

ARTICLE

# Chinese Legal Thought on the Global and the Domestic Stage: A Rhetorical Study

Samuli Seppänen\*

The Chinese University of Hong Kong  
Corresponding author. E-mail: [sseppanen@cuhk.edu.hk](mailto:sseppanen@cuhk.edu.hk)

(Received 8 June 2021; revised 1 February 2022; accepted 10 May 2022)

## Abstract

Chinese Communist Party ideologues and a number of prominent legal scholars have become outspoken about the global significance of Chinese legal thought. The question is, however, whether the ambitious statements about the global importance of Chinese legal thought are supported by legal theoretical arguments, which could be influential abroad. This article examines the interaction between the domestic and global stages of Chinese legal speech through the tools of rhetorical theory. Arguments about the nature and global significance of Chinese law are made for different purposes and for different audiences. The most ambitious statements about the global significance of Chinese legal thought are produced within a ‘ceremonial’ genre of speech. Domestic Chinese ceremonial speech is meaningful in the Chinese context, but it translates poorly to globally influential ideological speech. Foreign audiences will find more persuasive arguments about the significance of Chinese legal thought in Chinese deliberative speech, such as parts of Chinese legal scholarship. While arguments made in the deliberative genre are more persuasive than ceremonial speech, specific argumentative moves within this genre are not always helpful for the international advocacy of Chinese legal thought. Moreover, arguments in the deliberative genre are not consistently reflected in Chinese judicial decisions. These observations highlight the role of language and persuasion in the globalisation of law.

In the past few years Chinese Communist Party (CCP) ideologues and a number of prominent legal scholars have become outspoken about the global significance of Chinese legal thought. Chinese commentary on ‘Xi Jinping Thought on the Rule of Law’ (*Xi Jinping fazhi sixiang*, 习近平法治思想) has adopted a particularly ambitious tone. According to CCP ideologues, Xi Jinping Thought on the Rule of Law contributes ‘Chinese wisdom to the world for advancing the rule of law,’<sup>1</sup> and constitutes ‘an epoch-making advancement in human civilization.’<sup>2</sup>

\*Associate Professor, Faculty of Law, The Chinese University of Hong Kong. I thank Zheng Silu for his assistance on this article. The work described in this paper was fully supported by a grant from the Research Grants Council of the Hong Kong Special Administrative Region (Project No 14610918).

<sup>1</sup>Xi Focus: Xi Jinping Thought on the Rule of Law guides law-based governance in China’ (China Daily, 10 Dec 2020) <<https://www.chinadaily.com.cn/a/202012/10/W55fd1c396a31024ad0ba9b10f.html>> accessed 17 Nov 2022.

<sup>2</sup>Chen Yixin (陈一新), ‘Xue shen wu tou Xi Jinping fazhi sixiang, zuo dao “ba ge shenke bawo”, dadao “wu ge chengxiao” (学深悟透习近平法治思想,做到“八个深刻把握”,达到“五个成效”)[Learn deeply and understand thoroughly Xi Jinping’s Rule of Law Thought; Achieve the “eight profound grasps,” do the “five effects”]’ (Zhongguo Chang’anwang (中国长安网), 18 Nov 2020) <[http://www.chinapeace.gov.cn/chinapeace/c100007/2020-11/18/content\\_12415617.shtml](http://www.chinapeace.gov.cn/chinapeace/c100007/2020-11/18/content_12415617.shtml)> accessed 14 May 2021. See also *Xi Jinping fazhi sixiang gailun* (习近平法治思想概论) [An Introduction to Xi Jinping Thought on the Rule Law] (Gaodeng jiaoyu chubanshe 2021) 63.

© The Author(s), 2023. Published by Cambridge University Press on behalf of the National University of Singapore. This is an Open Access article, distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives licence (<https://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is unaltered and is properly cited. The written permission of Cambridge University Press must be obtained for commercial re-use or in order to create a derivative work.

There is a growing body of research on Chinese efforts to advocate Chinese law internationally.<sup>3</sup> The Chinese government disseminates ideological messages through its foreign language media, international conferences and various legal development cooperation programs, such as professional training courses.<sup>4</sup> Yet, several important aspects about such advocacy efforts remain obscure. For instance, it is unclear how ideologically loaded China's legal development cooperation programs are. China considers its foreign development cooperation a state secret and publishes little information about its substantive content.<sup>5</sup> The effects of Chinese legal advocacy efforts on foreign audiences are also uncertain.<sup>6</sup>

China's global ideological agenda remains underexamined also at the domestic level. Ideologically ambitious CCP literature and Chinese legal scholarship suggest that Chinese legal thought – or a specific version thereof, such as Xi Jinping Thought on the Rule of Law – provides globally pathbreaking legal theoretical insights.<sup>7</sup> At the same time, there also exist more modest registers for discussing the global significance of various forms of Chinese legal thought.<sup>8</sup> The question is, whether the ambitious statements about the global importance of Chinese legal thought are supported by legal theoretical arguments, which could be influential abroad. Alternatively, should Party ideologues' statements about the path-breaking nature of Chinese legal thought be seen as mere 'political rhetoric'?<sup>9</sup> This article seeks to answer these questions by: (i) describing statements about the global significance of Chinese legal thought within China; and (ii) considering the interaction between the domestic and global stages of Chinese ideological advocacy efforts. This article argues that much of the domestic Chinese speech on Chinese legal thought translates poorly to globally influential ideological, and legal theoretical, speech. This article reaches its conclusions without assuming that there exists a coherent body of Chinese legal thought.

The methodology for this study is derived from rhetorical theory. Rhetorical theory provides useful tools for dissecting the Chinese legal discourse and for examining how and why a particular

<sup>3</sup>Michael W Dowdle & Mariana Mota Prado, 'Dialogues de Beijing Consensus', in Weitseng Chen (ed), *The Beijing Consensus?: How China Has Changed Western Ideas of Law and Economic Development* (Cambridge University Press 2017) 15; Matthew S Erie & Hai Ha Do, 'Law and Development Minus Legal Transplants: The Example of China in Vietnam' (2021) 8 *Asian Journal of Law and Society* 1; Matthew S Erie, 'Chinese Law and Development' (2021) 62 *Harvard International Law Journal* 51; Benjamin Liebman, 'Authoritarian Justice in China: Is There a "Chinese Model"?', in Weitseng Chen (ed), *The Beijing Consensus?: How China Has Changed Western Ideas of Law and Economic Development* (Cambridge University Press 2017) 225; Paul Nantulya, 'Strategic Application of the Tao 道 of Soft Power: The Key to Understanding China's Expanding Influence in Africa' (2020) 47 *The African Review* 481; Yun Zhao, *International Governance and the Rule of Law in China under the One Belt, One Road Initiative* (Cambridge University Press 2018).

<sup>4</sup>See PRC State Council Information Office, *China and the World in the New Era* (Sep 2019) (hereinafter *China and the World*).

<sup>5</sup>For background, see Deborah Brautigam, *The Dragon's Gift: The Real Story of China in Africa* (Oxford University Press 2011) 12. For the latest Chinese government white paper on development cooperation, see PRC State Council Information Office, *China's International Development Cooperation in the New Era 2021* (Jan 2021) [hereinafter *China's International Development Cooperation*]. For the challenges of conducting interviews in the PRC, see Sheena Chestnut Greitens & Rory Truex, 'Repressive Experiences among China Scholars: New Evidence from Survey Data' (2020) 242 *The China Quarterly* 349.

<sup>6</sup>See Samuli Seppänen, 'Chinese Legal Development Assistance: Which Rule of Law? Whose Pragmatism?' (2018) 51 *Vanderbilt Journal of Transnational Law* 131, 139–140.

<sup>7</sup>Xi Jinping *fazhi sixiang gailun* (n 2) 63, 112.

