

CHINA’S RULE OF LAW DEVELOPMENT: THE
INCREASING EMPHASIS ON
INTERNATIONALIZATION OF LEGAL STANDARDS
AND THE HORIZONTAL RULE OF LAW

MARTIN KWAN*

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I. INTRODUCTION

Professor Frank He, in his thought-provoking article “(Non)legality as Governmentality in China,” argues that “China remains far from a rule-based society,” and that the rule of law may not be China’s ultimate goal at all.¹ He further asserts that “law in China is dispensable when there are higher priorities.”² Some Western academics and observers have taken a similar view,³ but these positions fail to differentiate between vertical and horizontal rule of law.

He’s observation addresses the vertical rule of law, which concerns the relationship between the state or party and its citizens.⁴ Western academics have noted that China prefers

* Research Director, OBOR Legal Research Centre. Independent consultant and arbitrator. I am indebted to the team of editors for their meticulous edits and helpful suggestions. Email: martinkwan11@gmail.com.

1. Frank He, *(Non)legality as Governmentality in China* 1, 2, 8 (University of Hong Kong Faculty of Law Research Paper No. 2020/035, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3612483.

2. *Id.* at 8.

3. Francis Fukuyama, *Reflections on Chinese Governance*, 1 J. CHINESE GOVERNANCE 379, 386, 390 (2016).

4. Colleen Murphy, *The Rule of Law, Democracy, and Obedience to Law*, 62 ST. LOUIS U. L.J. 293, 294 (2018); RAOUL WALLENBERG INST. HUM. RTS. & HUMANITARIAN L. & HAGUE INST. FOR INTERNATIONALISATION L., RULE

the predominance of party leadership or politics over legal accountability⁵ and the supremacy of law—which is a key pillar of the Western conception of the rule of law.⁶ In light of other characteristics of Chinese governance, such as the existence of and reliance on “legal extras” and “non-legality”⁷ and Chinese courts’ inability to cite the Chinese Constitution as a source of law,⁸ scholars widely argue that China possesses no vertical rule of law in the Western sense.⁹ Instead, many contend that there is rule *by law* by the state party,¹⁰ and that law in China is merely a tool of public

OF LAW: A GUIDE FOR POLITICIANS 8 (2012), <http://rwi.lu.se/app/uploads/2012/09/Rule-of-Law-a-guide-for-politicians.pdf> [<https://perma.cc/DF2W-AYSV>].

5. JAMIE P. HORSLEY, BROOKINGS INST., PARTY LEADERSHIP AND RULE OF LAW IN THE XI JINPING ERA: WHAT DOES AN ASCENDANT CHINESE COMMUNIST PARTY MEAN FOR CHINA’S LEGAL DEVELOPMENT? 8 (Sept. 2019), https://law.yale.edu/sites/default/files/area/center/china/document/horsley_china_party_legal_development.pdf [<https://perma.cc/4JJU-9LXS>].

6. Maj. Ronald T. P. Alcalá, Lt. Col. Eugene Gregory, & Lt. Col. Shane Reeves, *China and the Rule of Law: A Cautionary Tale for the International Community*, JUST SECURITY (June 28, 2018), <https://www.justsecurity.org/58544/china-rule-law-cautionary-tale-international-community/> [<https://perma.cc/XC3H-MYL7>]. See *What is the Rule of Law*, U.N. & RULE L., <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> [<https://perma.cc/Z65H-DBRP>] (last visited Feb. 3, 2021) (“For the United Nations (UN) system, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws . . . It requires measures to ensure adherence to the principles of supremacy of the law . . .”).

7. He, *supra* note 1, at 3, 6. The terms “non-legality” and “legal extras” are used in the same sense. For a summary of the types of legal and quasi-legal tools in China, see Hualing Fu, *The Varieties of Law in China*, HUM. RTS. CHINA (Jul. 18, 2011), <https://www.hrichina.org/en/crf/article/5422> [<https://perma.cc/4AGZ-2NFP>] (defining “extra-law” as “a system in which power is neither directly derived from properly constituted authorities nor subject to independent oversight . . . extra-law does not allow deliberation, representation and decision-making that can be regarded as judicial. It has a strong political or policy orientation and the whole system is geared to political expediency or convenience.”). In simple terms, “legal extras” or “non-legality” constitute a political system of rules for governance and adjudication that, although its functions resemble that of law, it is not law.

