

Чжан Фэй

Магистр

КазНУ

Алматы, Казахстан

ВЛИЯНИЕ ЗАПАДНОЙ ПРАВОВОЙ МЫСЛИ НА СОВРЕМЕННОЕ ВЕРХОВЕНСТВО ПРАВА В КИТАЕ

Аннотация: В данном исследовании рассматривается сложное взаимодействие между западной правовой мыслью и развитием современного верховенства права в Китае, выявляется процесс избирательной адаптации, а не массового принятия. Анализируя концептуальные, исторические и институциональные аспекты, в работе показано, как Китай переосмыслил западные правовые принципы, такие как независимость суда, права человека и конституционное управление, в рамках своего социалистического законодательства. В исследовании подчеркивается, что в результате возникла гибридная правовая система, которая сочетает глобальные юридические стандарты с приоритетами управления коренных народов, бросая вызов традиционным нарративам о правовой конвергенции. Используя сравнительно-исторический подход, исследование подчеркивает напряженность между западным индивидуализмом и китайским коллективизмом, а также синкретический характер правовой модернизации Китая. Полученные результаты вносят вклад в более широкие дебаты о правовом плюрализме и глобализации правовых норм, предполагая, что китайская траектория предлагает альтернативную модель развития верховенства права в незападных контекстах.

Ключевые слова: Западная Правовая Мысль, Китайское Правовое Государство, Правовая Гибридизация, Социалистическая Правовая Традиция, Сравнительная Юриспруденция

Zhang Fei

Master

INFLUENCE OF WESTERN LEGAL THOUGHT ON THE MODERN RULE OF LAW IN CHINA

Abstract : This study examines the complex interplay between Western legal thought and the development of modern rule of law in China, revealing a process of selective adaptation rather than wholesale adoption. By analyzing conceptual, historical, and institutional dimensions, the paper demonstrates how China has reinterpreted Western legal principles—such as judicial independence, human rights, and constitutional governance—within its socialist legal framework. The research highlights the resulting hybrid legal system, which combines global juridical standards with indigenous governance priorities, challenging conventional narratives of legal convergence. Through a comparative-historical approach, the study underscores the tensions between Western individualism and Chinese collectivism, as well as the syncretic nature of China's legal modernization. The findings contribute to broader debates on legal pluralism and the globalization of legal norms, suggesting that China's trajectory offers an alternative model for rule of law development in non-Western contexts.

Keywords : Western Legal Thought , Chinese Rule Of Law , Legal Hybridization, Socialist Legal Tradition, Comparative Jurisprudence

Introduction

The dynamic interplay between Western legal thought and the evolution of China's modern rule of law presents a critical field of inquiry in contemporary comparative jurisprudence. The significance of this study lies in its examination of how China, while maintaining its socialist legal tradition, has selectively integrated Western legal principles to construct a distinctively hybrid legal system. Western legal paradigms—ranging from natural law theories to liberal constitutionalism—have historically influenced legal reforms across diverse jurisdictions, yet their reception in China remains a complex process marked by adaptation rather than

wholesale adoption.[1] This research seeks to systematically analyze the conceptual and institutional dimensions of this influence, addressing both its transformative potential and its limitations within China's unique socio-political framework.

The modernization of China's legal system, particularly since the Reform and Opening-Up era, reflects a deliberate engagement with Western legal concepts such as judicial independence, due process, and constitutional governance. However, this engagement is mediated through the prism of socialist rule of law, which prioritizes stability and Party leadership. The resulting legal synthesis raises fundamental questions about the universality of Western legal norms and the viability of alternative modernities in legal development. By interrogating these tensions, this study contributes to broader theoretical debates on legal pluralism and the globalization of legal systems, while offering insights into China's strategic balancing of external influences and domestic imperatives.