<sup>8</sup>For instance, Zhang Wenxian, a prominent Chinese legal scholar, describes Xi Jinping Thought on the Rule of Law primarily in terms of its domestic contributions, arguing that Chinese contributions to the global legal thought may emerge only after further theoretical work. Zhang Wenxian (张文显), 'Xi Jinping fazhi sixiang de lilun tixi (习近平法治思想的理论体系) [The theoretical system of Xi Jinping Thought on the Rule of Law]' (Quanguo zhexue shehui kexue gongzuo bangongshi (全国哲学社会科学工作办公室) [National Office for Philosophy and Social Sciences]) <<http://www.nopss.gov.cn/n1/2021/0111/c219544-31996155.html>> accessed 26 May 2021. See also the ideologically neutral statements on legal development cooperation in *China's International Development Cooperation* (n 5).

<sup>9</sup>The colloquial meaning of the term 'rhetoric' refers to 'clever language that sounds good but is not sincere or has no real meaning': Cambridge Dictionary, 'rhetoric' <<https://dictionary.cambridge.org/dictionary/english/rhetoric>> accessed 17 Nov 2022.

statement about the global significance of Chinese law is made.<sup>10</sup> The rhetorical approach also highlights the role of language and persuasion in the globalisation of law. Rhetorical theory reveals that Chinese legal speech comprises various types of arguments about the nature and global relevance of Chinese legal thought. Moreover, rhetorical theory suggests that there exist vastly different registers – or genres of speech – to discuss such relevance. This article identifies three distinct rhetorical genres: the ceremonial, the deliberative and the judicial. The most ambitious statements about the global significance of Chinese legal thought are made within a highly standardised ceremonial genre (rather than in the reasoned deliberative genre). Statements made in the ceremonial genre do not attempt to persuade non-believers about intellectual propositions.<sup>11</sup> Instead, this article demonstrates that ceremonial speech affirms desirable (if not always realised) socialist values,<sup>12</sup> establishes hierarchical relations between individuals,<sup>13</sup> and signals the non-discursive nature of the Chinese political system.<sup>14</sup>

Audiences will find more substantive arguments about the significance of Chinese legal thought in deliberative texts, such as certain (rather rare) CCP policy papers,<sup>15</sup> and ideologically conservative Chinese legal scholarship.<sup>16</sup> These texts typically assert the substantially just and pragmatist nature of Chinese legal thought.<sup>17</sup> Arguments made in the deliberative genre are more persuasive for domestic Chinese and foreign audiences than China's idiosyncratic ceremonial speech partly

<sup>10</sup>See Kenneth Burke, *A Rhetoric of Motives* (University of California Press 1969) 77; Chaim Perelman, *The New Rhetoric: A Treatise on Argumentation* (University of Notre Dame Press 1969, 1971) 21, 84. For a seminal text on the performative aspects of speech acts, see John L Austin, *How to Do Things with Words: The William James Lectures Delivered at Harvard University in 1955* (Clarendon Press 1962) 66.

<sup>11</sup>See eg, Xi Jinping, 'Compilation of Xi Jinping's Expositions on Rule of Law' (2016) 48 Chinese Law & Government 468; Xi Jinping, *The Governance of China* (Foreign Language Press 2014).

<sup>12</sup>See nn 68–75 below.

<sup>13</sup>See nn 77–78 below.

<sup>14</sup>See nn 79–81 below.

<sup>15</sup>See eg, Zhonggong Zhongyang Wenxian yanjiu shi (中共中央文献研究室) [Literature Research Centre of the CCP Central Committee], *Xi Jinping guanyu quanmian yifa zhiguo lunshu zhaibian* (习近平关于全面依法治国论述摘编) [Excerpts from Xi Jinping's statements on comprehensively governing the country in accordance with the law] (Zhongyang Wenxian Chubanshe 2015); Xi Jinping, *The Governance of China* (n 11). Two CCP policy texts stand out as the most comprehensive explanations on the theoretical basis of China's socialist legal system, despite having been published already in 2009 and 2012. See Zhonggong zhongyang zhengfa weiyuanhui (中共中央政法委员会) [CCP Central Political and Legal Commission], *Shehui zhuyi fazhi linian duben* (社会主义法治理念读本) [*The Socialist Rule of Law Concept – A Reader*] (Zhongguo Chang'an chubanshe 2009) (hereinafter *The Socialist Rule of Law Concept – A Reader*); Office of the Central Political and Legal Affairs Commission of the Chinese Communist Party, *Shehui zhuyi fazhi linian xuexi wenda* (社会主义法治理念学习问答) [*Questions and Answers on the Socialist Rule of Law Concept*] (Zhongguo Chang'an chubanshe 2012) (hereinafter *Questions and Answers*). A similar category of sources includes texts published by the Chinese Academy of Social Sciences, which is not formally a Party organ. See eg, Zhongguo shehui kexueyuan faxue yanjiu suo fazhi xuanchuan jiaoyu yu gongfa yanjiu zhongxin zuzhi (中国社会科学院法学研究所法治宣传教育与公法研究中心组织) [Chinese Academy of Social Sciences, Institute of Law, Rule of law propaganda and education center], *Dangwei (dangzu) lilun xuexi zhongxin zu fazhi xuexi duben* (党委(党组)理论学习中心组法治学习读本) [*Party committee (Party group) theoretical study center rule of law reader*] (Zhongguo minzhu fazhi chubanshe 2016) [hereinafter *Party Committee Rule of Law Reader*].

<sup>16</sup>See eg, Feng Xiang (冯象), *Zhengfa biji* (政法笔记) [Notes on politics and the law] (Beijing daxue chubanshe 2017); Huang Zongzhi (黄宗智), *Zhongguo de xinxing zhengyi tixi: Shijian yu lilun* (中国的新型正义体系: 实践与理论) [China's new justice system: Practice and theory] (Guilin: Guangxi shifan daxue chubanshe, 2020); Jiang Shigong (强世功), *Fazhi yu zhili: Guojia zhuanxing zhong de falü* (法制与治理: 国家转型中的法律) [Legal system and governance: Law in a Transforming State] (Zhongguo Zhengfa daxue chubanshe 2003) [hereinafter *Fazhi yu zhili*]; Jiang Shigong (强世功), *Chengfa yu fazhi: Dangdai fazhi de xingqi 1976–1981* (惩罚与法治: 当代法治的兴起 (1976–1981)) [Punishment and the rule of law: The rise of contemporary rule of law in 1976–1981] (Falü chubanshe 2009) [hereinafter *Chengfa yu fazhi*]; Zhu Suli (朱苏力), *Fazhi ji qi bentu ziyuan: Xiudingban* (法治及其本土资源 (修订版)) [*Rule of law and its native resources: revised edition*] (Zhongguo Zhengfa daxue chubanshe 2010) [hereinafter *Fazhi ji qi bentu ziyuan*]; Zhu Suli, *Sending Law to the Countryside* (Springer 2016); Zhu Suli (朱苏力), *Zhidu shi ruhe xingcheng de* (制度是如何形成的) [*How are systems formed?*] (Beijing daxue chubanshe 2007).

<sup>17</sup>See eg, *Questions and Answers* (n 15) 93, 129–130, 146; Huang (n 16) 25, 32 (preface), 91.

because they make use of globally accepted rhetorical commonplaces.<sup>18</sup> Nevertheless, specific argumentative moves within the deliberative genre are not always helpful for the international advocacy of Chinese legal thought. Some of these arguments are aimed at proving the idiosyncratic nature of Chinese legal thought rather than demonstrating its global relevance.<sup>19</sup> Moreover, arguments in the deliberative genre are not consistently reflected in the mode of reasoning of the Chinese people's courts, which is often better described as 'formalist' rather than pragmatist (using the Party ideologues' own terminology).<sup>20</sup> This mismatch between the idealised descriptions of Chinese legal thought and the actual modes of reasoning further complicates the international advocacy of Chinese legal thought.<sup>21</sup> This article examines the compatibility of the deliberative and the judicial genres by studying selected Guiding Cases (*zhidaoxing anli*, 指导性案例) and Model Cases (*dianxing anli*, 典型案例), which have been published by the Chinese Supreme People's Court (SPC).<sup>22</sup>

The rest of this article is structured as follows. The following section describes the rhetorical approach in more detail. This article then examines self-descriptions of Chinese law in three different genres of Chinese legal speech: the ceremonial genre, the deliberative genre, and the judicial genre. Building on this analysis, this article finally describes the relevance of Chinese domestic rhetorical conventions for China's global advocacy efforts.