8. Thomas E. Kellogg, *Constitutionalism with Chinese Characteristics? Constitutional Development and Civil Litigation in China*, 7 INT’L J. CONST. L. 215, 221 (2009).

9. *Id.*

10. Josh Chin, *‘Rule of Law’ or ‘Rule by Law’? In China, a Preposition*

governance to achieve governmentality (i.e. the maintenance of power) and stability.¹¹

However, the horizontal rule of law presents a different perspective.¹² It addresses the relationships among private entities, excluding state and party-related entities. Unlike the vertical rule of law, which addresses the public or administrative aspect of governance, the horizontal rule of law concerns the private law aspect, such as commercial laws. Both the vertical and horizontal aspects of the rule of law help to achieve the vital functions of maintaining order and organizing citizens' transactions and behavior.¹³ Effective rule of law thus depends on both the vertical and horizontal components of governance.¹⁴

This article takes a horizontal perspective and suggests that there is an ever-increasing emphasis on the internationalization of legal standards and rule-based governance in China. It explains recent legal developments that support this trend and argues that Chinese President Xi Jinping positively reinforced the movement in his October 14th, 2020 speech in Shenzhen. The Chinese government intended for Shenzhen, a Special Economic Zone,¹⁵ to

Makes All the Difference, WALL ST. J. (Oct. 20, 2014), <https://www.wsj.com/articles/BL-CJB-24523> [<https://perma.cc/CUT7-JYA2>].

11. He, *supra* note 1, at 5.

12. See Brian Tamanaha, *A Concise Guide to the Rule of Law* 8, 14 (St. John's Univ. Sch. L. Legal Stud. Rsch. Paper Series, Paper No. 07-0082, 2007), <https://content.csbs.utah.edu/~dlevin/conlaw/tamanaha-rule-of-law.pdf> [<https://perma.cc/X7ZY-EZLN>] (arguing that the rule of law increases certainty, predictability, and security vertically between citizens and governments and horizontally among citizens and that "both functions of the rule of law. . . [are] to hold government officials to the law (vertical), and to resolve disputes between citizens according to the law (horizontal)").

13. *Id.* at 6.

14. See RAOUL WALLENBERG INST. & HAGUE INST., *supra* note 4, at 8 ("In short, the rule of law is relevant both to relations between those who are governed and those who govern and to the relations between private entities, be they physical persons or legal persons, such as associations and companies. This is worth stressing, since there are those who sometimes argue that the rule of law is exclusively concerned with limiting the exercise of governmental power. It is not.")

15. For background on China's Special Economic Zones, see Bret Crane et al., *China's Special Economic Zones: An Analysis of Policy to Reduce Regional Disparities*, 5 REG'L STUD., REG'L SCI. 98, 99-100 (2018) (explaining that China's Special Economic Zones (SEZs) are "small geographical areas that allow the integration of free-market principles to

become “a national model” for economic development in China.¹⁶ Whilst the main focus is to develop the economy, Shenzhen will also serve as the role model for other areas of development including law and order, innovation, and environmental protection.¹⁷ Therefore, Shenzhen’s pioneering development, and in particular President Xi’s speech regarding Shenzhen’s goal to achieve the horizontal rule of law, matter very much for China as a whole.

II. PRESIDENT XI’S SPEECH IN SHENZHEN

In his speech on October 14th, 2020, President Xi mentioned the Chinese phrase *fazhi*—which literally means “rule of law”—seven times.¹⁸ Western academics and observers

attract additional foreign investment.” They are characterized by “local management, unique benefits, and separate customs and administrative procedures. Unique benefits include operating under more liberal laws and economic policies compared with other parts of the country.”). The Shenzhen SEZ was created in 1980 and gives tax benefits and flexibility to foreign companies. Regulations on Special Economic Zones in Guangdong Province (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 26, 1980) arts. 14, 19–22. For more information on the Shenzhen SEZ, see Sheying Chen et al., *Special Economic Zones and Globalization of Chinese Cities: The Case of Shenzhen*, 10 AM. J. CHINESE STUD.1, 3, 5, 7 (2003) (describing Shenzhen as “the first and the most successful or influential special economic zone in the country” and explaining how Shenzhen maintains an open-door policy and a “socialist market economy,” among other features to attract foreign investment).

