

RULE OF LAW WITH CHINESE CHARACTERISTICS: BETWEEN ECONOMIC OPENING AND POLITICAL CONTROL UNDER XI JINPING

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Abstract

China, historically influenced by traditions such as Confucianism and Legalism, has reconfigured its legal system following economic opening and global integration. In this context, this article aims to analyze how the rule of law has been constructed, reinterpreted, and operationalized in contemporary China, with an emphasis on the impacts of WTO accession and political centralization under Xi Jinping. A qualitative and bibliographic methodology was used to examine institutional development, the limits of judicial independence, and the strategic use of legality to strengthen governance. After thorough research, it was concluded that China adopts a distinct legal rationality, marked by the tension between normative modernization and power centralization.

Keywords: International Politics. International Law. Foreign Relations. Government Policy.

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ESTADO DE DIREITO COM CARACTERÍSTICAS CHINESAS: ENTRE A ABERTURA ECONÔMICA E O CONTROLE POLÍTICO SOB XI JINPING

Resumo

A China, historicamente marcada por tradições como o confucionismo e o legalismo, tem reconfigurado seu sistema jurídico a partir da abertura econômica e da inserção global. Nesse sentido, a fim de elucidar tal temática, este artigo possui como objetivo analisar como o Estado de Direito vem sendo construído, reinterpretado e operacionalizado na China contemporânea, com ênfase nos impactos da adesão à OMC e na centralização política sob Xi Jinping. Para isso, foi utilizada a metodologia qualitativa e bibliográfica, para examinar o avanço institucional, os limites da independência judicial e o uso estratégico da legalidade para fortalecer a governança. Após minuciosa pesquisa, foi possível concluir que a China adota uma racionalidade jurídica própria, marcada pela tensão entre modernização normativa e centralização do poder.

Palavras-chave: Política Internacional. Direito Internacional. Relações Exteriores. Política Governamental.

ESTADO DE DERECHO CON CARACTERÍSTICAS CHINAS: ENTRE LA APERTURA ECONÓMICA Y EL CONTROL POLÍTICO BAJO XI JINPING

Resumen

China, históricamente influenciada por tradiciones como el confucianismo y el legalismo, ha reconfigurado su sistema jurídico a partir del proceso de apertura económica y su creciente inserción en el escenario global. En este contexto, el presente artículo tiene como propósito analizar cómo el Estado de Derecho ha sido construido, reinterpretado y operacionalizado en la China contemporánea, con especial énfasis en los impactos de la adhesión a la Organización Mundial del Comercio (OMC) y en la centralización política promovida durante el liderazgo de Xi Jinping. Para tal análisis, se adoptó una metodología cualitativa y bibliográfica, orientada a examinar el desarrollo institucional, los límites de la independencia judicial y el uso estratégico de la legalidad como herramienta para fortalecer la gobernanza estatal. A partir de una investigación minuciosa, se concluye que China adopta una racionalidad jurídica propia, caracterizada por una tensión permanente entre la modernización normativa y la consolidación del poder central.

Palabras clave: Política Internacional. Derecho Internacional. Relaciones Exteriores. Política Gubernamental.

Introduction

The consolidation of the rule of law in China is a recent, complex process, deeply shaped by specific historical, cultural, and political dynamics. Traditionally grounded in doctrines such as Confucianism and Legalism, the Chinese legal system for centuries prioritized social stability, the morality of rulers, and hierarchical control, to the detriment of formal legal normativity in the Western sense. With the “Reform and Opening-Up” policy initiated by Deng Xiaoping in the late 1970s, and especially with China’s accession to the World Trade Organization (WTO) in 2001, the country began to gradually incorporate legal practices and instruments aimed at normative predictability, institutional transparency, and regulatory security, particularly in the economic sphere.

Accordingly, this article aims to analyze how the rule of law has been constructed and reinterpreted in contemporary China, with emphasis on the impacts of global economic integration and the normative transformations promoted under the leadership of Xi Jinping. To achieve this, the study is organized into five sections, offering an integrated analysis of theory, institutional context, and historical elements.

The first section examines the conceptual foundations of the rule of law, focusing on its formulation within Western legal thought and its growing international projection. It also addresses critiques developed by critical legal theory and studies on legal globalization.

The second section is dedicated to analyzing China’s legal-philosophical trajectory, contrasting the traditions of Confucianism and Legalism and showing how these frameworks have shaped the unique way law became institutionalized in China. In this context, the coexistence between strengthening legality and maintaining centralized political control by the Chinese Communist Party (CCP) is discussed, which gives rise to a hybrid and functional model of legal governance.

The third section delves into China’s accession to the WTO, interpreting this event as a decisive milestone in legal and regulatory restructuring. It explores the commitments undertaken by the country, the reforms implemented to meet multilateral requirements, and the effects of this process on the modernization of the domestic legal apparatus, particularly regarding transparency, judicial review, and regulatory harmonization.

The fourth section focuses on Xi Jinping’s government and his proposal of “law-based governance.” It assesses how this directive has been operationalized

through institutional reforms, legal codification, and the redefinition of the relationship between the party and the judiciary, while structural limits to judicial independence and the separation of powers remain. This section also highlights technical advancements and accountability mechanisms introduced, contrasted with party surveillance and disciplinary systems.

