</sup>

Nevertheless, a number of texts on the global importance of Xi Jinping Thought on the Rule of Law assert their claims without attempting to justify them through reasoned persuasion. For instance, the above-mentioned textbook on Xi Jinping Thought on the Rule of Law mentions Hobbes and Locke as the inspiration for the contemporary “Western capitalist rule of law,” which “safeguards the fundamental interests of the bourgeoisie.”<sup>124</sup> The textbook asserts that, in contrast to Western legal thought, the socialist rule of law with Chinese characteristics takes Marxism as its foundation, “safeguarding the fundamental of the vast majority of people.”<sup>125</sup> Elsewhere the textbook contrasts Western attempts to transcend classes and political parties through the rule of law with China’s “organically” united political and legal system.<sup>126</sup> In neither instance does the textbook seek to refute Western theories through legal theoretical arguments, nor does it engage with possible counterarguments against its assertions.

Using the terms of rhetorical theory, such a genre of speech may be described as “ceremonia.l”<sup>127</sup> In contrast to deliberative speech, ceremonial speech does not seek to persuade its audiences about the validity of specific propositions; instead, ceremonial speech aims to reproduce and strengthen the political bonds and values between the speaker and their audience.<sup>128</sup> The purpose of the distinction between deliberative and ceremonial speech in rhetorical theory is to account for different genres and purposes of speech. These differences can be understood as being relative rather than absolute. As is the case with deliberative speech, ceremonial speech can be argumentative when it seeks to promote certain values over other values.<sup>129</sup> Ceremonial speech can also seek to achieve social effects among its audience, for instance, when it hopes to demonstrate the speaker’s acceptance of commonly held values to a specific audience.<sup>130</sup>

Insisting on the globally pathbreaking nature of Xi Jinping Thought on the Rule of Law provides an opportunity for Party ideologues and pro-establishment Chinese legal scholars to demonstrate their political loyalty to China’s core leadership. If Xi Jinping Thought on the Rule of Law is globally relevant, then also its author is afforded a higher political status

123 In this sense, persuasion can be seen to build and sustain hierarchical trust under authoritarian legality. See *Mary Gallagher*, Authoritarian Legality in China: Law, Workers, and the State, Cambridge 2017, pp. 33-34. In classical rhetoric, judicial rhetoric formed its own genre of speech. See *Perelman*, note 13, p. 21.

124 Introduction to Xi Jinping Thought, note 2, p. 258.

125 *Ibid.*

126 Introduction to Xi Jinping Thought, note 2, p. 81.

127 For ceremonial and deliberative texts, see *Aristotle*, note 13, pp. 47-48; *Perelman*, note 13, pp. 21, 47-48.

128 See *Aristotle*, note 13, pp. 47-48.

129 *Perelman*, note 13, p.51.

130 *Ibid.*

than the authors of previous, merely locally relevant forms of Chinese legal thought.<sup>131</sup> It is immaterial for such speech whether its audience is intellectually persuaded about its assertions. In fact, the implausible nature of ideological speech may serve to signal the non-deliberative nature of political ideology. Theorists of illiberal societies, in particular, have noted that illiberal ideological speech does not need to be plausible in order to be politically effective. Such speech may, for instance, seek to display loyalties or reinforce ideological cynicism.<sup>132</sup>

While ceremonial speech does not need to be produced or received in good faith in order for it to be effective, some descriptions of Xi Jinping Thought on the Rule of Law may describe Chinese leadership's values and viewpoints in an authentic way.<sup>133</sup> Praising the globally pathbreaking nature of Xi Jinping Thought supports the Chinese leadership's self-perception about China's new global role. The Chinese leadership no longer follows the policy of "biding time, hiding brightness" in international relations,<sup>134</sup> but offers "[s]ocialism with Chinese characteristics [as] a new option for other countries and nations."<sup>135</sup> Xi Jinping's principal foreign policy concept, the Belt and Road Initiative, has facilitated large-scale investments into developing countries (although the global COVID pandemic has reduced much of this activity).<sup>136</sup> China also provides concessional foreign development assistance to developing countries.<sup>137</sup> Such assistance has not been confined to commercial and concessional infrastructure projects, but it also comprises large-scale

131 See e.g., *Chen*, note 3; *Fu/Cui*, note 69; *Zhang*, note 2, p. 21.

132 See e.g., *Václav Havel et al.*, *The Power of the Powerless: Citizens Against the State in Central-Eastern Europe*, Armonk 1985, p. 27.