16. Phoebe Zhang, *Beijing Unveils Detailed Reform Plan to Make Shenzhen Model City for China and the World*, S. CHINA MORNING POST (Aug. 18, 2019), <https://www.scmp.com/news/china/politics/article/3023330/beijing-unveils-detailed-reform-plan-make-shenzhen-model-city> [<https://perma.cc/4K4E-U89K>]; see also *Interview: Shenzhen Pilot Area’s Success to Be Key to China’s Structural Transition - U.S. Expert*, XINHUA NET (Aug. 28, 2019), http://www.xinhuanet.com/english/2019-08/28/c_138345890.htm [<https://perma.cc/96BW-MS86>] (quoting a CCP document as predicting that “[b]y 2025, Shenzhen will become one of the leading cities in the world in terms of economic strength and quality of development. Its research and development input, industrial innovation capacity, and the quality of its public services and ecological environment will be first-rate in the world.”). This optimistic news was reposted by the General Office of the Shenzhen Municipal People’s Government on its official website, http://www.sz.gov.cn/en_szgov/news/infocus/pda/news/content/post_6619230.html [<https://perma.cc/7ZHQ-99YM>].

17. Zhang, *supra* note 16.

18. CGTN, *President Xi Lauds ‘Shenzhen Miracle’ at SE’s 40th Anniversary*, YOUTUBE (Oct. 14, 2020), <https://www.youtube.com/>

often contend that translating *fazhi* to “rule of law” is incorrect, because they believe that the rule of law does not exist in China, and that the phrase should therefore translate to either “rule by law” or “law and order.”¹⁹ But while this view may apply to the vertical rule of law, it should not apply in this case because President Xi’s speech concerned the horizontal context.

Both the wording of the speech and the context in which President Xi delivered it point to the emerging trend in China towards the horizontal rule of law. President Xi expressly stated that China needs to “place emphasis on law-based governance, learn to address challenges in urban management with law-based mentality and approaches, making rule of law the consensus and basic norm of the society.”²⁰ His emphasis on the “rule-of-law mindset and methods” suggests that law is the foremost basis of governance.²¹ Law no longer serves as a mere “instrument” or easily dispensable tool, as He contends,²² because it is the fundamental “consensus and basic norm.”²³ Contrary to He’s suggestion that “China remains far from being a rule-based society,”²⁴ President Xi’s speech arguably confirmed a shift towards rule-based governance and the horizontal rule of law. President Xi has also emphasized other hallmarks of the horizontal rule of law, including the need to “ensure scientific legislation, strict law enforcement, judicial impartiality and universal law abiding to make rule of law an important

watch?v=_ssMhjExy7Q&ab_channel=CGTN [https://perma.cc/KB6Z-FNNW]. As the official English translation of President Xi’s speech is not yet available, the excerpts quoted in this article are derived from government-related news agencies’ reported translations, which include this live-translated recording of President Xi’s speech.

19. George G. Chen, *Le Droit, C’est Moi: Xi Jinping’s New Rule-By-Law Approach*, OXFORD HUM. RTS. HUB (Jul. 26, 2017), <http://ohrh.law.ox.ac.uk/le-droit-cest-moi-xi-jinpings-new-rule-by-law-approach/> [https://perma.cc/BEB9-QCQ3].

20. CGTN, *supra* note 18, at 36:26.

21. *Xi Stresses Modernization of Shenzhen’s Urban Governance System, Capacity*, XINHUA NET (Oct. 14, 2020), http://www.xinhuanet.com/english/2020-10/14/c_139439224.htm [https://perma.cc/HEM8-6T58].

