



18th CPC Central Committee Fourth Plenum: Rule of Law with Chinese Characteristics

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The Fourth Plenary Session of the 18th Central Committee of the Communist Party of China (CPC) was held from 20-23 October 2014. Apart from the on-going Occupy Central democracy protests in Hong Kong, the Plenum was conducted without any other political complication. ‘Rule of law’ was the central theme of the Plenum; it was for the first time that such a topic had been adopted for discussion at a Plenum. The Communiqué released after the four-day meeting gave a new blueprint for the ‘rule of law’ and comprehensive ‘judicial reforms’, and at the same time stressed the overarching role of the Constitution in the country’s legal system (*Beijing Review* 2014). Does this imply an evolution of the rule of law in China albeit with Chinese characteristics?

After the report was released, there was a reshuffling of personnel of the CPC Central Committee including of alternate members

that also involved the stripping of Party membership from some. This was done after due examination of the Report by the Central Commission for Discipline Inspection (CCDI) to root out corruption and anti-Party activities that undermined the Party and the leadership. Furthermore, steps were initiated for the separation of local courts and judicial organs from the control of party cadres at the horizontal-level of local government. In fact, the Plenum has provided a new path to the process of legal reforms, an aspiration both within and outside China.

Legal Reforms and the Evolution of the ‘Socialist Rule of Law’

The concept of the ‘rule of law’ in China was elaborated upon soon after the launching of the reform policy in 1979 by

Deng Xiaoping. His speech on 13 December 1978 outlined the initiatives for strengthening the legal system to ensure people's democracy, and this democracy would be institutionalised and written into law to make sure that the institutions and laws do not change whenever the leadership changes (*Selected Works of Deng Xiaoping* 1984: 157-58). Since then, China has witnessed rapid economic, political and social development, and public awareness of the importance of rule of law has increased remarkably. This has been shown empirically in the White Paper on Judicial Reforms in China (SCIO 2012a). These changes, along with the new challenges confronting China, have demanded judicial reforms, which have gradually led to judicial reforms. In China, the path to legal reforms thus, has been an evolving process since the reform period. Keeping in sync with these trends, the 2014 *CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward* hereinafter referred to as the *Decision* has persisted in establishing socialist rule of law with Chinese characteristics.

The evolution of rule of law in China began in the early 1990s with the CPC's changing philosophy. Although a formal legal system was established during the 13th Party Congress in 1988, administration in accordance with the law began to play a major role in governance and the polity by the 14th Party Congress in 1992. However, during the 5th Plenum of the 14th Party Congress in 1995, only the phrase rule by law rather than rule of law was mentioned in the construction of a 'spiritual civilization' (精神文明 *jingshen wenming*) (Zhu 2010a: 103). Later, the 15th CPC Congress in 1997 decided to make 'rule of law' the basic strategy and 'building a socialist country

under the rule of law' became an important goal for socialist modernisation. In 1999, the Chinese State Constitution was amended to include Article 5 that stated, 'the People's Republic of China practices ruling the country in accordance with the law and building a socialist country of law' (Revised PRC Constitution cited in Zhu 2010b: 104). Furthermore, the 3rd Plenum of the 16th Party Congress upheld the policy of exercising power democratically and in accordance with the law. This indicated a shift in the nature of the Party from a revolutionary to governance.

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In terms of the process of the legal system, the enactment of the Administrative Procedure Law of the People's Republic of China (中华人民共和国行政诉讼法 *zhonghua renmin gongheguo xingzheng susong fa*) (*Xinhua* 1989), championed more by the scholars rather than party officials, was a major breakthrough in 1989. In 2004, China initiated legal reforms focusing on promotion of judicial impartiality and strict enforcement of the laws. In 2008 again, China began deepening reforms in the key areas of economy, promoting social harmony as the main principle for the overall advancement of society (SCIO 2012b). These reforms have led to the amendments of old laws, formulating new ones that are in tune with the prevailing situation in recent years. By 2013, the National People's Congress had decreed 243

laws, and the State Council had drafted more than 680 regulations (*Xinhua* 2014). However it must be admitted that bulk of these laws in conjunction with the 2014 Plenum *Decision's* 'rule of law' indicate the urgency of the Party towards evolution of the legal system in China today.