Finally, the fifth and last section presents the study's concluding remarks, synthesizing the main research findings and reflecting on the prospects for the evolution of the rule of law with Chinese characteristics. It argues that although the Chinese legal system does not fully align with Western models of the rule of law, it has been evolving into an increasingly sophisticated, instrumental, and strategic structure oriented toward economic governance and internal political stability.

Adopting a qualitative, exploratory, and bibliographic approach, the article draws on specialized national and international literature, institutional documents, and theoretical contributions on comparative law, legal globalization, and critiques of liberal constitutionalism.

In this context, studying the rule of law in China gains strategic relevance in light of the country's growing role in reshaping international norms and institutions. The Chinese legal model not only adapts traditional categories to its historical particularities but also proposes an alternative normative rationality to the Western liberal conception, with significant implications for global governance and international law. Thus, analyzing this legal experience becomes essential for understanding contemporary disputes over legality, sovereignty, and transnational legal orders.

1. From the Liberal State to Global Constitutionalism: Theoretical Disputes Surrounding the Rule of Law

According to Dan (2008), amid constant social transformations, two areas emerge as central to the stability and development of societies: economy and law. The author emphasizes that these spheres are interdependent, as sustainable economic growth requires a solid legal system capable of ensuring stability, protection of rights, and normative predictability. Furthermore, the contemporary global market demands international integration in the fight against corruption, grounded in transparency and regulations that promote democratic institutions and open economic systems (Dan 2008).

In this context, the concept of the Rule of Law gains prominence, also referred to by the term "rule of law" in its Anglo-Saxon origin (Dan 2008).

According to Reale (2000, 37), the Rule of Law is characterized by the principle that all state decisions are regulated by law and derive their legitimacy from it. In contrast, Canotilho (1999) presents the idea of a “non-rule-of-law state,” where the exercise of state power is not subject to legal constraints. Thus, the Rule of Law is based on the supremacy of law and the limitation of arbitrariness, ensuring the protection of fundamental rights and guarantees.

For Waldron (2016), the Rule of Law presupposes normative predictability and the equitable application of legislation, fostering public trust in institutions. The author explains:

If a statute is properly drafted (if it is clear, intelligible and expressed in general terms) and prospectively enacted and promulgated, and if it is administered impartially and with due process—they will call this an entirely appropriate exercise under the Rule of Law. Indeed, that is what many scholars mean by the Rule of Law: people being governed by measures laid down in advance in general terms and enforced equally according to the terms in which they have been publicly promulgated (Waldron 2016).

The concept of the Rule of Law gains even greater relevance in the context of globalization. According to Neto (2007), contemporary international relations have promoted a “Rule of Law globalization”, extending its application beyond the economic sphere to include areas such as human rights, environment, security, and justice. In this scenario, international regimes operate based on legal norms and establish regulatory standards for states, shaping a global governance model based on law (Neto 2007).

However, despite offering a system grounded and legitimized by law, the Rule of Law can also be used as a tool to safeguard specific interests and maintain power structures. It is in this context that critical legal theory emerges as an approach that challenges the traditional view of law as a neutral and impartial system of rules. Initially founded by the Frankfurt School, with thinkers such as Max Horkheimer (2002), Theodor Adorno (2003), and Jürgen Habermas (1984), this perspective argues that law is, in fact, a mechanism of power used to maintain and reproduce social inequalities. According to this critical view, law is not merely a set of objective rules, but a system that can be instrumentalized to perpetuate domination (Horkheimer 2002; Adorno 2003; Habermas 1984; Martins 2025).

Thus, the law may operate in various ways to uphold inequalities. It may favor specific social groups by granting benefits and protection to dominant

elites while marginalizing others. It may also act as a tool to restrict rights by limiting access to resources or freedoms for underprivileged groups in favor of powerful sectors (Martins 2025).

Another relevant aspect is the use of law as a means of concealing inequalities. Under the guise of formal equality, law may create the illusion that all are treated fairly, while in practice, certain interests are systematically favored (Martins 2025).

Horkheimer (2002) conceives law as part of “instrumental reason,” a logic that subordinates knowledge and human action to domination, turning law into a tool of social control. Adorno (2003) adds that law, by presenting itself as an objective system of rules, conceals its true function: to maintain the established order and the privileges of specific social groups. Habermas (1984), through his “theory of communicative action,” views law as a contested space where rational discourse should prevail but is often distorted by power relations.

David Kennedy (2006) expands this critique by arguing that the very concept of the Rule of Law is often used as a tool of domination. According to Kennedy, the discourse that promotes the Rule of Law in developing countries masks the reality that law is a product of power dynamics, serving to legitimize the hegemony of Western interests (Kennedy 2006).

Foucault’s (2004) critical perspective on governmentality also supports this interpretation, viewing the Rule of Law not only as a limiter of power but as a mechanism by which the state subtly exercises disciplinary power—organizing practices and defining norms that regulate everyday life. This view reveals that the Rule of Law, rather than limiting power, can serve to intensify and legitimize it (Foucault 2004).

It is also essential to consider the perspective of the Rule of Law from the “Law and Development” theoretical framework, particularly in the work of Trubek and Santos (2006), who question the export of Western legal models to developing countries. These authors argue that such models often ignore local cultural and institutional contexts, imposing a legal vision that does not reflect the needs and realities of peripheral countries. Instead of promoting development, these initiatives frequently reinforce dependency and perpetuate structural inequalities (Trubek and Santos 2006).

In response to this impasse, Boaventura de Sousa Santos (2002) proposes the concept of “legal pluralism” as an alternative to the hegemonic Rule of Law model. He advocates for the recognition of multiple legal systems, including those based on traditional knowledge and practices, as a way to break with the imposition of a singular legal worldview.

