

Research Series on the Chinese Dream and China's Development Path

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Drawing on a large body of empirical studies done over the last two decades, the *Research Series on the Chinese Dream and China's Development Path* seeks to provide its readers with in-depth analyses of the past and present, and forecasts for the future course of China's development. Thanks to the adoption of Socialism with Chinese characteristics, and the implementation of comprehensive reform and opening, China has made tremendous achievements in areas such as political reform, economic development, and social construction, and is making great strides towards the realization of the Chinese dream of national rejuvenation. In addition to presenting a detailed account of many of these achievements, the authors also discuss what lessons other countries can learn from China's experience. This series will be an invaluable companion to every researcher who is trying to gain a deeper understanding of the development model, path and experience unique to China.

More information about this series at <http://www.springer.com/series/13571>

Lin Li · He Tian · Yanbin Lv
Editors

China's Rule of Law Index 2017



 Springer

The Springer logo, which consists of a stylized chess knight piece on a pedestal, followed by the word 'Springer' in a serif font.

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Preface

Evaluating the Level of Rule of Law: Methods and Approaches

Since the founding of People's Republic of China, people have been attaching greater importance to the role played by the rule of law. Particularly since China adopted the reform and opening up policy about forty years ago, people have gradually realized that "rule of law" is the greatest common divisor in society and represents the only form of social governance gaining general support in China. Recent years have seen continuous legislative improvements in various fields, steady progress in building a law-based government, and substantial guarantee of judicial fairness. In spite of all the achievements we have made, it is important for us to accurately understand how well the laws are implemented, how the systems introduced from abroad perform in China, what problems have arisen from the exercise of government and judicial powers, and how the legal systems should be further improved in the future. Otherwise, it is impossible to make accurate decisions concerning the rule of law. To decide whether a law is in line with social reality and whether it is strictly implemented entails the collective will and interactions of the legal community, in which the study of law plays a critical role. People can evaluate the systems and put forward proposals for amendment through monitoring the operations of various systems and studying their effects. However, it is noteworthy that traditional methods for law study can hardly be used for handling such important tasks. Depending on normative analysis, logical deduction, and reasoning and proof, these traditional methods convert the rule of law, which has natural links with practice, into a grand narrative system, with concepts, systems, and theories as the supreme principles and universal truths. Even empirical studies are mostly limited to analysis of individual cases or to discussions and interviews. In contrast, the quantitative study of law starts from details, focuses more on the performance of systems, and describes in detail facts related to the rule of law, past and present. Hence, it is greatly different from the traditional methods.

The quantitative methods of law study have been developed as the times require. In the information era, data generation, collection, and application have become

important factors of success in many industries. To some extent, data is a crucial social resource for mankind. All decision-makings are increasingly based on data analysis instead of traditional experience and intuition. The habit of “approximate” social governance will be revolutionized. As mathematician Demollins observed, without mathematics, we cannot gain an insight into the depth of philosophy; without philosophy, we cannot gain an insight into the depth of mathematics; without both, we cannot gain an insight into anything. Mathematics and philosophy provide two research methods in social sciences, and one should not be separated from the other as they are inseparably interconnected.

Quantitative study is a natural companion to natural sciences but used to be rejected by social sciences. As time passes, social sciences have begun to welcome quantitative research methods with open arms. Quantitative research methods, especially index methods, are adopted in some famous international studies. Index is a statistical concept and usually refers to the relative indicators in statistics that reflect the changes of a social phenomenon within a certain period of time. The rule of law index is an important measurement of the development of rule of law. It is the data result obtained from quantitative evaluation via models and indicator systems. By reconstruction and reinterpretation of related data, it can comprehensively summarize the achievements in development of rule of law and lay bare the existing problems.

The research group of the Institute of Law of Chinese Academy of Social Sciences has begun research on rule of law index as early as 2009. In accordance with the planning, the research group first chose transparency as the entry point for evaluation of rule of law index. Since 2009, it has been conducting quantitative evaluation of government transparency, judicial transparency, and procuratorial transparency. The reason why transparency is selected as the primary evaluation item is as follows. First, transparency is the cornerstone of rule of law. Transparency in the operation of power is the foundation for ensuring proper power operation and protection of people’s rights and interests. In 2011, when Cameron F. Kerry, the General Counsel of the US Department of Commerce, visited the Institute of Law and had a discussion with us, he happened to hold the same view as us. He also believed that transparency played a role of the cornerstone, without which anything else would be meaningless. Second, transparency is an important way of governance. It not only guarantees people’s legitimate rights and interests, the right to know included, but also helps regulate the operation of power, contain power rent-seeking, reduce social running cost, and replace traditional management means of governments. Hence, transparency is highly beneficial to social progress. Third, transparency is the foundation of all evaluations of rule of law. Materials and data are needed for any evaluation. However, much of the data about the operation of rule of law is held by organs of public power. If such data were not shared with the society, all evaluation and academic institutions would face the predicament of “making bricks without straw.” Therefore, the evaluation of transparency encourages governments and judicial organs to disclose data and helps the public and professional institutions to engage in governance through evaluating their work.

Since 2009, our government transparency evaluation has covered 54 departments under the State Council which have external administrative power, 31 provincial-level governments, and 49 governments of large cities that traditionally have legislative power. In 2017, our evaluation will expand to 100 county-level governments. The research group has also begun pilots in such areas as Beijing and Guizhou Province and carried out evaluation of the provincial-level government departments and prefectural-level governments there.