### The rhetorical approach

The theoretical approach adopted in this article has been inspired by two mid-twentieth century theoretical developments: the performative theory of speech and the revival of classical rhetorical theory as so-called New Rhetoric.<sup>23</sup> The performative theory of speech directs inquiries away from the study of the truth of a given statement, and towards the examination of the intended and actual effects of a speech act.<sup>24</sup> Instead of examining the true nature of, say, 'the rule of law' and 'Chinese legal thought', the performative approach studies the social effects of statements about such concepts.<sup>25</sup> This approach brings to the surface a number of non-literal considerations. For instance, arguments about 'the rule of law' and 'Chinese legal thought' may be effective because they are ambiguous, ironic, implausible, paradoxical, provocative and even humorous.<sup>26</sup>

New Rhetoric covers some of the same ground as the study of performativity, but its focus is on the persuasiveness of statements. Many of its concepts are derived from classical Aristotelian rhetorical theory. Chaïm Perelman, a principal advocate of New Rhetoric, regarded rhetorical theory as a particularly useful method for understanding legal argumentation.<sup>27</sup> In Perelman's view, the

<sup>18</sup>See nn 173–174 below.

<sup>19</sup>See nn 96–98 below.

<sup>20</sup>See nn 106, 142–151 below.

<sup>21</sup>Judicial speech influences domestic Chinese accounts on the nature of Chinese law, making it harder for CCP ideologues and Chinese legal scholars to formulate a single message on the nature of Chinese legal thought. Judicial practices are also studied by foreign jurists who seek influences from Chinese law, but who may not find that Chinese judicial decisions corroborate with statements about the pragmatist and substantively just nature of Chinese legal thought. See further Qiao Liu, 'Chinese "Case Law" in Comparative Law Studies: Illusions and Complexities' (2019) 14 Asian Journal of Comparative Law S97, S117.

<sup>22</sup>See n 140 below.

<sup>23</sup>Burke (n 10); Perelman, *The New Rhetoric* (n 10). For a critical discussion on Perelman's new rhetoric in legal theory, see Peter Goodrich, *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis* (Palgrave Macmillan 1987) 111–112.

<sup>24</sup>Austin (n 10).

<sup>25</sup>For conceptions about the rule of law in China, see Albert HY Chen, 'Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law' (1999) 17 UCLA Pacific Basin Law Journal 125; Randall Peerenboom, *China's Long March toward Rule of Law* (Cambridge University Press 2009); Ewan Smith, 'The Rule of Law Doctrine of the Politburo' (2017) 79 The China Journal 40.

<sup>26</sup>See Austin (n 10) 66.

<sup>27</sup>Chaïm Perelman, *Justice, Law, and Argument: Essays on Moral and Legal Reasoning* (Reidel 1980) 129.

disciplines of law and rhetorical theory both examined the credibility, plausibility and probability of argumentation.<sup>28</sup>

Legal scholars have typically applied rhetorical theory to the study of domestic legal theory,<sup>29</sup> but the rhetorical approach is helpful also in the comparative context.<sup>30</sup> Legal scholars are intuitively familiar with the rhetorical conventions and other background rules of their domestic jurisdictions. However, in foreign contexts, legal scholars may neglect to assign proper significance to those aspects of speech, which may initially appear unimportant, but which nonetheless contribute to the persuasiveness and other social effects of legal argumentation. The rhetorical perspective is a particularly helpful corrective for the study of illiberal and other ‘non-Western’ legal systems, which are often examined through liberal democratic conventions of legal argumentation.<sup>31</sup> Rhetorical theory also helps to study the globalisation of law, at least when globalisation occurs through the voluntary reception of foreign legal institutions and processes of persuasion.<sup>32</sup>

The specific tools of rhetorical studies include: (i) the analysis of genres of speech;<sup>33</sup> (ii) the examination of argumentative techniques, such as the use of tautologies and other quasi-logical arguments;<sup>34</sup> (iii) the description of the nature of the audience and its relationship with the speaker;<sup>35</sup> and (iv) the examination of the intended and actual effects of argumentation.<sup>36</sup> Perhaps most characteristically, (v) rhetorical studies examine argumentative commonplaces.<sup>37</sup> In classical rhetorical theory, argumentative moves were classified through locations (in Greek *topoi* and in Latin *loci*).<sup>38</sup> For instance, it is a common location (a ‘commonplace’) that more is better than less,<sup>39</sup> and good consequences are better than bad consequences.<sup>40</sup> Legal arguments, too, have been analysed through such commonplaces,<sup>41</sup> although it is questionable whether the diversity of legal arguments can be reduced to a set of formal *topoi* or *loci*.<sup>42</sup>

<sup>28</sup>Perelman, *The New Rhetoric* (n 10) 1.

<sup>29</sup>Perelman, *Justice, Law, and Argument* (n 27) 57–58.

<sup>30</sup>See in particular, Boaventura De Sousa Santos’s postmodern theory of the law: Boaventura de Sousa Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (1st edn, Routledge 1995); Boaventura de Sousa Santos, *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition* (2nd edn, Butterworths 2002) 103–107. Subsequent references to this text are to the second edition. Comparative legal linguistics touches on many rhetorical themes. See Heikki ES Mattila, *Comparative Legal Linguistics* (Christopher Goddard tr, Ashgate 2006).

<sup>31</sup>For a discussion on the liberal democratic perspective in different contexts, see Donald Clarke, ‘Anti Anti-Orientalism, or Is Chinese Law Different?’ (2020) 68 *American Journal of Comparative Law* 55, 57, 94 (focusing on the nature of ‘courts’ and the concept of ‘law’); Huang (n 16) 237; Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Harvard University Press 2013) 12 (discussing the use of western law as a yardstick for studying Chinese law); William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press 2009) 124–125 (focusing on universalist ethical conceptions in Western jurisprudence). For an example of the difficulties involved in taking illiberal legal doctrines at their face value, see Ewan Smith, ‘On the Informal Rules of the Chinese Communist Party’ (2021) 248 *The China Quarterly* 141, 149.

<sup>32</sup>Duncan Kennedy, ‘Three Globalizations of Law and Legal Thought: 1850–2000’, in David Trubek & Alvaro Santos (eds), *The New Law and Economic Development: A Critical Appraisal* (Cambridge University Press 2006) 19, 22. Kennedy seeks to demonstrate that speech acts, which initially appear as idiosyncratic statements in an autonomous legal system, are actually *parole* in the global *langue* of legal thought: *ibid* 46–47. For *langue* and *parole*, see Ferdinand de Saussure, *Course in General Linguistics* (McGraw-Hill 1959) 14–15. Nevertheless, as argued below, rhetorical theory does not have to seek to construct a grammar of rhetoric in order to be useful.

<sup>33</sup>See Perelman (n 10) 45 and text accompanying nn 54, 94 and 139 below.

<sup>34</sup>See Perelman (n 10) 214 and text accompanying nn 147–152 below.

<sup>35</sup>See Perelman (n 10) 19, 331 and text accompanying nn 83–84, n 86, n 99 below.

<sup>36</sup>See Perelman (n 10) 45 and text accompanying nn 79–80, 179–180 below.

<sup>37</sup>See Perelman (n 10) 83 and text accompanying nn 70–75 below.

<sup>38</sup>Aristotle, *Topics: Books I and VIII, with excerpts from related texts* (Robin Smith tr, Clarendon Press 1997) 88.

<sup>39</sup>Perelman, *The New Rhetoric* (n 10) 85.

<sup>40</sup>*ibid* 267.

<sup>41</sup>Robert Alexy, *A Theory of Legal Argumentation: The Theory of Rational Discourse as Theory of Legal Justification* (rev ed, Oxford University Press 2010).