Another important notion is that of global governance, which emerges as a central element in this debate, particularly in the context of global constitutionalism. Global governance refers to the development of normative and regulatory mechanisms that transcend state borders, establishing rules and standards that directly affect national legal systems. In this scenario, international organizations, transnational corporations, and private regulatory networks become key actors, shaping law in a decentralized manner (Teubner 2004). Therefore, with globalization-driven interconnection among countries, it can be inferred that various actors in the international system influence how states develop domestic legal frameworks, affecting legal regulation.

Based on all the above, it can be concluded that the concept of the Rule of Law is not static but dynamic, being appropriated and reinterpreted according to political, economic, and cultural contexts. Its centrality in contemporary societies stems from its promise to ensure rights, limit power, and promote the essential legal stability to institutional functioning and collective trust.

However, as discussed, this promise is not immune to criticism. While the Rule of Law can be a tool of protection and emancipation, it can also function as a mechanism of exclusion, domination, and reproduction of inequalities, as demonstrated by the critical approaches that deconstruct it from sociological, philosophical, and economic perspectives.

The analysis of the authors cited here highlights the normative and institutional relevance of the Rule of Law as a foundation of modern democracies. Yet, a critical view reveals the intersection of power relations, economic interests, and historical structures that shape its application and reach. Law, depending on the context, appears as a technology of governance—producing subjectivities, practices, and norms—whose analysis must go beyond its formal appearance to unveil its connections with mechanisms of control, regulation, and social discipline.

Therefore, understanding the Rule of Law today requires a critical approach capable of articulating its formal and material dimensions, normative and sociological aspects, and both its domestic and transnational forms. Far from being a finished concept, it remains a historical construction still in development.

With these theoretical foundations established, the article now turns to its main objective: to analyze the construction of the Rule of Law in China, with an emphasis on its economic dimension and under the leadership of President Xi Jinping. Thus, continuing the scope of the research, the next section will examine how this concept is applied within the Chinese legal system.

This analysis will reveal how the principles of the Rule of Law are adapted, challenged, or redefined in the specific context of China's political regime.

2. Rule of Law with Chinese Characteristics? Philosophical and Institutional Foundations of the Traditional Legal Model

The notion of the Rule of Law, as conceived in the West, is deeply rooted in a liberal tradition in which law functions as an instrument for limiting state power and guaranteeing individual rights. However, this conception did not develop in a parallel manner in China, whose legal-philosophical tradition is marked by the predominance of doctrines such as Confucianism and Legalism (Dan 2008; Aguiar 2017).

Confucianism, which dominated Chinese social organization for millennia, holds that order must be achieved through the morality and virtue of rulers, with a strong emphasis on hierarchy, harmony, and familial obligations. In this system, legal norms play a secondary role, with moral rectitude serving as the true regulator of social relations (Aguiar 2017). Justice, therefore, was not based on rigid codes or jurisprudence but on ethical and cultural standards (Dan 2008).

In contrast, Legalism, also a classical tradition in Chinese thought, was based on a skeptical view of human nature and defended the use of law as a tool for social control. In Legalism, the effectiveness of governance is directly tied to the clarity and strict application of laws, enforced impartially and rigorously, regardless of one's status or morality. This perspective is closer to the Western model of the Rule of Law, as it recognizes the centrality of legal norms and the necessity of sanctions to ensure order (Dan 2008; Aguiar 2017).

However, as Burnay (2018 *apud* Aguiar 2017) highlights, the synthesis of these two traditions in China's imperial legal system led to a configuration in which law primarily served to maintain the stability of governmental power, while the protection of the individual was subsidiary and largely delegated to the family structure. This resulted in a system with a strong emphasis on criminal law and limited institutionalization of civil and administrative spheres.

Another structural factor that hindered the consolidation of a Rule of Law akin to Western standards was the centralization of power in the hands of imperial magistrates, who combined legislative, administrative, and judicial functions (Lawrence and Patterson 2018). This structure underwent significant change only in the 20th century, with the fall of the last imperial

dynasty and the beginning of reforms aimed at modernizing China's legal apparatus (Dan 2008).

Beginning with economic reforms in the 1980s, especially through Deng Xiaoping's "Reform and Opening-Up" policy, law began to play an instrumental role in the modernization of the state and its integration into the international system. The adoption of legal norms inspired by Western models became part of China's development strategy, particularly after its accession to the World Trade Organization (WTO) in 2001 (Dan 2008; Aguiar 2017; Lawrence and Patterson 2018).

Since then, the Chinese government has shown continuous effort in building a legal framework that is more transparent, rational, and predictable, with the aim of attracting foreign investment and ensuring regulatory stability in the economic sphere. This process led to the formal establishment of the Rule of Law as one of the constitutional pillars, incorporated into Article 5 of the 1982 Constitution, amended in 1999, which states that no entity or individual is above the law (Aguiar 2007).

In 2018, a new constitutional amendment eliminated presidential term limits previously established in the 1982 Constitution. Since then, several broad but legally vague security laws have been implemented—including in the Hong Kong Special Administrative Region. A prominent example of the instrumental use of domestic law and China's selective adherence to international legal commitments is the June 2020 enactment of the "National Security Law" for Hong Kong. This law was unilaterally approved by Beijing, bypassing the local legislature and contradicting principles set forth in the Sino-British Joint Declaration, particularly the "One Country, Two Systems" framework (Oud 2022).