The 'rule of law' (*yifazhiguo* 依法治国) in the present sense, is better translated as 'rule according to law.' Both authorities and citizens use these two terms interchangeably to define and promote their own agenda. The authorities have been using it as an umbrella to promote a range of administrative and legal reforms while citizens and activists have sought to use both the rhetoric associated with the term, and the practical reforms accompanying it, as opportunities to promote deeper institutional and political change in an authoritarian state (Minzer 2014: 7). Debates around the rule of law, thus, are not confined to a single interpretation. The 4th Plenum postulates that the "rule of law should be advanced under the CPC leadership and in line with socialism with Chinese characteristics." Likewise, the *Global Times* noted, 'that the rule of law should only be advanced by the rule of the Party and there are CPC fundamentals that should not be overridden' (*Qiushi* 2014). However, party officials also argue that this is Xi's effort at 'Chinese rejuvenation and cultural self-confidence' being extended to the legal sphere (Mustafaga 2014: 1-2).

Rule According to Law—But the Party Comes First

The 4th Plenum *Decision* reinforces a range of legal reforms for strengthening governance and society. The *Decision* made a proposal for centralisation of judicial power to help curb the interference of local authorities in court decision by creation of

'circuit tribunals' for handling important cases involving multiple administrative jurisdictions (SCIO 2012c) have been replaced now by a litigation process of trials and citizen petitions (Minzer 2014b: 7). Nevertheless, the *Decision* has reinforced the cardinal principle of upholding the Party leadership in these reforms. For instance, Section 1 of the *Decision* lists principles that must be upheld in order to achieve the goal of ruling the state according to law, the first being leadership of the Party. Another example is Section 6, which states that judges should be loyal to four things: the Party, the state, the people and the law. Here, the party comes first and the law comes last (EU-Asia Centre 2014).

Efforts to promote the rule of law were also aimed at furthering China's socialist market economic reforms by minimising government intervention and creating a more level playing field for

The *Decision* also envisages Party regulations and Party discipline being stricter than State laws. All Party organisations and cadres must not only be models of abiding by State laws, but must also put strict demands on themselves according to the even higher standards of Party regulations and Party discipline. It also mandates Party control over legislation under the auspices of the National People's Congress Standing Committee (NPCSC). The NPCSC's responsibility as enforcer of the Chinese Constitution lays emphasis on 'constitution' (宪法 *xianfa*) and not 'constitutionalism' (宪政 *xianzheng*), which would imply separation of powers between different organs of government, that does not apply to the Chinese national situation (Cohen 2014a: 4). Similarly, the *Decision*

also calls on Party authorities to explore the essence of the Chinese legal culture and promote traditional Chinese culture to increase the moral content of the socialist rule of law efforts; it also necessitates constructing a cadre of politically reliable legal scholars, conscious of the Chinese national character. The *Decision* has strengthened ideological warnings regarding the applicability of foreign models, explicitly noting that China will ‘not copy foreign rule-of-law ideas or models.’

The *Decision* stresses that the ‘socialist market economy’ essentially is a ‘rule of law economy’. To ensure that the market plays a decisive role in the allocation of resources, the government must take initiatives to protect property rights, uphold contracts, unify markets, ensure fair competition and supervise and implement laws accordingly. It also called for the strengthening of the protection of property rights of economic organisations of all kinds of ownership systems as well as individuals.

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At the same time, efforts to promote the rule of law were also aimed at furthering China’s socialist market economic reforms by minimising government intervention and creating a more level playing field for industries (McArver 2014), as signs of demarcation of power with respect to economy and politics are deliberated upon by the party-state. This decision supports the earlier 3rd Plenum Decision on China’s market reforms.