133 *Perelman*, note 13, p. 48 (describing the ancient reception of epidictic oratory); *Yifan Yang*, *Looking Inward: How Does Chinese Public Diplomacy Work at Home?*, *British Journal of Politics and International Relations* 22 (2020), pp. 375-376 (describing the connection between CCP ideology and the aspirations of the Chinese people).

134 *David Shambaugh*, *China's Long March to Global Power*, in: *David Shambaugh* (ed.), *China and the World*, New York 2020, p. 17.

135 *Socialism with Chinese Characteristics Enters New Era: Xi*, *China Daily* (18 October 2017), [https://www.chinadaily.com.cn/china/19thcernationalcongress/2017-10/18/content\\_33398070.htm](https://www.chinadaily.com.cn/china/19thcernationalcongress/2017-10/18/content_33398070.htm) (last accessed on 11 May 2022).

136 Before the COVID-19 pandemic, China's commercial investments through the Belt and Road Initiative exceeded investments funded by Western-led development agencies, such as the World Bank and the Asian Development Bank. See *OECD*, *China's Belt and Road Initiative in the Global Trade, Investment and Finance Landscape* (2018), <https://www.oecd.org/finance/Chin-as-Belt-and-Road-Initiative-in-the-global-trade-investment-and-finance-landscape.pdf> (last accessed on 11 May 2022), pp. 20-21. For the reduced activity in the Belt and Road Initiative, see *Christoph Nedopil Wang*, *China Belt and Road Initiative (BRI) Investment Report H1 2021* (July 2021), [https://greenfdc.org/wp-content/uploads/2021/07/21\\_07\\_22\\_BRI-Investment-Report-H1-2021.pdf](https://greenfdc.org/wp-content/uploads/2021/07/21_07_22_BRI-Investment-Report-H1-2021.pdf) (last accessed on 11 May 2022), p. 3. See also *Erie*, note 9, pp. 73-74.

137 *Joshua Eisenman/Eric Heginbotham*, *China's Relations with Africa, Latin America, and the Middle East*, in: *David Shambaugh* (ed.), *China and the World*, New York 2020, pp. 298-300; *Seppänen*, note 14, pp. 103-104.

capacity-building programs.<sup>138</sup> In the field of law, China has set up legal development cooperation programs with a number of countries, providing capacity-building programs for lawyers from developing countries, advice on law reform, and regulatory compliance support for Chinese state-owned enterprises and private companies operating in developing countries.<sup>139</sup> While there are no signs of Xi Jinping Thought on the Rule of Law being promoted through such cooperation,<sup>140</sup> the Chinese government's foreign engagement can be better justified domestically if it is assumed that China can offer globally pathbreaking views on law and development.<sup>141</sup>

Whether the Chinese government has, in fact, articulated such path-breakings views is another matter. As discussed above, texts on Xi Jinping Thought on the Rule typically refrain from explaining how the new, "pathbreaking," form of legal thought differs from Western legal thought. As also discussed above, texts on Xi Jinping Thought on the Rule of Law have become more muted in their criticism of "Western" legal formalism compared to the texts in the Hu Jintao era.<sup>142</sup> The discrepancy between ceremonial rhetoric and reality can again be seen to serve domestic goals. In recent years the Chinese leadership has sought to strengthen the status of formal legal rules and processes in Chinese people's courts and CCP organs.<sup>143</sup> Formalist arguments have become common in policy texts on the Party's internal governance. Prominent Party ideologues promote the construction of a logically rational system of rules within the CCP, thereby seeking to control uses of power within the Party.<sup>144</sup> The new doctrine sends a message about the increased importance of formal legality in Xi Jinping's China.<sup>145</sup> However, while texts on Xi Jinping on the Rule of Law emphasize formal legality, they also underline Marxist ideology even more

138 In 2017, China funded over 525 "Confucius Institutes" (centers for Chinese language and culture) abroad, and received 489,200 international students, 264,976 of which came from Asia. Eisenman/Heginbotham, note 137, p. 302. See also Seppänen, note 14, pp. 117-118.