Nonetheless, the central issue remains the interpretation of this "Chinese Rule of Law" concept. A continued debate persists over whether the Chinese legal system aligns with the "rule of law"—in which law constrains even the ruling party—or the "rule by law," in which legislation is used as a tool to consolidate existing political power (Li 2019; Lawrence and Patterson, 2018). This debate stems from the dominance of the Chinese Communist Party (CCP) and its direct control over the judiciary—factors that challenge institutional independence and, consequently, the possibility of a Rule of Law aligned with Western standards.

In this context, China's legal modernization should not be interpreted solely from a Western perspective. As Choukroune (2012) argues, it is a singular process in which local and global elements are intertwined, resulting in a hybrid model of legal governance. China's accession to the WTO spurred significant

normative reforms and contributed to the development of mechanisms for transparency and judicial review. However, these advancements coexist with structural limitations, such as the absence of checks and balances, the lack of a truly independent judiciary, and the central role of the party in strategic decision-making (Peres and Daibert, 2015).

Despite these obstacles, the growing influence of the academic community and legal scholars in shaping and interpreting legal norms demonstrates a degree of institutional maturation. As Carvalho (2020) notes, the increasing role of legal scholars in China's legal and legislative debates has promoted the diffusion of the concept of law-based governance. Legal education, in this regard, is seen as a key vector in China's cultural and institutional transformation (Carvalho 2017).

Therefore, while the Rule of Law in China still faces significant challenges related to separation of powers, judicial autonomy, and protection of fundamental rights, it is undeniable that the country has implemented substantial changes in its normative and institutional framework. These transformations reflect not only external pressures from globalization and international commitments, but also an internal strategy to strengthen state capacity and modernize governance (Choukroune 2012; Lawrence and Patterson 2018; Dan 2008).

Accordingly, the next section will closely examine this transformative process by analyzing how the commitments made under the WTO framework have impacted Chinese law across multiple dimensions. It will explore the extent to which China's integration into the global economic order has contributed to the consolidation of a more formalized and functional legal governance system—and how this evolution coexists or clashes with the political centrality of the Chinese Communist Party in controlling state institutions.

3. The WTO as a Legal Catalyst: Legal Restructuring and International Pressures in China

China's accession to the World Trade Organization (WTO) in 2001 marked a crucial turning point not only in its full integration into the multilateral trading system but also in the transformation of its domestic legal framework. The accession process, which lasted over a decade, resulted in extensive and detailed commitments compiled into a protocol exceeding 900 pages—one of the most demanding in the organization's history (Peres and Daibert 2015; Choukroune 2012).

According to Dan (2008), China's accession protocol included fundamental obligations aimed at aligning its legal practices with the liberal international order. These included: (a) the uniform, rational, and impartial application of laws and regulations governing trade in goods and services; (b) the creation of administrative and judicial review mechanisms for trade-related decisions; (c) the promotion of regulatory transparency, requiring the prior publication of applicable norms; and (d) the implementation of independent judicial reviews. Although framed in the language of international trade, these requirements led to profound institutional and legal transformations within China.

As highlighted by Peres and Daibert (2015), and Choukroune (2012), China's commitments extended beyond tariff liberalization and market opening. They required the construction of a modern and more predictable legal infrastructure. This included the adoption of core principles of free trade, most-favored-nation (MFN) treatment, national treatment, and regulatory transparency—foundational concepts of both the General Agreement on Tariffs and Trade (GATT/47) and the WTO system.

However, since joining the organization, various WTO members have raised concerns about China's compliance with these commitments. Countries such as Switzerland, Norway, Japan, the United States, and EU member states have denounced the persistence of discriminatory practices and the Chinese state's interventionist role in the economy—mainly through subsidies, state-owned enterprises, and non-tariff barriers. In response, China pledged to gradually eliminate regulations incompatible with WTO guidelines, strengthen its national legal system, and limit the regulatory autonomy of local governments, which were frequently cited as sources of distortion in rule implementation (Peres and Daibert 2015; Gao 2020).

Despite these formal commitments, the concrete application of legal norms remains a challenge. The predominance of the Chinese Communist Party (CCP) over all branches of power limits judicial autonomy and restricts the development of a Rule of Law as traditionally understood in the West (Peerenboom 2002). Instead of institutional independence, what prevails is an instrumental legal rationality focused on stability and economic development rather than protection of right (Zhang 2013).

Even so, it is undeniable that WTO accession acted as a catalyst for significant legal reforms. Within ten years of joining, over two thousand regulatory acts were revised, amended, or repealed to align with multilateral standards. Additionally, there were advancements in the public disclosure of legal acts through online portals, printed materials, and official dissemination

channels, which improved predictability and legal certainty for foreign investors (Choukroune 2012; Peres and Daibert 2015).

From an economic perspective, the results were substantial: China experienced rapid GDP growth, increased trade flows, and deeper integration into global value chains. Part of this growth can be attributed to a law-based regulatory system that enabled greater investment attraction and the rationalization of productive activities, including the shift of underutilized labor from agriculture to the industrial and service sectors (Zhou 2015).

Thus, WTO accession can be viewed as a dual milestone: on one hand, it signaled China's openness to the international system of rules and institutions; on the other, it triggered internal reforms that, although selective and pragmatic, reinforced the foundations of a legal system oriented toward legality and predictability. Ultimately, as Peerenboom (2002) and Gao (2020) emphasize, China's commitment to the WTO reflects a broader political rationality aimed at reconciling the imperatives of economic development with the maintenance of political stability and party control.