<sup>42</sup>Perelman, *Justice, Law, and Argument* (n 27) 132.



In contrast to the study of performativity, rhetorical studies have often been motivated by an attempt to formulate universally persuasive arguments.<sup>43</sup> Nevertheless, rhetorical studies can also be anchored in the social context of specific speakers and audiences without any universalist aspirations.<sup>44</sup> Such an approach is particularly valuable for comparative studies. The sense of persuasiveness and other social effects of legal arguments may vary across audiences: an argument which is appealing to one audience may be at a disadvantage in front of another audience or meaningful in some other way. For instance, it is a well-established argumentative strategy both in China and in the United States to characterise one's native law as pragmatist and substantive and to describe other legal systems as fixed and formalist.<sup>45</sup> Yet these commonplaces have different implications and uses in China and the USA. In China, they typically attest to the benefits of the one-party state, whereas in the USA they stand for the progressive, 'liberal' reform agenda.<sup>46</sup>

Stripped of its universalist aspirations, rhetorical theory has the potential of generating a nuanced image of different legal discourses and the interaction between them. At the same time, it should be acknowledged that rhetorical theory provides no basis for maintaining that comparison elevates a foreign scholar above rhetorical uses of language. Every argument about the actual nature of the Chinese legal discourse can be easily interpreted as yet another (unprovable) rhetorical move within the comparative law discourse. Moreover, there is always the argument that the genres and commonplaces of a particular rhetorical study misinterpret the 'real' genres and commonplaces of a foreign legal discourse. In particular, it may be argued that Aristotelian rhetorical theory is inapplicable to a non-European context.<sup>47</sup>

There is no way to preempt such arguments *in abstracto*. At most a scholar can hope that the descriptions and generalisations they promote appear more plausible to that scholar's audience than competing descriptions and generalisations. Besides, from the rhetorical perspective it appears that the quest for certainty in comparative law itself is supported by a rhetorical commonplace: the notion that a true and authentic object is superior to its illusory and inadequate representations.<sup>48</sup> This rhetorical trope arguably sets comparative law up for failure. If there exists a correct and 'authentic' view of a legal system, any derivative description of that legal system is inevitably an inauthentic facsimile.<sup>49</sup> In contrast to the search for authenticity in comparative law, the rhetorical approach teaches that approximation is not to be resented.

<sup>43</sup>Alexy (n 41) 7–8; Francis J Mootz III, 'Judging Well' (2019) 11 Washington University Jurisprudence Review 1, 15; Marijan Pavcnik, 'Legal Decision making As a Responsible Intellectual Activity: A Continental Point of View' (1997) 72 Washington Law Review 481, 503; Perelman, *Justice, Law, and Argument* (n 27) 71–72.

<sup>44</sup>Martin Thomas & Richard Toye, *Arguing about Empire: Imperial Rhetoric in Britain and France, 1882–1956* (Oxford University Press 2017) 8–9; Quentin Skinner, 'Meaning and Understanding in the History of Ideas' (1969) 8 History and Theory 3, 37–38.

<sup>45</sup>For China, see eg, Jiang, *Chengfa yu fazhi* (n 16) 48 and Huang (n 16) 2 (ch 1); for the USA, see eg, Roscoe Pound, 'The End of Law as Developed in Juristic Thought. II' (1917) 30 Harvard Law Review 201, 211. For this commonplace in rhetorical theory see Perelman, *The New Rhetoric* (n 10) 133.

<sup>46</sup>See eg, Morton J Horwitz, *The Transformation of American Law, 1870–1960: The Crisis of Legal Orthodoxy* (Oxford University Press 1992) 110. For a more recent description of the relationship between liberalism and pragmatism in the US, see William H Simon, 'Solving Problems vs. Claiming Rights: The Pragmatist Challenge to Legal Liberalism' (2004) 46 William & Mary Law Review 127, 131. Pragmatism has different meanings also in other contexts. See Lance Ang & Jianguo Wang, 'Judicial Independence in Dominant Party States: Singapore's Possibilities for China' (2019) 14 Asian Journal of Comparative Law 337, 361 (describing Singapore 'government's pragmatic commitment to the rule of law resting on a strong judiciary to ensure law and order [and] to attract foreign investment').

<sup>47</sup>On the applicability of Western rhetorical theory to China, see Perry Link, *An anatomy of Chinese: Rhythm, metaphor, politics* (Harvard University Press 2013) 136–137; Hui Wu, 'Redrawing the Map of Rhetoric: Introducing Guiguizi', in Guiguizi, *China's first treatise on rhetoric: a critical translation and commentary* (Southern Illinois University Press 2016) 1, 5; Yameng Liu, 'To Capture the Essence of Chinese Rhetoric: An Anatomy of a Paradigm in Comparative Rhetoric' (1996) 14 Rhetoric Review 318, 320–321.

<sup>48</sup>Perelman, *The New Rhetoric* (n 10) 437.

<sup>49</sup>Vivian Grosswald Curran, 'Cultural Immersion, Difference and Categories in U.S. Comparative Law' (1998) 46 American Journal of Comparative Law 43, 48–49; See Pierre Legrand, 'Negative Comparative Law' (2015) 10 Journal of Comparative Law 405, 410–411, 443–445, 451.

Finally, it should be stressed that the focus on the rhetorical does not mean that a particular form of argumentation (for example, CCP cadres' ideological speech) is 'just rhetoric' – that is, insincere or meaningless language.<sup>50</sup> As Friedrich Nietzsche pointed out, all language and knowledge itself can be understood as rhetoric.<sup>51</sup> From the rhetorical perspective, all statements in comparative law and legal theory owe their persuasiveness to rhetorical techniques (including, of course, the statements in this article).<sup>52</sup> It should also be noted that the rhetorical approach does not imply that legal theoretical descriptions, such as 'formalism' and 'pragmatism', could not be usefully applied from the applicators' point of view.<sup>53</sup> Instead of arguing for or against specific legal theoretical propositions, rhetorical studies focus on the persuasiveness and effectiveness of argumentation. A particular argument about the nature of Chinese legal thought may well be effective, and 'useful', for a particular speaker and audience. At the same time, it needs to be recognised that applying the rhetorical perspective to a particular discourse has social effects in its own right. For instance, the rhetorical approach may be successful in persuading its audience that CCP ideologues' narratives about the nature of Chinese legal thought, discussed in the following sections, represent a partial reading of Chinese law.

### The ceremonial genre of Chinese legal Speech

Internationally, the most visible part of the Chinese legal speech takes place in a self-consciously ideological genre of speech.<sup>54</sup> In classical Aristotelian terms this genre can be described as ceremonial (or 'epideictic'). Ceremonial speech does not provide immediately actionable guidance to its audience, nor does it primarily seek to persuade its audience about intellectual propositions.<sup>55</sup> At the same time, ceremonial speech can have social effects. Among other things, ceremonial speech can strengthen the common values of the speaker and their audience, thereby persuading audience members about the importance of adhering to these values.<sup>56</sup> Interpreting the Chinese leadership and CCP cadres' ideological statements on law as ceremonial helps contextualise – and compartmentalise – the image of Chinese law conveyed through such speech. Such a characterisation also helps one to understand the challenges of Chinese legal development cooperation and the advocacy of Chinese legal institutions and legal thought abroad.

As mentioned above, CCP leadership and Party ideologues have in recent years become increasingly ambitious about the global relevance of Chinese legal thought.<sup>57</sup> Party ideologues describe Xi

<sup>50</sup>Cambridge Dictionary (n 9).

<sup>51</sup>Friedrich Nietzsche, *Friedrich Nietzsche on Rhetoric and Language* (Oxford University Press 1989) 23.

<sup>52</sup>See nn 48 and 49. See also Jaakko Husa, 'Comparative law, literature and imagination: Transplanting law into works of fiction' (2021) 28 *Maastricht Journal of European and Comparative Law* 371, 381 (discussing the metaphorical nature of legal transplants). For the rhetorical effects of admissions, see below n 202.