Methodologically, the research employs a comparative-historical approach, tracing the transmission of Western legal ideas into Chinese jurisprudence and assessing their contemporary relevance. The analysis is grounded in legal-philosophical discourse, emphasizing the interplay between normative principles and institutional practice. Ultimately, this investigation not only clarifies the contours of China's legal transformation but also challenges conventional assumptions about the diffusion of legal norms in non-Western contexts. The findings hold implications for understanding the future trajectory of China's rule of law, particularly in an era of geopolitical contestation over legal paradigms.

Theoretical Foundations of Western Legal Thought

Western legal thought constitutes a complex tapestry of intellectual traditions that have fundamentally shaped modern jurisprudence. At its core, this tradition bifurcates into two principal streams: natural law theory and legal positivism, with liberal theories of the rule of law emerging as a consequential development of their interaction. Natural law, as articulated by Locke and Rousseau, posits an intrinsic connection between law and morality, asserting the existence of universal principles discernible through reason. This philosophical stance carries particular significance

for China's legal development, as it raises questions about the ontological foundations of legal norms in a system that emphasizes historical materialism.

Legal positivism, represented by Austin and Hart, presents a contrasting paradigm by severing the necessary connection between law and morality, focusing instead on law as a system of rules emanating from sovereign authority. The positivist tradition's analytical rigor and emphasis on institutional structures have exerted notable influence on China's technical legal reforms, particularly in codification and administrative law.[2] However, this influence remains circumscribed by China's rejection of positivism's value-neutral premises, maintaining instead law's instrumental role in social governance. The liberal tradition of Dicey and Hayek synthesizes elements from both schools while emphasizing constitutionalism, separation of powers, and individual rights as institutional safeguards against arbitrary rule. These concepts have permeated global legal discourse, creating a framework against which China's socialist rule of law is often measured. The tension between Western liberal individualism and China's collectivist legal culture manifests most acutely in this domain, particularly regarding the interpretation of rights and the role of judicial institutions.

These theoretical traditions collectively represent not merely abstract philosophies but competing visions of law's relationship to state, society, and individual. Their reception in China reflects a strategic process of selective adaptation, where technical legal concepts are often divorced from their original philosophical underpinnings and recontextualized within China's distinct political-legal framework. The resulting synthesis challenges conventional Western narratives of legal development while contributing to emerging discourses on pluralistic approaches to rule of law in a multipolar world order.

Historical Transmission of Western Legal Ideas to China

The historical trajectory of Western legal thought's influence on China reveals a complex process of selective adaptation and institutional transformation. The late Qing and early Republican period marked China's first systematic engagement with Western jurisprudence, characterized by the transplantation of European civil law

structures. This initial reception reflected a pragmatic response to imperial decline, with legal modernization serving as both a defensive mechanism against foreign encroachment and a tool for domestic institutional strengthening. The post-1978 reform era witnessed a more targeted appropriation of Anglo-American legal concepts, particularly in commercial and economic law domains, where technical legal frameworks were adapted to facilitate market-oriented reforms while maintaining socialist political parameters.

Contemporary legal development demonstrates China's increasingly sophisticated engagement with international legal norms, particularly in areas of human rights and global governance. This phase differs fundamentally from earlier periods of legal borrowing, as China now participates actively in shaping transnational legal discourses while asserting its own interpretative frameworks.[3] The historical continuum from passive reception to active participation reflects China's evolving position in the global legal order, where Western legal concepts are neither rejected nor uncritically adopted, but rather reinterpreted through the prism of socialist rule of law with Chinese characteristics. This process of legal acculturation challenges conventional narratives of legal diffusion, presenting instead a model of dialectical engagement between civilizational legal traditions.

Conceptual Adaptations in China's Legal System

The transplantation of Western legal concepts into China's juridical framework has necessitated significant conceptual adaptations, creating a unique synthesis that reflects both global influences and indigenous legal characteristics. The distinction between rule of law and rule by law exemplifies this adaptive process, where China has reinterpreted the Western liberal model to align with its socialist legal tradition. While Western jurisprudence emphasizes the supremacy of law as a constraint on state power, China's approach maintains law as an instrument of governance under Party leadership, resulting in a system where legal norms serve developmental and stabilizing functions rather than acting as autonomous checks on authority. This adaptation reveals the fundamental tension between universalist legal aspirations and particularistic political realities.