Therefore, the analysis of China's accession to the WTO reveals both the transformative potential of law in authoritarian contexts and the constraints imposed by a highly centralized power structure. While integration into the multilateral system promoted significant reforms in favor of legality, transparency, and predictability, these changes were carefully calibrated to preserve the primacy of the Chinese Communist Party. It is in light of this duality that the next section focuses on Xi Jinping's government, analyzing how his leadership has shaped the possible paths toward the consolidation of the Rule of Law in contemporary China.

4. Legal Governance under Xi Jinping: Normative Expansion and Reinforcement of Political Control

With Xi Jinping's rise to the leadership of the Chinese Communist Party (CCP) in 2012, the notion of "law-based governance" was elevated to a strategic priority and integrated into the so-called "Four Comprehensives" guiding his administration. The stated goal was to consolidate a modern legal system capable of sustaining social stability and strengthening public trust in state institutions (Carvalho 2022). Beginning with the Fourth Plenary Session of the 18th Central Committee in 2014, the concept of a "Rule of Law with Chinese Characteristics" became the normative axis of the country's

institutional development, combining elements of Legalist tradition with the political hegemony of the Party (Peerenboom 2014).

However, this formulation carries a structural tension. Although important reforms have been implemented in the judicial and regulatory spheres, China's legal system remains directly subordinated to the control of the CCP. The Central Political and Legal Affairs Commission, responsible for overseeing the judiciary, continues to wield decisive influence over sensitive decisions—particularly in politically charged cases. As Hualing Fu (2016 *apud* Li, 2016) notes, the emphasis on “government constitution” over “state constitution” highlights an instrumental approach to law aimed at consolidating Party authority (Li 2016).

Despite these limitations, Xi Jinping's administration has promoted relevant institutional reforms. Between 2014 and 2016, pilot projects were launched to modernize the judicial system, focusing on the rationalization of judicial functions and the introduction of accountability mechanisms for judges. Judges' performance began to be evaluated individually over the course of their careers, creating incentives for cautious rulings, though also increasing the risk of self-censorship. Another significant measure was the centralization of budget and human resources control at the provincial court level, diminishing local government influence in order to reduce judicial capture by regional elites and reinforce central authority (Li 2016; Wu and Li 2017).

Simultaneously, there was a reconfiguration of the relationship between the Party and the judiciary. Institutional reforms sought to limit the direct control of Local Political and Legal Affairs Committees over the courts, granting greater technical autonomy to the judiciary in non-politically sensitive matters (He 2017). As Horsley (2019) points out, there were notable advances in administrative law and regulatory systematization in civil and commercial areas, culminating in the promulgation of China's first Civil Code in 2020—a significant milestone in legislative unification and the rationalization of private law (Carvalho 2020; Horsley 2019).

The official discourse began to emphasize respect for the Constitution and equality before the law. Xi Jinping publicly reiterated that “no one is above the law,” including Party members (Horsley 2019). However, this statement must be understood within the framework of the Rule of Law with Chinese Characteristics, where law is conceived as a tool for achieving Party objectives rather than as a system designed to restrain its power (Peerenboom 2014; Horsley 2019).

One of the central pillars of Xi's governance has been the internal regulation of the Party itself. Since 2012, the number of Party regulations

has increased significantly, covering everything from ideological conduct to disciplinary provisions. This normative expansion seeks to consolidate internal power, reinforce hierarchy, and curb corruption. However, this regulation has not translated into greater public accountability: the CCP remains immune to ordinary judicial jurisdiction, and infractions are handled exclusively within Party disciplinary commissions (Horsley 2019; Quintanilla 2020).

The legal governance project is also expressed through selective transparency initiatives, such as partial publication of judicial decisions, expanded access to public information, and the digitalization of legal processes. Still, information control and censorship of sensitive content continue to prevail, limiting the emancipatory potential of these policies (Fang 2018; Horsley 2019).

China's leadership promotes a distinct conception of the Rule of Law, consolidated under the formula "socialist rule of law with Chinese characteristics." This concept incorporates elements of Marxism-Leninism, Legalist tradition, and Confucian influences, and reflects the premise that law must serve the Party's political objectives rather than have autonomous value (Rudolf 2021).

In this sense, "Xi Jinping Thought on the Rule of Law" was incorporated into China's first Five-Year Plan for the Rule of Law (2020–2025), which aims to structure a cohesive legal system under the CCP's centralized leadership. The plan sets the goal of fully consolidating such a system by 2035 and explicitly rejects pillars of the Western model, such as separation of powers and judicial independence, which are deemed "erroneous Western concepts" (Rudolf 2021).

Another notable aspect of the Chinese approach is the intensification of digital technology use in the legal field. The government has invested in court informatization, the creation of virtual courts, and tools such as the social credit system. These technologies aim to increase efficiency and reduce arbitrariness in law enforcement—without limiting Party power. In this context, technology is presented as an authoritarian alternative to separation of powers, based on a supposed algorithmic objectivity (Rudolf 2021).

On the international stage, China has sought to export its conception of the Rule of Law by promoting regulatory reforms in multilateral organizations, expanding its legal presence through the Belt and Road Initiative (BRI), and establishing its own arbitration and legal cooperation mechanisms. This effort aims to redefine international legal standards through a logic that privileges state sovereignty over individual rights. For policymakers in Europe and other democracies, understanding this approach is essential to strategically respond to the institutional challenges posed by China's rise (Rudolf 2021).