22. He, *supra* note 1, at 6.

23. CGTN, *supra* note 18, at 36:38.

24. He, *supra* note 1, at 2.

guarantee for the development of the [Special Economic Zones].”²⁵

The context in which President Xi delivered the address indicates that his choice of words should not be taken lightly. Understanding this context requires comprehension of China’s underlying motivations for promoting the horizontal rule of law, which are linked to its paramount goal of economic development. China highly values international businesses, so President Xi stressed the importance of “opening up on all fronts and continuously enhanc[ing] the attractiveness of ‘bringing in’ [international business] and the competitiveness of [Chinese business] ‘going out.’”²⁶ The President added that, to achieve these goals, China must develop a “market-oriented, law-based, and internationalized business environment.”²⁷ China will endeavor to “protect the legitimate rights and interests of entrepreneurs, property rights, as well as intellectual property rights in accordance with the law, so as to motivate entrepreneurs to start up and develop their businesses.”²⁸ Thus, in order to increase international business opportunities, China accepts the fundamental importance of protecting rights and respecting legality.

The Chinese government’s emphasis on market-oriented economic reform, which relies on a “law-based and internationalized business environment,” is not limited to Shenzhen.²⁹ Indeed, this remains the goal for China as a whole.³⁰ China intends for Shenzhen to demonstrate the

25. *Xi Summarizes Experience of Shenzhen and Other SEZs’ Reform and Opening Up*, XINHUA NET (Oct. 14, 2020), http://www.xinhuanet.com/english/2020-10/14/c_139439180.htm [https://perma.cc/5RDF-HHBK]. For an alternate translation, see CGTN, *supra* note 18, at 16:02 (“We must adhere to scientific legislation, strict law enforcement, justice, and universal law abiding, and make rule of law the essential guarantee of development of the Special Economic Zones”).

26. *Xi Summarizes Experience of Shenzhen and other SEZs’ Reform and Opening Up*, *supra* note 25.

27. CGTN, *supra* note 18, at 31:31.

28. *Id.* at 32:20.

29. *Commentary: China’s Flourishing Market Entities Vital to its Economic Recovery*, XINHUA NET (Jul. 23, 2020), http://www.xinhuanet.com/english/2020-07/23/c_139234677.htm [https://perma.cc/BV8A-7N7U].

30. *Id.*

“high-level open economy” that it hopes will one day define the entire country.³¹

III. INTERNATIONALIZATION OF LEGAL STANDARDS FOR THE DEVELOPMENT OF THE HORIZONTAL RULE OF LAW

The quality or content of law is fundamental to the rule of law.³² Even if China elevates law as the foundation of horizontal governance, the rule of law can hardly exist if the substantive legal standards or rules remain unreasonable or obscure. Accordingly, in addition to President Xi's determination to protect commercial property rights, China has implemented many actual improvements to its commercial law that contribute to a sound horizontal rule of law. The examples below show that China has incrementally adopted international legal standards for commercial law.

For some foreign investors, arbitration is the most trusted means of dispute resolution in China. In the past, China adopted what some called a restrictive approach to certain types of arbitration because the Chinese courts wanted to prevent “domestic parties from by-passing Chinese courts and jurisprudence.”³³ China therefore disallowed ad hoc arbitration, and Chinese courts invalidated arbitration agreements committing arbitration tribunals seated in China to follow the rules of a foreign arbitration institution (e.g., the International Chamber of Commerce's International Court of Arbitration).³⁴ However, China has lately become more

31. *Xinhua Commentary: China on New Journey for High-Level Reform, Opening Up*, XINHUA NET (Oct. 14, 2020), http://www.xinhuanet.com/english/2020-10/14/c_139439953.htm [<https://perma.cc/Z62G-T4ZF>].

32. See *What Is the Rule of Law?*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/about-us/overview/what-rule-law> [<https://perma.cc/944K-N8FZ>] (last visited Feb. 3, 2021) (asserting that laws that are “clear, publicized, and stable; are applied evenly; and protect fundamental rights” are a fundamental principle of the rule of law).