The judicial transparency evaluation covers the Supreme People's Court, 31 higher people's courts, and 49 intermediate people's courts of large cities and ranks all the 81 courts. Starting from 2013, the research group has been entrusted by Zhejiang Higher People's Court to conduct evaluation of judicial transparency index on 105 courts (initially 103 courts in 2013) at three levels for three consecutive years; since 2014, it has carried out evaluation of judicial transparency index on 22 courts at three levels in Beijing for two consecutive years; in 2016, it carried out such evaluation on 129 courts at three levels in Guangxi Zhuang autonomous region.

The procuratorial transparency evaluation covers the Supreme People's Procuratorate, 31 provincial people's procuratorates and 49 procuratorates of large cities.

Our evaluation has benefited from the rapid development of e-government in recent years. In China, it has become a consensus to disclose information publicly via respective Web sites. Therefore, we mainly conduct the three evaluations by observing the information disclosure at the Web sites of the organizations being evaluated. We also act as the receiving end of information disclosure for verification. Take evaluation of government transparency for example. Each year, we send applications for government information disclosure to the organizations being evaluated via letters and online channels and observe the degree of standardization of their replies. As for judicial transparency evaluation, we call the inquiry hotlines to verify disclosure to the parties concerned. During the evaluation of judicial transparency index in several areas, we not only observe the web portals from the outside, but dive deep into the courts. By obtaining internal statistics and randomly checking the files, we examine the disclosure of various information to the parties in specific cases.

Our evaluation is different from satisfaction evaluation. Due to such restrictions as the design quality of questionnaires, sample selection of the organizations being evaluated, and degree of cooperation, the conclusions of satisfaction evaluations are often inaccurate. Many regions in China score at least 95 points in the annual satisfaction evaluations, but the local people do not recognize such high scores. In certain fields, though the agencies do a lot of work and exhibit a high level of standardization, the relative persons remain dissatisfied. Most typically, in the case where public security organs have punished the violators in accordance with regulations on penalties for administration of public security, when asked whether they are satisfied, the violators can hardly be expected to make an objective and reasonable comment. Furthermore, in the case of court rulings, the party who loses the

lawsuit is probably dissatisfied, while the winning party may also be dissatisfied for not winning more.

Our evaluation is also different from the self-evaluations done in some regions and by some entities. Rule of law assessment is now quite widely conducted in China, but many take it takes the form of internal self-evaluation that is poorly supported by scientifically sound indicator systems and more qualitative than quantitative in nature. They are often based on the statements and materials provided by the organizations being evaluated. Superiors are asked to rate their subordinates, and staff are asked to rate their peers. As a result, practically each organ who is evaluated receives a score in the top 90 percentile. Even the organizations that conduct the evaluation sometimes find such patently inflated grades incredible, so it is small wonder why the general public has even less trust in these exercises. Therefore, it becomes all the more important for a third-party institute to conduct quantitative evaluations of rule of law that are independent, objective, and scientifically informed. By contrast, when we carry out evaluations for purpose of compiling a rule of law index, including those conducted in cooperation with other entities, we are the ones who get to decide for what, when, and how the evaluation is done. We would conduct the evaluation without advance notice to organizations being evaluated, lest the evaluated should make preparations accordingly.

These years, we have adopted a set of evaluation principles that we have ourselves devised.

First, evaluations should be law-based. The design of all the evaluation items and indicators must be based on laws and regulations. The basic requirement for organs of public power is to carry out their duties according to law. Hence, the evaluation should first of all be directed to whether they perform duties in conformity with legal provisions. What is not yet legally provided can only be used as a guiding indicator. Meanwhile, it goes without saying that the evaluation should be aimed to discover defects in legislative and system designs in view of the situation of power operation and give advice for improvement.

Second, evaluations should be objective. We should try to avoid subjective evaluations and convert such subjective and arbitrary criteria as “good” and “bad” into objective and operable indicators. The evaluation is focused on whether government agencies disclose related information according to law in a timely manner and whether the information made publicly available is accurate and easily accessible to the public. To this end, the evaluation indicators only require the evaluators to choose from “yes” and “no” and forbid them from commenting “good” and “bad,” minimizing the space of discretion for evaluators and prevent them from having improper conducts due to the influence, obstruction, or lobbying of the evaluation subjects or the like.

Third, evaluations should be conducted with some regularity. Third-party evaluations should be based on the daily work of related departments to be evaluated, and campaign-style evaluation should be avoided. Regular evaluation can prevent the organizations being evaluated from making preparations in advance to get good results, and more importantly, prevent ostentation of government agencies which would affect the credibility of evaluation results.

Based on the aforesaid principles and methods, we have found out the real situations of the development of rule of law in various fields, which have largely alarmed the related departments. Some departments did not accept such evaluation at first because they were used to evaluating academic institutions, social organizations, and the people and found it hard to allow others to evaluate them. But as time goes on, our evaluations have been proven objective, neutral, scientific, and authentic. Many regions and organs have gradually accepted our evaluations and are ready to improve their work in light of our advice. Related departments refer to some of our evaluation opinions when formulating system documents and even directly incorporate them into their documents. The third-party evaluation has arguably become a new approach to modernizing China's governance system and governance capacity in the new era.

This volume of annual reports includes two sets of evaluation reports published in 2016 and 2017, from which the readers could see the progress China has made and existing issues in the construction of transparency and rule of law.

Transparency evaluation is but one part of rule of law evaluation. In recent years, we have also conducted evaluation on regional implementation of rule of law, local legislative work, government procurement, information construction of courts, courts' efforts to address difficulties in law enforcement, and so on. We will continue to publish related evaluation reports at this platform to share with people overseas who are concerned with the development of rule of law in China.

Beijing, China

Lin Li
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