More recently, according to data from "China2Brazil" (2025), China has invested in rebuilding market trust by strengthening the Rule of Law and

replacing implicit barriers with clear norms. The new Foreign Investment Law abolished the dual treatment model for domestic and foreign enterprises, instituting the principle of “pre-establishment national treatment” and a “negative list,” thereby reducing bureaucracy and enhancing legal parity. In 2024, this list was reduced from 31 to 29 sectors (China2Brazil 2025).

There have also been significant advances in intellectual property protection. With the creation of specialized courts and the fourth revision of the Patent Law, penalties for willful violations can now reach up to RMB 5 million, with exemplary punishment applied. In 2024 alone, Chinese courts adjudicated 8,252 new cases involving foreign companies, reinforcing the country’s image of commitment to justice and legal security.

In the same year, Shanghai inaugurated the country’s first Intellectual Property Prosecutor’s Office, reducing by 40% the time required to initiate criminal actions related to trade secrets—further boosting foreign investor confidence (China2Brazil 2025).

It is also worth noting that free trade zones have been used as regulatory laboratories. In Shanghai, provisions of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), such as neutrality in government procurement, are being tested. In Hainan, a system based on a negative list and security assessments for cross-border data transfers is in place. These initiatives indicate growing convergence between China’s legal system and international regulatory standards, demonstrating an official commitment to regulated and predictable market openness (China2Brazil 2025).

In summary, although the Xi Jinping administration has promoted significant advances in the technical professionalization of the legal system, the political instrumentalization of law remains a foundational element. The coexistence of a sophisticated normative apparatus with persistent authoritarian control reveals the ambivalences of the Chinese model. The tension between institutional modernization and Party centralization thus constitutes the core paradox of legal governance in contemporary China (Horsley 2019; Human Rights Watch 2021; Rudolf 2021).

5. Final Considerations: Legality in Dispute in Contemporary China

This article aimed to analyze the development of the Rule of Law in China, focusing on its economic dimension and the transformations promoted under the leadership of Xi Jinping. To achieve this goal, the analysis was structured

around four major thematic axes: (i) the concept of the Rule of Law and its international projection; (ii) its application in the Chinese context; (iii) the impacts of China's accession to the World Trade Organization (WTO); and (iv) the main advances and challenges faced in the effort to consolidate a law-based governance system, especially in the current political landscape.

Throughout the research, it was demonstrated that, following the economic opening initiated in the late 20th century and the intensification of external engagement, China began to incorporate international legal practices as part of its modernization strategy. Among these, law-based regulation emerged as a central element of institutional reliability—both for its citizens and global commercial partners. In the context of economic globalization, the Rule of Law has become necessary not only as an internal mechanism for organization and justice but also as a condition for the secure and transparent operation of external economic relations.

In this regard, China's accession to the WTO in 2001 was a decisive milestone in this trajectory. As a condition for joining the organization, China was compelled to revise numerous legal norms, revoke laws incompatible with free market principles, restrict provincial powers over commercial law, and establish more transparent review and oversight mechanisms. These adjustments directly contributed to strengthening a more technical, predictable, and functional legal system—particularly in economic and regulatory domains—as analyzed in this study.

However, as discussed in the second section, this movement toward international standards did not imply a full adoption of the Western liberal model of the Rule of Law. China's legal tradition, strongly influenced by philosophical schools such as Confucianism—which emphasizes order, morality, and authority—and Legalism—which values obedience to law as a tool for social control—has resulted in a distinct conception of legality. Added to this is the institutional legacy of the 1949 Revolution, which established the central role of the Chinese Communist Party (CCP) as the supreme organ of political and legal authority. In this context, it can be inferred that the Chinese model aligns more closely with the idea of *rule by law*, in which law is used as a tool of governance and order maintenance, rather than as an autonomous limit on political power.

Although the Chinese judiciary has undergone significant structural improvements—such as increased specialization, process digitalization, and broader access to justice—its functioning remains subordinated to the CCP. The lack of full judicial independence, internal party accountability channels outside the state legal system, and the persistence of extrajudicial practices

in suppressing dissent reflect the limitations of legal institutionalization in a centralized political system.

Under Xi Jinping's leadership, as discussed in the fourth section, this process of institutionalization was simultaneously deepened and tightly controlled. Xi advanced an ambitious legal reform agenda, including the enactment of China's first Civil Code, the reorganization of the judicial system, the intensification of anti-corruption efforts, and the creation of judicial accountability mechanisms—even if experimental in nature. There was also progress in court debureaucratization and in the transparency of regulatory acts.

These initiatives reflect an attempt to build a more efficient legal system, aligned with internal demands for justice and external demands for predictability and institutional integrity.

However, these reforms were implemented within the constraints of the political regime's structure. The strengthening of party discipline—through intra-party regulation and the expansion of control committees—demonstrates that the CCP seeks to preserve its supremacy despite increasing institutional complexity. The tension between political control and legal professionalization remains one of the greatest challenges of contemporary China.

Based on the analysis developed, it can be concluded that the development of the Rule of Law in China is a gradual, hybrid process, deeply conditioned by historical, cultural, and political factors. It is a functional legal order, technically sophisticated and continuously expanding, but still subordinated to the logic of power centralization. While it does not represent a Rule of Law in the Western mold, the institutional advances observed in recent decades—driven by both global market demands and domestic interests in stability—indicate a trend toward the strengthening of legality as a pillar of governance.