<sup>53</sup>For instance, the above-mentioned argument that foreign legal systems are overly 'formalistic' has served many purposes in early twentieth century America and in contemporary China: see n 45 above.

<sup>54</sup>According to Google Scholar, Xi Jinping's speech, 'Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era' (18 Oct 2017) had received 606 citations as of 18 May 2021. At the same time, Zhu Suli, one of the most prominent Chinese legal scholars in the past few decades, had obtained 79 citations in the Google Scholar database for his most cited text Zhu Suli, 'Political Parties in China's Judiciary' (2006) 17 *Duke Journal of Comparative & International Law* 533. Chinese legal scholarship is rarely discussed also in international media. For the exception, see Chris Buckley, "'Clean Up This Mess": The Chinese Thinkers Behind Xi's Hard Line' (The New York Times, 2 Aug 2020) <<https://www.nytimes.com/2020/08/02/world/asia/china-hong-kong-national-security-law.html>> accessed 20 May 2021.

<sup>55</sup>Aristotle (n 38) 47–48. Kenneth Burke calls epideictic speech 'demonstrative'. See Burke (n 10) 70. Perry Link describes Chinese political rhetoric as ritualistic without using explicitly Aristotelian terminology: see Link (n 47) 241.

<sup>56</sup>Perelman, *The New Rhetoric* (n 10) 50.

<sup>57</sup>See, in particular, Xinhua (n 1); Chen (n 2); *Xi Jinping fazhi sixiang gailun* (n 2) 63, 112–114. Earlier CCP policy papers on the socialist rule of law concept were modest about the global relevance of Chinese legal thought. These texts focused mostly on defending Chinese law against Western liberal inputs. See *The Socialist Rule of Law Concept—A Reader* (n 15) 30–31, 106–107; *Questions and Answers* (n 15) 16–17, 71–72.

Jinping Thought on the Rule of Law as ‘an epoch-making advancement in human civilization.’<sup>58</sup> Chinese legal scholars have argued that ‘Xi Jinping Thought on the Rule of Law’ is globally ‘original’,<sup>59</sup> ‘of great significance for ... the global history of the rule of law’,<sup>60</sup> ‘a new development’ in human rights theory,<sup>61</sup> and ‘an innovation’ in global constitutional theory.<sup>62</sup> Such statements establish the success of Xi Jinping Thought on the Rule of Law as a fact, typically without attempting to describe the advanced and path-breaking nature of Xi Jinping Thought on the Rule of Law in comparison to other forms of legal thought. Instead of deliberative reasoning, ceremonial speech focuses on defining various elements of Xi Jinping Thought on the Rule of Law. A standard definition of the policies involved in Xi Jinping Thought on the Rule of Law, the ‘Eleven Upholds’ (*Shiyige jianchi*, 十一个坚持), comprises ideals such as ‘upholding Party leadership’ and adhering to constitution-based governance and the impartial administration of justice.<sup>63</sup>

The category of ceremonial speech helps explain why Chinese political speech on Xi Jinping Thought on the Rule of Law neglects to reason about its advantages in contrast to the previous and other existing forms of legal thought. For instance, a speech by Chen Yixin, the Secretary-General of the Central Political and Legal Affairs Commission, describes the benefits of Xi Jinping Thought on the Rule of Law by conflating the dispute settlement methods advanced under this concept with China’s traditional informal dispute resolution.<sup>64</sup> At the same time, Chen also maintains that the epochal advancements of Xi Jinping Thought on the Rule of Law arise from safeguarding ‘the rule of law’ on the international plane.<sup>65</sup> The former argument associates Xi Jinping Thought on the Rule of Law with informal social practices, whereas the latter argument couples his thought with attempts to formalise the international legal order through legal norms. How these two forms of social organisation fit together is not discussed in the text, as would likely be the case in a more deliberative register.<sup>66</sup> Instead of seeking to persuade a sceptical audience about his propositions, the focus of Chen’s speech is on reiterating the values relating to law and Party governance in China: informal dispute resolution is a positive value, as is formal dispute resolution.<sup>67</sup>

Ceremonial speech on Xi Jinping Thought on the Rule of Law reiterates socialist values in a standardised, even liturgical manner.<sup>68</sup> Party cadres must follow ‘the law’, advance ‘the rule of law’ (*fazhi*, 法治), ‘govern the country in accordance with law’, ‘construct a country that is ruled by law’, while ‘unwaveringly upholding the Party’s leadership over political and legal

<sup>58</sup>Chen (n 2).

<sup>59</sup>Fu Zitang (付子堂) & Cui Bo (崔博), ‘Xi Jinping fazhi sixiang de shijian yaoqiu (习近平法治思想的实践要求) [The practical requirements of Xi Jinping Thought on the Rule of Law]’ (*Lilun Zhongguo* (理论中国) [Theory China], 8 Jan 2021) <<http://www.theorychina.org/c/2021-01-08/1327819.shtml>> accessed 21 May 2021.

<sup>60</sup>Huang Wenyi (黄文艺), ‘Lun Xi Jinping fazhi sixiang de xingcheng fazhan, xianming tese yu zhongda yiyi (论习近平法治思想的形成发展、鲜明特色与重大意义) [On the formation and development of Xi Jinping Thought of the Rule of Law, its distinctive characteristics and significance]’ (2021) 61/5 *Henan daxue xuebao* (shehui kexue ban) (河南大学学报 (社会科学版)) [Journal of Henan University (Social Sciences)] 15, 24.

<sup>61</sup>Liu Hainian (刘海年), ‘Xi Jinping fazhi sixiang yu renquan baozhang zhidu jianshe (习近平法治思想与人权保障制度建设) [Xi Jinping Thought on the Rule of Law and the construction of a human rights protection system]’ (2021) 1 *Renquan yanjiu* (人权研究) [Human Rights Studies] 1, 2.

<sup>62</sup>Jiang Bixin (江必新) & Jiang Qinghua (蒋清华), ‘Xi Jinping fazhi sixiang dui xianfa lilun he shijian de fazhan chuangxin (习近平法治思想对宪法理论和实践的发展创新) [The developments and innovations of Xi Jinping Thought on the Rule of Law for constitutional theory and practice]’ (2021) 226 *Faxue pinlun* (法学评论) [Law Review] 1, 5.

<sup>63</sup>*Xi Jinping fazhi sixiang gailun* (n 2) 75.

<sup>64</sup>Chen (n 2).

<sup>65</sup>*ibid.*

<sup>66</sup>It could, for instance, be argued that legal formalism is a useful part of international relations, which protects various locally specific informal legal practices. See Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press 2001) 500.

<sup>67</sup>*ibid.*; *Party Committee Rule of Law Reader* (n 15) 10–11.

<sup>68</sup>For repetition in Chinese political rhetoric, see Link (n 47) 265–266.



work'.<sup>69</sup> For a skeptical audience such arguments may appear disingenuous or even cynical. Party leaders sometimes dictate the outcome of judicial decisions in a way that contradicts even the limited definition of judicial independence in Party ideology, not to speak of the Party's more ambitious legalistic goals.<sup>70</sup> Nevertheless, even implausible statements about the legal system can be seen as descriptions of values, which the Party leaders and their supporters would like to see affirmed, even if this is not always possible in practice.<sup>71</sup> Indeed, many rhetorical commonplaces used in Chinese ceremonial texts would be agreeable in a liberal democratic context. Substantively more just decisions are preferable to substantively less just decisions;<sup>72</sup> like cases must be treated alike;<sup>73</sup> legal authorities must be followed;<sup>74</sup> and acts must be assessed in terms of their consequences,<sup>75</sup> except when acts must be judged through precedents and rules.<sup>76</sup> Doubts about the coherence of these commonplace arguments are seldom made explicit in Chinese ceremonial speech, except as denials of such doubt.<sup>77</sup>