139 See *The State Council Information Office of the People's Republic of China*, China's Foreign Aid (10 July 2014), [http://english.www.gov.cn/archive/white\\_paper/2014/08/23/content\\_281474982986592.htm](http://english.www.gov.cn/archive/white_paper/2014/08/23/content_281474982986592.htm) (last accessed on 18 May 2022); Seppänen, note 14, pp. 127-140.

140 See China and the World in the New Era, note 96; China's International Development Cooperation in the New Era, note 96.

141 For the domestic controversy surrounding Chinese development assistance, see Yun Sun, The domestic controversy over China's foreign aid and the implications for Africa (8 October 2015), <https://www.brookings.edu/blog/africa-in-focus/2015/10/08/the-domestic-controversy-over-chinas-foreign-aid-and-the-implications-for-africa/> (last accessed on 1 September 2022).

142 Compare Questions and Answers, note , p. 19; Introduction to Xi Jinping Thought, note 2, p. 81.

143 Taisu Zhang/Tom Ginsburg, China's Turn Toward Law, *Virginia Journal of International Law* 59 (2019), p. 311.

144 Wang Zhenmin (王振民), Zhongguo Gongchandang dangnei fagui yanjiu (中国共产党党内法规研究) [Study on CCP intraparty regulations] Beijing 2015, p. 11; Song Gongde (宋功德), Danggui zhi zhi (党规之治) [Governance Through Intraparty Regulations], Beijing 2016, pp. 125-126.

145 For the importance of formal legality in contemporary China, see Mary Gallagher, Authoritarian Legality in China: Law, Workers, and the State, Cambridge 2017; Carl Minzner, End of an Era:

intensely than texts from the Hu Jintao era.<sup>146</sup> According to the textbook on Xi Jinping Thought, the political foundation of the socialist rule of law with Chinese characteristics is “Marxist state theory,” whose essence is “class struggle.”<sup>147</sup> The textbook also derides “Western capitalist” countries for their attempt to transcend social classes and political decision-making through liberal legal processes.<sup>148</sup> Such statements strengthen the message that the Party is unwilling to release its grasp on the Chinese judiciary.

In conclusion, the above-described statements about the global importance of Chinese legal thought should be interpreted and understood in the context of domestic Chinese politics and ideological speech. It is difficult to assess how genuine CCP ideologues and Chinese legal scholars’ statements about the comparative advantages of Chinese legal thought are. As mentioned above, ceremonial speech may have social effects even if its audience does not find it intellectually persuasive. Western legal theory certainly remains an important source and reference point for Chinese legal academy, and many Chinese legal scholars are no doubt sceptical about the grand claims made in CCP ideology and pro-establishment legal scholarship.<sup>149</sup> At the same time, it is worth noting that the supremacy of Chinese legal thought has become a recognizable talking point in Chinese legal academy. For instance, the proceedings of a conference organized to commemorate the 40th anniversary of China’s Reform and Opening-up policies in 2018 concluded “that the hegemony ... of western jurisprudence had ended,” and the legal systems in the western world were

How China’s Authoritarian Revival is Undermining Its Rise, Oxford 2020; *Zhang/Ginsburg*, note 143.

146 Whereas textbooks from the Hu Jintao era discussed Marxism mostly in historical introductions, the 2021 textbook on Xi Jinping Thought on the Rule of Law seeks to revitalize Marxism for the world. See *The Socialist Rule of Law Concept—A Reader*, note , pp. 14-19; *Questions and Answers*, note , pp. 24-27; *Introduction to Xi Jinping Thought*, note 2, p. 6.