Finally, it can be stated that China is moving toward the consolidation of a more structured, complex, and predictable legal order, although still marked by substantial limitations regarding the separation of powers and the protection of fundamental rights. The effectiveness and legitimacy of this model in the coming years will depend on the Chinese regime's ability to reconcile political centralization with internal and external pressures. The future of the Rule of Law in China, therefore, remains open—situated in the ongoing tension between tradition, modernization, and political control.

In light of this, space opens for future studies to more deeply explore the international ramifications of Chinese legal rationality—especially its impact on the formulation of alternative legal standards and global normative disputes. The consolidation of the “Rule of Law with Chinese Characteristics”

is not limited to the domestic sphere but represents a normative proposal that challenges the foundations of liberal constitutionalism and influences the institutional design of partner countries. Thus, China emerges not only as a subject of comparative analysis but as an active agent in constructing new transnational legal architectures.

Bibliography

Adorno, Theodor. *Negative Dialectics*. Rio de Janeiro: Zahar, 2003.

Aguiar, Bruno Leonardo de. "The Construction of the Rule of Law in Contemporary China." *Journal of the Law School of UFMG* 51 (2007): 35–54.

Aguiar, Bruno Leonardo de. *The Modernization of the Chinese Legal System: Between Tradition and Westernization*. Belo Horizonte: Fórum, 2017.

Canotilho, J. J. G. *Constitutional Law and Theory of the Constitution*. 4th ed. Lisbon: Almedina, n.d.

Carvalho, Evandro Menezes de. "A New Era of Chinese Law." *China Today* 24 (2017).

Carvalho, Evandro Menezes de. "China's First Civil Code: A Historical Milestone." Blog Evandro Menezes de Carvalho. <http://www.evandrocarvalho.com.br/o-primeiro-codigo-civil-chines-um-marco-historico/>.

Carvalho, Gustavo Ferreira Santos de. "Jurists and the Rule of Law in China: Role and Influence." *Direito GV Journal* 13, no. 2 (2017): 418–443.

Carvalho, Gustavo Ferreira Santos de. *Rule of Law in China: Construction, Reform, and Challenges*. São Paulo: Saraiva Educação, 2020.

Carvalho, Salo de. "Rule of Law with Chinese Characteristics? A Study of Contemporary Chinese Criminal Law." In *Global Criminal Law*, edited by Gustavo Oliveira and Livia Vieira. Rio de Janeiro: Revan, 2020.

Carvalho, Salo de. "Legal Governance and Rule of Law with Chinese Characteristics: Between Legal Expansion and Party Control." *Brazilian Journal of International Law* 19, no. 1 (2022).

Carvalho, Tiago André. “China Approves Its First Civil Code: Analysis and Implications.” *Conjur*, 2020.

Carvalho, Tiago André. “Law-Based Governance in Contemporary China: Challenges of Legal Institutionalization under Xi Jinping.” *Brazilian Journal of International Politics* 65, no. 1 (2022).

CHINA2BRAZIL. “China Strengthens Business Environment with Legal Reforms and Regulatory Opening to Attract Foreign Investment.” <https://china2brazil.com.br/china-reforca-ambiente-de-negocios-reformas-legais-abertura-regulatoria-investimento-estrangeiro/>.

Choukroune, Leïla. “China and the WTO: Towards a Reform of the Chinese Legal System?” *Asian Journal of WTO and International Health Law and Policy* 7, no. 2 (2012): 339–359.

Choukroune, Leïla. “China’s Accession to the WTO: The End of the Beginning?” *International Journal of Legal Information* 40, no. 2 (2012): 248–258.

Choukroune, Leïla. “China and the Global Economic Rule of Law: From WTO Accession to Business Law Reform.” *Revue internationale de droit économique* 26, no. 1 (2012): 11–34.

Choukroune, Leïla. “The Compromised ‘Rule of Law by Internationalization.’” *China Perspectives*, no. 2012/1. <http://journals.openedition.org/chinaperspectives/5782>.

D’Aguiar, Filipa Pais. “The Rule of Law in China: Contributions from Legal Culture and Comparative Law.” *Lusíada. Direito*, series 2, no. 17–18 (2017): 19–54.

Dan, Deliang. *The Construction of the Rule of Law in Contemporary China*. Coimbra: Almedina, 2008.

Dan, Wei. “The Chinese Path to the Rule of Law.” *Revista de Direitos Fundamentais and Democracia* 4 (2008): 50–75.

Fang, Yuhua. “Discipline and Dissent: The Impact of China’s Anti-Corruption Campaign on Judicial Transparency.” *The China Quarterly* 234 (2018): 295–320.

Foucault, Michel. *Security, Territory, Population: Lectures at the Collège de France (1977–1978)*. São Paulo: Martins Fontes, 2004.

Gao, Henry. "China's Compliance with WTO Law: A Critical Analysis." *Journal of International Economic Law* 23, no. 1 (2020): 47–75.

Habermas, Jürgen. *The Theory of Communicative Action. Vol. 1: Reason and the Rationalization of Society*. São Paulo: Martins Fontes, 1984.

Halliday, Terence C., and Gregory Shaffer. *Transnational Legal Orders*. Cambridge: Cambridge University Press, 2015.