Given their ceremonial role in domestic Chinese politics, it is only to be expected that the most ambitious statements about the importance of Xi Jinping Thought on the Rule of Law are published in the Chinese language and disseminated to domestic Chinese audiences. In Chinese domestic politics, it may not matter whether such statements are sincerely believed or not. One performative function of illiberal ideological speech may consist of signaling that the political system is not based on persuasion (or discursive rationality), but on the unquestioning submission to more or less implausible ideological constructions.<sup>78</sup> The recent ideological messaging on Xi Jinping Thought on the Rule of Law – a more idiosyncratic and personified construct than the older term 'socialist rule of law' – can be seen as a signal for the newly heightened expectations of ideological compliance.<sup>79</sup>

<sup>69</sup>See Xi Jinping, *Compilation of Xi Jinping's Expositions on Rule of Law* (n 11) 469–472; 'Shenru xuexi guanche Xi Jinping fazhi sixiang; nuli tigao yifa lüzhi nengli he shuiping (深入学习贯彻习近平法治思想; 努力提高依法履职能力和水平) [Study and implement Xi Jinping Thought on the Rule of Law thoroughly; strive to improve the ability and standards of performing duties in accordance with the law' (Renmin ribao (人民日报) [People's Daily], 21 Apr 2021) ([http://paper.people.com.cn/rmrb/html/2021-04/21/nw.D110000renmrb\\_20210421\\_5-03.htm](http://paper.people.com.cn/rmrb/html/2021-04/21/nw.D110000renmrb_20210421_5-03.htm)) accessed 25 May 2021.

<sup>70</sup>Kwai Hang Ng & Xin He, *Embedded Courts: Judicial Decision-Making in China* (Cambridge University Press 2017) 123–124; Ling Li, 'The Chinese Communist Party and People's Courts: Judicial Dependence in China' (2016) 64 *American Journal of Comparative Law* 37, 74.

<sup>71</sup>Such commonplaces are used, for instance, in a recent CCP policy text, which outlines concrete efforts for 'the construction of a rule of law society' in China. These concrete and eminently achievable efforts include the publishing of government white papers on the rule of law at appropriate intervals. Zhonggong zhongyang (中共中央) [CCP Central Committee], 'Fazhi shehui jianshe shishi gangyao (2020–2025 nian) (法治社会建设实施纲要 (2020–2025年) [Implementation Outline for the Construction of a Rule of Law Society (2020–2025)'] (Zhongguo Zhengfu Wang (中国政府网) [China Government Net], 7 Dec 2020) [hereinafter 'Implementation Outline for the Construction of a Rule of Law Society (2020–2025)'] s 7 <[http://www.gov.cn/zhengce/2020-12/07/content\\_5567791.htm](http://www.gov.cn/zhengce/2020-12/07/content_5567791.htm)> accessed 25 May 2021.

<sup>72</sup>Perelman, *The New Rhetoric* (n 10) 89.

<sup>73</sup>ibid 219.

<sup>74</sup>ibid 307.

<sup>75</sup>ibid 267.

<sup>76</sup>ibid 231.

<sup>77</sup>*The Socialist Rule of Law Concept – A Reader* (n 15) 20. In contrast, contradictions used to be a powerful rhetorical device in Maoist ideological speech. See eg, Mao Zedong, 'On Contradiction' (Marxists Internet Archive) <[https://www.marxists.org/reference/archive/mao/selected-works/volume-1/mswv1\\_17.htm](https://www.marxists.org/reference/archive/mao/selected-works/volume-1/mswv1_17.htm)> accessed 25 May 2021.

<sup>78</sup>See eg, Václav Havel et al, *The Power of the powerless: citizens against the state in central-eastern Europe* (ME Sharpe 1985), 27; Huang (n 16) 124; Eva Pils, *Human Rights in China* (Polity Press 2018) 142; Slavoj Žižek, *The Sublime Object of Ideology* (Verso 1989) 29.

<sup>79</sup>Earlier Party literature described Chinese legal thought in terms of the socialist rule of law conception, whereas recent literature treats the socialist rule of law conception as an element of Xi Jinping Thought. See *The Socialist Rule of Law Concept – A Reader* (n 15); *Xi Jinping fazhi sixiang gailun* (n 2) 75. For background on Xi Jinping era, see Rogier Creemers & Susan Trevaskes, 'Ideology and Organisation in Chinese law: Towards a New Paradigm for Legality,' in Rogier JEH Creemers & Sue Trevaskes (eds), *Law and the Party in Xi Jinping's China: Ideology and Organization* (Cambridge University Press 2021) 1; Jacques deLisle, 'Law in the China Model 2.0: Legality, Developmentalism and Leninism under Xi Jinping' (2017) 26 *Journal of Contemporary China* 68.

Consequently, the reproduction of praise for Xi Jinping Thought on the Rule of Law serves to indicate one's compliance with the Party leadership's ideological project.<sup>80</sup>

Some speech acts in the Chinese ceremonial genre are disseminated to foreign audiences. Key speeches and texts by CCP leadership are translated into foreign languages, posted on Chinese government websites and referenced in state-run foreign language publications.<sup>81</sup> These translations are loaded with ideological terms, which are significant in the Chinese context, but largely meaningless for foreign audiences even as English language translations. For instance, an English language compilation of Xi Jinping's speeches, translated by the Party's Compilation and Translation Bureau, makes use of Chinese political terms such as 'Deng Xiaoping Theory', 'the Chinese Dream of national rejuvenation', and 'formalism, bureaucratism, hedonism, and extravagance'.<sup>82</sup> While the translators of this compilation explain the meaning of traditional Chinese sayings used in Xi Jinping's speeches,<sup>83</sup> they make no attempts to explain the meaning of Chinese political terms to a foreign audience. Outside a small circle of China experts, few foreigners will have the prerequisite knowledge to understand what Chinese political concepts, such as 'Deng Xiaoping Theory' and 'formalism', mean in their original context.<sup>84</sup> Such miscommunications may not matter, since foreigners do not generally take part in domestic Chinese political performances. The dissemination of Chinese ceremonial speech abroad seems designed to demonstrate China's domestic ideological resolve rather than to achieve any specific effect abroad.

CCP ideologues have designed a genre of ceremonial speech specifically for foreign audiences. This subgenre of Chinese ceremonial speech is organised around concepts such as 'peaceful coexistence', 'harmonious world' and, most recently, 'the community of shared future for mankind' (or 'community of shared destiny for mankind', *renlei mingyun gongtongti*, 人类命运共同体).<sup>85</sup> In the Chinese context, these concepts signify a form of international integration that suits China's statist political and economic system and stands opposed to the Western economic and human rights agenda.<sup>86</sup> At the same time, foreign-orientated ceremonial speech is typically centered on unobjectionable terms such as 'mutual respect, equity, justice and win-win cooperation'.<sup>87</sup> For

<sup>80</sup>Gloria Davies, 'Making Sense Through Ideology,' in Rogier JEH Creemers & Sue Trevaskes (eds), *Law and the Party in Xi Jinping's China: Ideology and Organization* (n 81) 64, 80.

<sup>81</sup>See eg, Beijing Review <<https://www.bjreview.com/>> accessed 25 May 2021.

<sup>82</sup>Xi Jinping, *The Law Based Governance of China*, Compiled by the Party Literature Research Office of the Communist Party of China (Central Compilation and Translation Press 2017) 3, 8, 12.

<sup>83</sup>Compare Xi Jinping, *The Law Based Governance of China* (n 84) 81, and Zhonggong Zhongyang wenxian yanjiu shi (n 15) 69. The English language translation explains the meaning of the original Chinese saying in the Chinese language original.

<sup>84</sup>Elsewhere the CCP has described 'Deng Xiaoping Theory' as a policy, which 'shifted the focus of work to economic construction and introduced the policies of reform and opening to the outside world, bringing China into a new period of socialist construction.' See *An Illustrated History of the Communist Party of China* (China Internet Information Centre) <<http://www.china.org.cn/english/features/45981.htm>> accessed 25 May 2021. 'Formalism', as one of the 'four forms of decadence' (together with bureaucratism, hedonism and extravagance), connotes a bookish and overly bureaucratic working style. See 'Jianjue zhengzhi xingshi zhuyi, guanliao zhuyi (坚决整治形式主义、官僚主义) [Resolutely remedy formalism and bureaucratism]' (China Daily, 30 Sep 2018) <[http://china.chinadaily.com.cn/2018-09/30/content\\_37011559.htm](http://china.chinadaily.com.cn/2018-09/30/content_37011559.htm)> accessed 25 May 2021.