The announcement of a National Constitution Day on 4 December 2014 and every year thereon, tries to emphasise the importance of the highest law through school education and revamping of curricula. The important objective is to make errant officials obedient to the state constitution. However, the 4 December announcement is not an entirely new idea. The first post-reforms Chinese Constitution of 1982 was adopted at the 5th Session of the 5th NPC Congress and promulgated for implementation by the proclamation of the National People’s Congress on 4 December that year. It was also referred to as “Implement Constitution Day.” Another law reform in 2001 was called “Legal System Propaganda Day” but neither had substantial impact on the country’s legal structure or practice (*People’s Daily* 5 December 2001, cited in Cohen 2014b: 3).

The 4th Plenum and Local Governance

The *Decision* calls for the transformation of several aspects of local governance and also the legal system. Active participation of the provincial congresses in firmly implementing the Party decision of ‘rule of law’, and abiding by the Constitution were stressed. The *Decision* also mandated the transformation of the existing court structure, with the Supreme People’s Court (SPC)’s establishment of ‘circuit tribunals’ (巡回法庭 *xunhui fating*) to run major administrative and civil cases in more than one administrative region. The People’s Courts and People’s Procuratorates with jurisdiction transcending administrative districts will be responsible for cross-regional cases, implying the creation of a

new set of courts. These centralising trends suggest that the courts may only be

accountable to the central government and the Party leadership.

Besides this, there is also the *Decision's* initiative to educate and professionalise the jurists, lawyers and the party cadres under the auspices of the Party. The study of the Constitution and the legal system will now be mandatory in the study curriculum of Party schools and study groups. Respect for 'rule of law' along with contributing to the GDP growth and environmental impact, will be an important criterion for evaluation and promotions. It further calls for a training programme for jurists and their recruitment through exams, starting from below, and promotions based on skills and ability. Lateral entry opportunities for legislators, lawyers, officials and even military cadres to become judges have also been incorporated.

The cautious handling of legal cases by

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limiting media coverage was emphasised. Excessive media intervention was held responsible for possibly sensationalising local court cases in the national news. This is in addition to stricter internet controls on sharing information. Officials will now swear loyalty to China's Constitution, and this invoking of the highest law of the land is indicative of the newer dynamics underlying the on-going of legal reforms in China. More specifically, the Plenum Communiqué and the final *Decision* focussed on the 'rule of law' as reducing local officials' control over local courts and thus their ability to engage in corruption.

An Assessment

The 4th Plenum has given a new slogan: 'socialist rule of law with Chinese characteristics' and the CPC's promise that it would be implemented by 2020, may bring about changes in the legal and political landscape in China. The emphasis on 'rule of law' and 'governing in accordance with the law' has stressed judicial professionalisation from the grassroots to higher levels of governance.

Since coming to power in 2012, two of the most significant campaigns launched by Xi Jinping, namely, the rule of law and the campaign against corruption can be better understood not in terms of an attempt to concentrate power in his hands through the purging of his detractors or of dissidents but as an effort to clean up the administration. The campaign against corruption has led to an investigation and arrest of more than 182,000 party officials at various levels including prominent CC members with ranks of vice minister (Rappai 2014). Nevertheless, these campaigns have also led to Xi's consolidation of power. The arrest of Zhou Yongkang, former 17th Politburo Standing Committee (PBSC) member and security czar and his expulsion from the Party following the 4th Plenum (*Global Times* 2014) demonstrates Xi's firm stance against Party indiscipline and corruption. In sum, the Plenum's decisions underscore the firm intent of the Party to retain its power by not only leading the legal reforms in the country but also through its overall supervision of the process.

However, despite these political reforms, the Plenum also recognized that rules are of little use if they are not effectively enforced. There were several hundred thousand pending cases of maladministration, graft and infringement of peoples' rights on land

and resources. Corruption and abuse of power were breeding resentment and anger among ordinary Chinese, while communities, large and small, had no institutional means of voicing or redressing their grievances (Diamond 2003: 319-20). Though most of the basic rights, including property rights, are enshrined in the Constitution, almost 65 per cent of the mass incidents that occur each year in rural China are related to disputes over illegal seizure of land by officials (*The Economist* 2014). Thus, the Party's call for a 'socialist rule of law with Chinese characteristics' can be seen as one of an important steps in the long march towards the rule of law and jurisprudence in the People's Republic of China.

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