33. See, e.g., Ing-loong Yang & Tina Wang, *Five Key Considerations in China-Related Arbitrations*, HONG KONG LAW. (Nov. 2014), <http://www.hk-lawyer.org/content/five-key-considerations-china-related-arbitrations> [<https://perma.cc/D5AD-PKN7>] (citing a case in which a Chinese court held that two Chinese legal entities could not arbitrate in a foreign arbitral institution or engage in ad hoc arbitration outside the territory of China).

34. Jessica Fei et al., *The Longlide Case and Its Impact, or Non-Impact, on Sino-Foreign Arbitration Clause Drafting*, HERBERT SMITH FREEHILLS ARB.

willing to open up and conform to international standards for commercial arbitration. Both the Beijing and Shanghai free trade zones now allow foreign arbitral institutions to register as of 2020 and 2019, respectively.³⁵ Some free trade zones now allow ad hoc arbitrations,³⁶ and arbitrations administered by foreign arbitral institutions seated in China are now considered valid.³⁷ Very recently, the Guangzhou Intermediate People's Court was the first to adopt the "seat standard" for determining the nationality of an arbitral award, aligning itself with the wider international community.³⁸

NOTES (July 24, 2014), <https://hsfnotes.com/arbitration/2014/07/24/the-longlide-case-and-its-impact-or-non-impact-on-sino-foreign-arbitration-clause-drafting/> [https://perma.cc/F35H-JSR3].

35. Yves Hu & Clarisse von Wunschheim, *Opening of Mainland China Arbitration Market to Foreign Institutions: Is It Happening, Really?*, KLUWER ARB. BLOG (Sept. 24, 2020), <http://arbitrationblog.kluwerarbitration.com/2020/09/24/opening-of-mainland-china-arbitration-market-to-foreign-institutions-is-it-happening-really/> [https://perma.cc/JE4A-VDN4].

36. Ning Fei et al., *International Arbitration 2020: China*, GLOB. LEGAL INSIGHTS, <https://www.globallegalinsights.com/practice-areas/international-arbitration-laws-and-regulations/china> [https://perma.cc/7QSB-QB5Q] (last visited Feb. 3, 2021).

37. James Rogers, *The Longlide Decision*, NORTON ROSE FULBRIGHT: THOUGHT LEADERSHIP (Apr. 2015), <https://www.nortonrosefulbright.com/en/knowledge/publications/3f0f344a/the-longlide-decision> [https://perma.cc/6YMN-C95D].

38. Tereza Gao & Ziyi Yao, *Arbitrations in China Administered by Foreign Institutions: No Longer a No Man's Land? – Part I*, KLUWER ARB. BLOG (Oct. 12, 2020), <http://arbitrationblog.kluwerarbitration.com/2020/10/12/arbitrations-in-china-administered-by-foreign-institutions-no-longer-a-no-mans-land-part-i/> [https://perma.cc/5CMF-HDK9]; Bulante Wude Gongye Youxian Gongsi Su Guangdong Fa'anlong Jixie Chengtao Shebei Gongcheng Youxian Gongsi (布兰特伍德工业有限公司诉广东阔安龙机械成套设备工程有限公司) [Brentwood Indus. v. Guangdong Fa-anlong Mech. Equip. Manufacture Co.], Guangzhou Interm. People's Ct., Aug. 6, 2020 (China), *translated in* CHINA L. PORTAL, <https://www.chinajusticeobserver.com/law/x/2015-sui-zhong-fa-min-si-chu-zi-no-62-20200806> [https://perma.cc/MFM7-FJJZ]. *See also* Tereza Gao & Ziyi Yao, *Arbitrations in China Administered by Foreign Institutions: No Longer a No Man's Land? – Part II*, KLUWER ARB. BLOG (Oct. 12, 2020), <http://arbitrationblog.kluwerarbitration.com/2020/10/12/arbitrations-in-china-administered-by-foreign-institutions-no-longer-a-no-mans-land-part-ii/> [https://perma.cc/9G6U-9X4W] (explaining that, although the Guangzhou Intermediate People's Court's decision is not binding, "Chinese courts have been known to sometimes consult with courts of higher levels before rendering decisions on important and controversial matters, even in the absence of a formal reporting requirement." It is very likely that the

(Previously, China had adhered exclusively to the “institution standard.”)³⁹ These developments signal an increasing preference for market freedom and a gradual departure from China’s previous stance of tight control over the handling of private commercial disputes.