<sup>85</sup>For 'peaceful coexistence', see Maria Adele Carrai, *Sovereignty in China: A Genealogy of a Concept since 1840* (Cambridge University Press 2019) 159; for 'harmonious world', see Leila Choukroune, 'Global "Harmonious Society" and the Law: China's Legal Vision in Perspective' (2021) 13 German Law Journal 497, 503–504; for the community of shared future for mankind, see Yu-Jie Chen, 'China's Challenge to the International Human Rights Regime' (2019) 51 New York University Journal of International Law & Policy 1179, 1193; Ryan Martínez Mitchell, 'Chinese Receptions of Carl Schmitt Since 1929' (2020) 8 Penn State Journal of Law & International Affairs 181, 253.

<sup>86</sup>See Ryan Mitchell, 'The Human Community of Fate: A Conceptual History of China's Ordoglobal Idea' (2022) 13 Humanity: An International Journal of Human Rights, Humanitarianism, and Development 175.

<sup>87</sup>*China's International Development Cooperation* (n 5).

instance, the 2021 Chinese government whitepaper on Chinese development cooperation makes no mention of Xi Jinping Thought on the Rule of Law.<sup>88</sup>

Commonly agreeable ‘ceremonial’ language allows China’s development partners to express their commitment to common development projects with Beijing and to position themselves as suitable recipients for Chinese development aid and investments.<sup>89</sup> To ease such performances, central concepts of law and development are sometimes left ambiguous in foreign-orientated Chinese policy texts. A Chinese government white paper, *China and the World in the New Era*, outlines various lessons from the Chinese development experience to developing countries, including the Chinese experience with the ‘rule of law’.<sup>90</sup> The white paper defines the rule of law as the ‘law-based governance of the country, law-based exercise of state power and law-based administration in the government’.<sup>91</sup> It is unclear whether this rule of law model comprises an independent judiciary and individual civil and political rights.<sup>92</sup> Since some of China’s development partners are (or at least aspire to be) liberal democracies, it is prudent for the Chinese side to avoid taking a clear view on such questions in speech aimed at foreign audiences.

### Deliberative speech in Chinese policy texts and legal scholarship

While ceremonial speech is the most visible part of the Chinese legal speech globally (because of its domestic prominence and foreign language translations), in China there also exists a deliberative genre of legal speech, which seeks to persuade Chinese audiences about ideological propositions.<sup>93</sup> Deliberative speech could potentially play a role in the voluntary reception of Chinese legal thought in foreign countries.<sup>94</sup> However, until recently CCP ideologues and conservatively minded Chinese legal scholars have not advanced arguments about the global relevance of Chinese legal thought in foreign forums. Instead, these ideologues and scholars have focused on arguing against the importation of Western legal concepts into China. A standard technique in this project has been to argue that foreign legal institutions are inevitably incompatible with the national conditions of the country importing them.<sup>95</sup> This argument has served a useful defensive purpose for Party ideologues and conservatively-orientated legal scholars, who oppose the ‘hegemonic’ Western legal and political model.<sup>96</sup> Nevertheless, the emphasis on the idiosyncrasies of the Chinese national conditions does little to help the Chinese government’s efforts to promote Chinese socialism internationally.<sup>97</sup>

<sup>88</sup>ibid.

<sup>89</sup>Georg Strüver, ‘China’s Partnership Diplomacy: International Alignment Based on Interests or Ideology’ (2017) 10 *The Chinese Journal of International Politics* 31, 39.

<sup>90</sup>*China and the World* (n 4).

<sup>91</sup>ibid.

<sup>92</sup>For different rule of law conceptions, see Brian Z Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press 2004) 91–92.

<sup>93</sup>Perelman, *The New Rhetoric* (n 10) 21.

<sup>94</sup>In addition to persuasion, also economic and political factors may explain the reception of foreign legal thought. See Ugo Mattei, ‘A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance’ (2003) 10 *Indiana Journal of Global Legal Studies* 383, 385, 389; Ugo Mattei, ‘The Cold War and Comparative Law: A Reflection on the Politics of Intellectual Discipline’ (2017) 65 *American Journal of Comparative Law* 567.

<sup>95</sup>*Questions and Answers* (n 15) 6. For groupings and identities as rhetorical device, see Burke (n 10) 55–56; Perelman, *The New Rhetoric* (n 10) 210.

<sup>96</sup>See eg, Deng Zhenglai, *Rethinking Chinese Jurisprudence and Exploring its Future: A Sociology of Knowledge Perspective* (Lin Xi tr, World Scientific Publishing Company 2014) 46–48, 65; Jiang, *Fazhi yu zhili* (n 16) 77; Zhu, *Sending Law to the Countryside* (n 16) 24–25.

<sup>97</sup>See ‘Socialism with Chinese Characteristics Enters New Era: Xi’ (Xinhua, 18 Oct 2017) <[http://news.xinhuanet.com/english/2017-10/18/c\\_136688475.htm](http://news.xinhuanet.com/english/2017-10/18/c_136688475.htm)> accessed 1 Feb 2023 (offering ‘the culture of socialism with Chinese characteristics’ as ‘a new option for other countries and nations who want to speed up their development while preserving their independence’); Chen (n 2) (maintaining that ‘Xi Jinping Thought on the Rule of Law ... has global influence’); Huang (n 60) 24 (calling for more efforts to disseminate Xi Jinping Thought on the Rule of Law globally).

To persuade foreign audiences about the global relevance of a certain description of Chinese legal thought, CCP ideologues will have to identify similarities (rather than differences) between China and its development partners.<sup>98</sup> The Chinese deliberative genre provides some resources for this effort. First of all, even those Chinese scholars who otherwise endorse homegrown Chinese legal institutions tend to agree that the ‘fundamental values of modern society are ... universal’.<sup>99</sup> Some CCP policy texts also acknowledge that the key aspects of Party ideology, such as popular sovereignty, basic human rights and the limitation of powers doctrine, have been received from Western liberal democracies.<sup>100</sup> Building on such shared common ground, Party ideologues could develop a variation of the socialist rule of law which, while distinct from the ‘capitalist’ rule of law, could still be relevant to other developing countries.<sup>101</sup> As mentioned above, some Chinese jurists already describe Chinese legal thought and Xi Jinping Thought on the Rule of Law as innovations, which are ready for global exportation.<sup>102</sup>

However, at some point in this process Party ideologues and conservative legal scholars promoting Chinese law will have to explain what precise benefits a given version of Chinese legal thought can offer to foreign jurists compared to existing modes of legal thought.<sup>103</sup> One way to answer this question is to associate Western legal thought with legal theoretical concepts such as ‘legal formalism’ (*falü xingshi zhuyi*, 法律形式主义), ‘positivism’ (*shizheng zhuyi*, 实证主义) and ‘legal dogmatism’ (*fatiao zhuyi*, 法条主义), and to criticise these forms of legal thought as intellectually outmoded.<sup>104</sup> According to the CCP’s historiography, the Party’s legal thought marks a significant development to capitalist legal formalism.<sup>105</sup> As Jiang Shigong of Peking University explains, the PRC replaced the ‘method of strictly observing formal logic’ with the Marxist and Maoist approach of ‘penetrating the phenomenon to see the essence’ of a matter.<sup>106</sup> Other Chinese scholars have drawn similarly sharp distinctions between the supposedly ‘formalist’ Western legal system and China’s more advantageous ‘substantively just’ legal system.<sup>107</sup>

Such ‘anti-formalist’ arguments associate Chinese legal thought with the progressive elements of global legal thought.<sup>108</sup> In addition to placing the Party in the avant-garde of global intellectual development, such an association is useful domestically. The anti-formalist argumentative strategy allows Party ideologues to suggest that written law should not be the only normative source of adjudication, and that Party cadres should also consider ‘the Party’s cause and the interests of the people’ in law enforcement.<sup>109</sup> A CCP textbook from the Hu Jintao era even describes the ‘political and social effects’ of a judicial decision as the ‘ultimate criteria’ of law enforcement, which may be able to trump the ‘legal effects’ of a decision.<sup>110</sup> Anti-formalist arguments seek to transfer the value of positive social consequences to the Party organisation, thereby legitimising the Party’s role in the

<sup>98</sup>Chen (n 2); *Xi Jinping fazhi sixiang gailun* (n 2) 63.