147 *Introduction to Xi Jinping Thought*, note 2, p. 258.

148 *Introduction to Xi Jinping Thought*, note 2, p. 81. For similar critique in earlier texts, see *The Socialist Rule of Law Concept—A Reader* note , p. 30; *One Hundred Tutorial Questions*, note , p. 26.

149 For example, Issue 2021/4 of *Zhongguo Faxue* (中国法学) [China Legal Science], a journal edited and published by the Chinese Academy of Sciences, comprises 15 scholarly articles, only three of which do not reference contemporary Western legal scholarship. These articles discuss the use of big data in Chinese people’s courts, the internal governance of the CCP, and Chinese national security legislation. See *Sun Xiaoyong* (孙晓勇), *Sifa da shuju zai Zhongguo fayuan de yingyong yu qianjing zhanwang* (司法大数据在中国法院的应用与前景展望) [The application and prospects for judicial big data in Chinese courts], *Zhongguo Faxue* (中国法学) [China Legal Science] (2021/4), p. 123; *Han Chunhui* (韩春晖), *Yifa zhiguo he yi guizhi dang youji tongyi yanjiu* (依法治国和依规治党有机统一研究) [Study on the organic unification of law-based governance of the state and rule-based governance of the Party], *Zhongguo Faxue* (中国法学) [China Legal Science] (2021/4), p. 145; *Jiang Su* (江溯), *Yi weixian fangfa weihai gonggong anquan zui rending guize yanjiu* [ (以危险方法危害公共安全罪认定规则研究) [Study on the Regulations regarding the crime of endangering public security by dangerous means], *Zhongguo Faxue* (中国法学)[China Legal Science] (2021/4), p. 221.

“facing a huge crisis of confidence.”<sup>150</sup> The conference participants, who included some of China’s most prominent legal scholars, observed that the West had produced no leading legal theoretical figures since H.L.A. Hart and Ronald Dworkin.<sup>151</sup> Some participants maintained that China’s socialist rule of law theory provided Chinese legal thought an advantage over other forms of legal thought.<sup>152</sup>

## E. Conclusion

This article has argued that CCP ideologues and pro-establishment legal scholars’ ambitious statements about the global relevance of Chinese legal thought should be studied as performances within Chinese domestic politics. This is not to say that texts on Xi Jinping Thought on the Rule of Law should be seen as mere insincere flattery. As this article has demonstrated, texts of Xi Jinping Thought on the Rule of Law seek to support various domestic policy objectives, such as the strengthening of rule-based governance within the Chinese party-state. These texts also direct Chinese development experts and legal scholars to engage more actively with foreign and transnational legal systems. Such ambitions conform to the sentiment among Party ideologues and some establishment scholars that China is at the forefront of the world’s ideological and scientific development. Nevertheless, it is noteworthy that the texts asserting the global importance of Xi Jinping Thought on the Rule of Law have not been designed to win over foreign audiences through legal theoretical arguments. On the contrary, it appears that the more assertive Party ideologues and pro-establishment legal scholars have become about the global importance of Chinese legal thought, the less invested they have become in intellectual persuasion. This development is also explainable on the basis of Chinese domestic politics. As a result of China’s domestic political developments, China’s increasingly idiosyncratic socialist ideology relies ever more on ceremonial language. The global turn in Chinese legal ideology is ultimately a domestic one.

150 Participants included scholars such as Xu Xianming and Zhang Wenxian. See *Guo Ye*, Pursuit and Appreciation for the Historical Logic of Chinese Legal Science, *China Legal Science* (2018/6), pp. 122-123. Xu Xianming served fifteen years as the vice president of Shandong University is now the Deputy Procurator General of the Supreme People’s Procuratorate. See, *Xu Xianming*, *China Vitae*, [https://www.chinavitae.com/biography/Xu\\_Xianming/full](https://www.chinavitae.com/biography/Xu_Xianming/full) (last accessed on 1 September 2022). For biographical information on Zhang Wenxian, see note 22.

151 *Guo*, note 150, p. 128.

152 *Guo*, note 150, pp. 127-128, 134.