Apart from arbitration, China has shown increased willingness to conform to international standards in other areas of dispute resolution. For example, in 2019 China joined the United Nations Convention on International Settlement Agreements Resulting from Mediation (otherwise known as the Singapore Mediation Convention).⁴⁰ In doing so, China further demonstrated its commitment to modernize its commercial practices and standards and bring them in line

Guangzhou court has consulted the highest court, the Supreme People’s Court, before rendering this groundbreaking judgment.); Hu & von Wunschheim, *supra* note 35 (taking the same view regarding the precedential value of this judgment in the broader Chinese court system); Feng Lin, *The Future of Judicial Independence in China* 11 (City Univ. H.K. Ctr. for Jud. Educ. & Rsch., Working Paper Series No. 2, May 2016), https://www.cityu.edu.hk/cjer/lib/doc/paper/WK2_The_Future_of_Judicial_Independence_in_China.pdf [<https://perma.cc/TT5P-GKWA>] (noting that lower courts often seek instructions from higher courts because their performance is reviewed annually, and one of the review criteria is “the percentage of cases he has decided which have been overruled by the higher level court.”).

39. Gao & Yao, *Part I, supra* note 38. The “seat” refers to a “location selected by the parties as the *legal* (not necessarily the physical) place of arbitration, which consequently determines the procedural framework of the arbitration.” Milica Savi, *Seat of Arbitration*, *JUS MUNDI*, <https://jusmundi.com/en/document/wiki/en-seat-of-arbitration> [<https://perma.cc/3R8W-XN8E>] (last updated Dec. 3, 2020). Because there are different mechanisms for enforcing foreign and domestic arbitration awards, it is crucial to determine the nationality of the award. The “seat standard” determines the nationality by reference to the location of the seat, whereas the “institution standard” refers to the location of the arbitration institution. Even though China ratified the New York Convention in 1986, which adopts the “seat standard,” art. 283 of the Chinese Civil Procedure Law applies the “institution standard.” This inconsistency explains why the recent Guangzhou case is a very important development, as it signals China’s movement towards the consistent and internationally preferred “seat standard.” Gao & Yao, *Part I, supra* note 38.

40. Press Release, Ministry Com. China, China Signs the United Nations Convention on International Settlement Agreements Resulting from Mediation (Aug. 8, 2019), <http://english.mofcom.gov.cn/article/newsrelease/significantnews/201908/20190802891357.shtml> [<https://perma.cc/65PD-5JH4>].

with those of other major economies. Additionally, China has improved its intellectual property law—a priority for foreign investors—to conform to international standards. The government recently introduced punitive damages for the infringement of intellectual property to heighten the standard of protection, aligning China with U.S. and E.U. law.⁴¹

China has also explicitly recognized other virtues of the rule of law. For instance, the judiciary has noted the importance of consistency and predictability of judgments for foreign parties; a 2017 Opinion of the Supreme People’s Court even required People’s Courts at all levels to establish a system for “search of similar cases and relevant cases, to ensure a uniform judgment standard for similar cases, and the uniform application of law.”⁴² The Supreme People’s Court issued guidance in 2020 that further reinforces this practice.⁴³

IV. CONCLUSION

Gordon Silverstein correctly observed that “[g]lobalization requires the rule of law,” and he predicted that “trade with China will force it to adopt and adhere to the

41. Aaron Wininger, *China’s Supreme People’s Court Releases Opinions on Increasing Sanctions for Intellectual Property Infringement*, NAT’L L. REV. (Sep. 16, 2020), <https://www.natlawreview.com/article/china-s-supreme-people-s-court-releases-opinions-increasing-sanctions-intellectual> [<https://perma.cc/HC3W-SY2V>].