Judicial independence and professionalization demonstrate another dimension of conceptual adaptation. China has adopted Western-derived institutional forms, such as standardized judicial examinations and procedural reforms, while preserving the judiciary's role as an extension of state governance rather than an independent branch of government. The professionalization of legal personnel follows global trends in legal education and practice, yet remains embedded within a framework that prioritizes political reliability and social stability. This selective institutional borrowing creates a hybrid system that combines technical legal modernization with enduring socialist governance principles.[4] The human rights discourse presents perhaps the most complex case of conceptual adaptation. China has engaged with international human rights norms while articulating a distinctively collectivist interpretation that emphasizes economic and social rights over civil-political liberties. This approach reflects both a strategic response to international pressure and a philosophical rejection of Western individualism. By framing human rights within the context of developmental sovereignty and cultural particularism, China has developed a counter-discourse that challenges the universality of Western human rights paradigms while participating in the global human rights regime. These conceptual adaptations collectively illustrate China's capacity to engage with global legal norms while maintaining its distinctive juridical identity, offering insights into the complex interplay between legal globalization and local particularism in contemporary governance systems.

Institutional Reforms and Western Influences in China's Legal System

The institutional architecture of China's legal system has undergone significant transformation through the selective incorporation of Western legal concepts, creating a distinctive hybrid model that merges global juridical standards with socialist governance principles. In the domain of constitutional and administrative law, Western notions of checks on state power have been adapted to China's political context through mechanisms such as administrative litigation. While the 1989 Administrative Litigation Law introduced judicial review of government actions—a concept rooted in Western constitutionalism—its implementation remains constrained

by the overarching authority of the Party and the legislative supremacy of the National People's Congress. This reflects a pragmatic adaptation where institutional forms are adopted while their substantive power dynamics are reconfigured to align with China's unitary political system. The development of administrative law thus represents not a replication of Western separation of powers, but rather the institutionalization of accountability within a single-party framework, demonstrating how global legal concepts are reinterpreted to serve domestic governance objectives.

Commercial and corporate law reforms reveal a more extensive engagement with Western legal models, particularly in the post-1978 period of economic liberalization. The adoption of Western-style contract law, property rights frameworks, and corporate governance structures was driven by the pragmatic necessities of market integration and foreign investment. The 1999 Contract Law and 2007 Property Law incorporated fundamental principles from German civil law and Anglo-American common law traditions, creating a legal infrastructure for market transactions. However, these adaptations maintain distinct Chinese characteristics, particularly in the state's retained authority over strategic sectors and land ownership.[5] The resulting legal regime facilitates economic globalization while preserving the state's directive role in economic development, illustrating how technical legal transplants in commercial domains can coexist with socialist political economy. Criminal justice reforms demonstrate perhaps the most visible tension between Western legal principles and Chinese juridical traditions. The gradual incorporation of due process protections and the presumption of innocence—formally recognized in the 2012 Criminal Procedure Law amendments—reflects influence from international human rights standards. Yet these principles operate within a system that continues to emphasize social stability and crime control, resulting in a distinctive balance between rights protection and state security imperatives. The professionalization of judicial personnel and standardized evidence rules represent institutional responses to both domestic demands for justice and global expectations of legal fairness, while maintaining the political-legal system's fundamental orientation.

These institutional adaptations collectively illustrate China's strategic approach to

legal modernization—adopting functional legal mechanisms from Western systems while reconfiguring their underlying normative foundations. The reforms reveal a pattern of selective institutional borrowing, where formal legal structures may resemble their Western counterparts while their operational logic remains embedded in China's political-legal tradition. This process challenges conventional understandings of legal convergence, presenting instead a model of institutional innovation that combines global legal standards with locally-specific governance priorities. The Chinese experience suggests that institutional legal reforms in non-Western contexts may follow distinct pathways, where external influences are mediated through existing political and cultural frameworks to produce hybrid legal orders with their own internal coherence.