He, Xin. "Judicial Innovation under Political Control: The New Guiding Cases System of the Supreme People's Court in China." *The China Journal* 76 (2016): 25–50.

Horsley, Jamie P. "China's Rule of Law Mirage: The Regression of Legal Reform under Xi Jinping." In *The China Quarterly Special Issue: Xi Jinping's China*, edited by Andrew J. Nathan, 62–89. Cambridge: Cambridge University Press, 2019.

Horsley, Jamie P. *The Rule of Law with Chinese Characteristics: An Empirical Cultural Perspective*. The Brookings Institution, 2019.

Horkheimer, Max. *Eclipse of Reason*. São Paulo: Centauro, 2002.

Human Rights Watch. "China: Crackdown on Lawyers Undermines Rule of Law." Human Rights Watch, 2021. <https://www.hrw.org>.

Kennedy, David. *The Dark Sides of Virtue: Reassessing International Humanitarianism*. Princeton: Princeton University Press, 2006.

Lawrence, Susan V., and Michael F. Patterson. *China's Legal System*. Washington: Congressional Research Service, 2018.

Lawrence, Johnny, and Johnny Patterson. *FPC Briefing: Rule of Law in China – A Priority for Businesses and Western Governments*. The Foreign Policy Centre, September 24, 2018.

Li, Anthony H. F. "Centralisation of Power in the Pursuit of Law-Based Governance." *China Perspectives*, no. 2016/2. <http://journals.openedition.org/chinaperspectives/6995>.

Li, Eric. "China and the Rule of Law." *American Affairs* 3, no. 3 (2019): 133–154. <https://americanaffairsjournal.org/2019/08/china-and-the-rule-of-law/>.

Li, Ling. "The Chinese Communist Party and People's Courts: Judicial Dependence in China." *American Journal of Comparative Law* 64, no. 1 (2016): 37–74.

Li, Ling. "The Political-Legal Bureaucracy in China and Its Role in Political Control." *The China Quarterly* 233 (2018): 67–92.

Martins, Julio Cesar. *Critical Legal Theory: A Critical Approach to Power Relations in Law*. 2025.

Martins, Julio Cesar. "Critical Legal Theory: A Critical Approach to Power Relations in Law." <https://www.jusbrasil.com.br/artigos/teoria-critica-do-direito-uma-abordagem-critica-as-relacoes-de-poder-no-direito/2066719736>.

Neto, Pedro Scuro. "Globalization of the Rule of Law: Meaning and Consciousness – Part I." *Revista Sociologia Jurídica*, no. 4 (Jan./June 2007).

Oud, Malin. *Rule of Law*. Decoding China Dictionary, 2022.

Peerenboom, Randall. *China's Long March toward Rule of Law*. Cambridge: Cambridge University Press, 2002.

Peerenboom, Randall. "Varieties of Rule of Law: An Introduction and Provisional Conclusion." In *Asian Discourses of Rule of Law*, edited by Randall Peerenboom. London: Routledge, 2014.

Peres, Ana Luísa S., and Letícia de Souza Daibert. "China and the World Trade Organization." In *Contemporary Chinese Law*, edited by Fabrício B. P. Polido and Marcelo M. Ramos, 387–412. São Paulo: Almedina, 2015.

Peres, Juliana, and Renan Daibert. "Rule of Law in China: Institutional Advances and Structural Limits." *Brazilian Journal of International Politics* 58, no. 2 (2015): 36–52.

Peres, Marcelo Dias Varella, and João Paulo Daibert. "WTO and China: Effects of Accession to the Multilateral Trade System." *Revista de Direito Internacional Econômico e Tributário* 11, no. 1 (Jan./June 2015): 5–28.

Quintanilla, Lauren. "Internal Party Regulations in China: Consolidating Xi Jinping's Control." *China Leadership Monitor*, no. 64 (2020).

Reale, Miguel. *Philosophy of Law*. 17th ed. São Paulo: Saraiva, 2000.

Rudolf, Moritz. *Xi Jinping Thought on the Rule of Law: New Substance in the Conflict of Systems with China*. SWP Comment 2021/C 28. Stiftung Wissenschaft und Politik (SWP) – German Institute for International and Security Affairs, April 2021. <https://www.swp-berlin.org/en/publication/xi-jinping-thought-on-the-rule-of-law>.

Santos, Boaventura de Sousa. *Toward a New Legal Science: Introduction to Postmodern Law*. Porto: Afrontamento, 2002.

Teubner, Gunther. *Constitutional Fragments: Societal Constitutionalism and Globalization*. Oxford: Oxford University Press, 2004.

Trubek, David, and Alvaro Santos, eds. *The New Law and Economic Development: A Critical Appraisal*. Cambridge: Cambridge University Press, 2006.

Waldron, Jeremy. "The Rule of Law." *The Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/archives/fall2016/entries/rule-of-law>.

Wu, Guoguang, and Cheng Li. "Politics and the Judiciary in China: The Case of Judicial Independence and Reform under Xi Jinping." In *China's Governance Puzzle: Enabling Transparency and Participation in a Single-Party State*, edited by Yuen Yuen Sun. Cambridge: Cambridge University Press, 2017.

Zhang, Taisu. "The Rule of Law in China: A Realistic Perspective." *Tsinghua China Law Review* 5, no. 2 (2013): 213–231.

Zhou, Wei. "China's Trade-Related Legal Reforms After WTO Accession: Achievements and Challenges." *Asia Pacific Law Review* 23, no. 2 (2015): 139–158.