42. Zuigao Renmin Fayuan Guanyu Luoshi Sifa Zerenzhi Wanshan Shenpan Jiandu Guanli Jizhi de Yijian (Shixing) (最高人民法院关于落实司法责任制完善审判监督管理机制的意见(试行)) [Supreme People’s Court Opinions on Putting a Judicial Responsibility System in Place and Improving Mechanisms for Trial Oversight and Management (Provisional)] (promulgated by the Sup. People’s Ct., Apr. 12, 2017, effective May 1, 2017), ¶ 6 (China), *translated in* CHINA L. TRANSLATE, <https://www.chinalawtranslate.com/supreme-peoples-court-opinions-on-putting-a-judicial-responsibility-system-in-place-and-improving-mechanisms-for-trial-oversight-and-management-provisional/?lang=en> [<https://perma.cc/4TCA-J5BS>]; Danny Friedmann, *IP in China: Moving Closer to the Common Law System for the Sake of Uniformity*, 12(8) J. INTELL. PROP. L. & PRAC. 621 (2017).

43. Guanyu Tongyi Falü Shiyong Jiaqiang Leian Jiansuo de Zhidao Yijian (关于统一法律适用加强类案检索的指导意见(试行)) [Guiding Opinions on Strengthening Searches for Similar Cases to Unify the Application of Law (Provisional)] (promulgated by the Sup. People’s Ct., Jul. 27, 2020, effective Jul. 30, 2020) (China), *translated in* CHINA L. TRANSLATE, <https://www.chinalawtranslate.com/en/case-review/> [<https://perma.cc/7THX-M2Y6>].

rule of law or risk the loss of international capital and significant foreign trade.”⁴⁴ President Xi’s vital speech in Shenzhen confirms and reinforces China’s gradual development of the horizontal rule of law, which China considers essential to its market economy and future economic development. This is no doubt good news for the Western community who value the rule of law, because the movement towards a rules-based horizontal regime and the internationalization of standards are positive advancements.

Western commentators have focused their criticism on the shortcomings of the vertical rule of law in China. However, it is equally important to distinguish between vertical and horizontal rule of law, because doing so helps the international audience understand how China will develop and interact with the international community. The horizontal and vertical aspects of China’s rule of law require different levels of reform.⁴⁵ Arguably, reforming the horizontal rule of law has proven easier because of China’s strong incentives to develop its market economy and because the horizontal rule of law, unlike the vertical, does not touch on hard-to-assess issues between China’s party leadership and the law. He’s observations should therefore be viewed in light of this distinction.

Although much work remains to be done,⁴⁶ China has improved in areas central to the rule of law, such as the judiciary.⁴⁷ From the Western perspective, these positive developments are noteworthy and should be encouraged, because they will not only benefit the horizontal rule of law, but also cause positive spillover effects for the vertical relationship between the party, the citizenry, and the law.⁴⁸ In

44. Gordon Silverstein, *Globalization and the Rule of Law: “A Machine that Runs of Itself?”*, 1 INT’L J. CONST. L. 427, 444, 428 (2003).

45. Albert H.Y. Chen, *China’s Long March Towards Rule of Law or China’s Turn Against Law?*, 4 CHINESE J. COMPAR. L. (2016) 1, 35.

46. See, e.g., RANDALL PEERENBOOM, CHINA’S LONG MARCH TOWARD RULE OF LAW 11 (2002) (“While it remains to be seen whether the legal system will be able to impose meaningful restraints on the CCP on issues of major importance, there will be fewer and fewer instances where the will of the Party or individual Party members will be able to trump laws”).

47. Eric Li, *China and the Rule of Law*, 3 AM. AFF. (2019), <https://americanaffairsjournal.org/2019/08/china-and-the-rule-of-law/> [<https://perma.cc/4PXT-NT4C>].

48. Silverstein, *supra* note 44, at 428.

sum, Western observers should welcome China's emerging emphasis on the horizontal rule of law as an effort to connect China to international rule of law norms in the realm of commercial interests and, potentially, beyond.