Tensions and Syncretism in China's Legal Development

The integration of Western legal concepts into China's juridical system has generated fundamental tensions that reveal deeper philosophical and political divergences between civilizational legal traditions. At the core of these tensions lies the unresolved dialectic between Western individualism and Chinese collectivism, manifested most acutely in the conceptualization of rights and their social function. Western liberal legalism, with its emphasis on individual autonomy and negative liberties, conflicts with China's communitarian legal philosophy that privileges collective interests and developmental rights. This ontological divergence produces a syncretic legal reality where formal rights protections coexist with substantive limitations grounded in social stability considerations, creating a distinctive rights discourse that defies simple categorization within traditional Western legal typologies.

The encounter between socialist legal tradition and liberal legalism presents another dimension of this juridical syncretism. China's legal system maintains its Marxist-Leninist theoretical foundations while incorporating technical legal mechanisms from liberal systems, resulting in a hybrid model that combines socialist conceptions of law as an instrument of class rule with borrowed institutions of legal professionalism and procedural regularity. This synthesis challenges conventional

periodizations of legal development, demonstrating how socialist legal systems can engage in selective modernization without undergoing ideological transformation. The operational reality of China's legal system thus reflects neither pure socialist legality nor liberal legalism, but rather an emergent third path that negotiates between these competing paradigms through pragmatic adaptation. The relationship between authoritarian governance and rule of law principles constitutes perhaps the most politically sensitive area of tension.[6] China's approach demonstrates that rule of law frameworks can be deployed to enhance governance capacity without necessitating political liberalization, contradicting Western theoretical assumptions about the inherent connection between legal rationality and democratic structures. The Chinese experience suggests that authoritarian regimes may develop their own distinctive modalities of legal legitimacy, where predictability and procedural regularity serve to strengthen rather than undermine centralized authority. This adaptation challenges teleological narratives of legal evolution while contributing to broader theoretical debates about the necessary political preconditions for effective rule of law.

These tensions and syntheses collectively illustrate the complex dynamics of legal development in contemporary China, where global legal norms are neither fully rejected nor uncritically adopted, but rather reinterpreted through indigenous conceptual frameworks. The resulting legal order represents an important case of civilizational juridical innovation, offering insights into alternative modernities in legal development that transcend conventional East-West dichotomies. This process holds significant implications for understanding the future trajectories of legal globalization in an increasingly multipolar world order, where competing visions of legality may coexist and interact in unpredictable ways.

Conclusion

The examination of Western legal thought's influence on China's modern rule of law reveals fundamental insights about legal globalization and civilizational jurisprudence. The Chinese experience demonstrates that the transmission of legal concepts across civilizational boundaries inevitably produces hybrid systems that transcend their original theoretical frameworks. This hybridization process challenges

conventional linear models of legal development, suggesting instead a more complex paradigm of selective adaptation and creative reinterpretation. The theoretical implications extend beyond China's particular case, offering a critical perspective on the nature of legal pluralism in an era of global interconnectedness.

China's legal evolution points toward an emerging model where technical legal rationality coexists with distinct political-philosophical foundations, creating institutional forms that resist easy classification within traditional Western legal taxonomies. Future trajectories will likely see China continuing to engage with global legal norms while asserting greater autonomy in shaping their interpretation and implementation. Rather than converging with or diverging from Western models, China's legal system appears destined to develop along its own distinctive path, contributing to a more multipolar landscape of global jurisprudence where multiple legitimate approaches to rule of law coexist. This development carries significant implications for international legal discourse, potentially reshaping foundational assumptions about the universal applicability of Western legal paradigms.

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