<sup>99</sup>Jiang Shigong, ‘How to Explore the Chinese Path to Constitutionalism? A Response to Larry Cata Backer’ (2014) 40 *Modern China* 196, 209. See also Huang (n 16) 10.

<sup>100</sup>*Questions and Answers* (n 15) 30.

<sup>101</sup>For the theoretical basis of this argument (in the non-Chinese context), see Kennedy (n 32) 23.

<sup>102</sup>Huang (n 60) 24; *Xi Jinping fazhi sixiang gailun* (n 2) 63. As mentioned above, other Chinese scholars acknowledge that the global relevance of Chinese legal thought will only emerge after deep theoretical reflection: Zhang (n 8).

<sup>103</sup>Following Duncan Kennedy, ‘legal thought’ may be understood as a legal theoretical category, which comprises ‘a conceptual vocabulary, organizational schemes, modes of reasoning and characteristic arguments.’ Kennedy (n 32) 22.

<sup>104</sup>*Questions and Answers* (n 15) 19; *The Socialist Rule of Law Concept – A Reader* (n 15) 30.

<sup>105</sup>*ibid* 20, 24–25. For an analogous historiographical reversal in the Western context, see Hans-Georg Gadamer, *Truth and Method* (Continuum 2006) 275. In western jurisprudence, ‘formalism’ connotes the assumption that legal rules are capable of restricting, and should restrict, decision-making. See Frederick Schauer, ‘Formalism’ (1988) 97 *Yale Law Journal* 509, 548. For the observation that such an assumption is uncontroversial also in CCP ideology, see text accompanying nn 133–135 below.

<sup>106</sup>Jiang, *Chengfa yu fazhi* (n 16) 48.

<sup>107</sup>Huang (n 16) 266–267.

<sup>108</sup>For the use of group associations as an argumentative device, see Perelman, *The New Rhetoric* (n 10) 322.

<sup>109</sup>*Questions and Answers* (n 15) 21.

<sup>110</sup>*The Socialist Rule of Law Concept – A Reader* (n 15) 110. See, however, *Xi Jinping fazhi sixiang gailun* (n 2) 92.

Chinese party-state.<sup>111</sup> China is better off because of the Party's political leadership and, therefore, the Party itself is beneficial for China.<sup>112</sup> The rhetorical transfer of value may also occur between China's economic successes and Chinese legal thought. For instance, Huang Wenyi of Renmin University has morphed China's economic progress into an argument about the global relevance of Xi Jinping Thought on the Rule of Law.<sup>113</sup>

The concept of pragmatism provides a legal theoretical vehicle for establishing a distinction between Chinese and Western legal thought and for legitimising Party leaders' interventions into the judiciary. According to Huang Zongzhi of Renmin University, Chinese legal thought is characterised by 'pragmatic moralism' (*shiyong daode zhuyi*, 实用道德主义).<sup>114</sup> This form of legal thought is not based on formalistic deductive logic but, instead, sets up specific moral purposes (such as filial piety and other family values) for all law application.<sup>115</sup> From this perspective, the CCP is the guardian of Chinese moral values in the judiciary,<sup>116</sup> which may decide to modify or suspend the law in specific cases.<sup>117</sup> Adhering to a similar pragmatist ethos, Zhu Suli of Peking University has instructed judges 'to settle disputes well' after considering all the facts of the case, instead of seeking to merely 'abide by their duties and implement extant legal rules'.<sup>118</sup> Huang's and Zhu's arguments rely on the pragmatist commonplace, which juxtaposes the observance of legal forms with the achievement of positive social consequences.<sup>119</sup> In the Chinese context pragmatist arguments are typically made in order to support the political status quo, but they may also support other political projects.<sup>120</sup> For instance, politically liberal Chinese jurists have argued that optimal social consequences follow from allowing the judiciary to independently decide the nature of China's social needs,<sup>121</sup> and from requiring that judges adhere to formal rules above anything else.<sup>122</sup>

In addition to pragmatist and consequentialist arguments, Chinese deliberative texts rely on arguments about essences in their characterisations of Chinese legal thought.<sup>123</sup> Such arguments seek to reveal an event or an object as the manifestation of a more 'essential' event or object.<sup>124</sup> Jiang Shigong explains that the goal of Maoist administration of justice was to understand the 'essence' (*benzhi*, 本质) of an issue at hand.<sup>125</sup> Maoist judges revealed individual events of a case as fragments of the 'true situation', which comprised the entire social context of the event.<sup>126</sup> Arguments about essences were a particularly prominent rhetorical trope during the Maoist era, but they retain some persuasive force in contemporary China.<sup>127</sup> While Jiang Shigong mostly places the search for essences into a historical context, he also states that 'contemporary Chinese legal technique is nurtured in a holistic political worldview'.<sup>128</sup> A similar argument has been advanced by

<sup>111</sup>Perelman, *The New Rhetoric* (n 10) 267.

<sup>112</sup>For transference of value in consequentialist arguments, see Perelman, *The New Rhetoric* (n 10) 268.

<sup>113</sup>Huang (n 60) 24.

<sup>114</sup>Huang (n 16) 31 (preface).

<sup>115</sup>*ibid* 2, 5 (ch 1), 94–95.

<sup>116</sup>*ibid* 322–232.

<sup>117</sup>*ibid* 244–245.

<sup>118</sup>Zhu, *Sending Law to the Countryside* (n 16) 123. See also Feng (n 16) 9 (describing the judiciary's strategic redefinition of rights).

<sup>119</sup>Perelman, *The New Rhetoric* (n 10) 267.

<sup>120</sup>See eg, Richard Posner, *Overcoming Law* (Harvard University Press 1995) 29 (associating pragmatism with liberalism).

<sup>121</sup>See eg, He Weifang, *In the Name of Justice* (Brookings Institution Press 2012) 39 (advancing various consequentialist arguments in support of Western-style judicial independence).

<sup>122</sup>Yu Xingzhong, 'Legal Pragmatism in the People's Republic of China' (1989) 3 *Journal of Chinese Law* 29, 49–50.

<sup>123</sup>For arguments about essences, see Perelman, *The New Rhetoric* (n 10) 94–95.

<sup>124</sup>*ibid* 327–328.

<sup>125</sup>Jiang, *Chengfa yu fazhi* (n 16) 53.

<sup>126</sup>*ibid* 49.

<sup>127</sup>Mao (n 77); Mao Zedong, 'On the Correct Handling of Contradictions Among the People' (Marxists Internet Archive) <[https://www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5\\_58.htm](https://www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5_58.htm)> accessed 25 May 2021.

<sup>128</sup>Jiang, *Chengfa yu fazhi* (n 16) 53.



Huang Zongzhi, who opposes Western formalist justice and maintains that the Chinese substantive approach to justice is able to combine law and politics into a harmonious governance ideology.<sup>129</sup>

Finally, it should be noted that arguments about anti-formalism, pragmatism and essences coexist in Chinese policy texts and legal scholarship alongside formalist arguments about the normative order.<sup>130</sup> Formalist arguments are common in all modern legal systems,<sup>131</sup> and they are ubiquitous also in China. The same Party documents that criticise legal formalism and instruct Party cadres to prioritise positive social and political consequences of a legal decision, also require Party cadres to apply the law ‘strictly’ and to work towards perfecting China’s formal legal system.<sup>132</sup> Some texts explicitly advocate anti-formalism, while urging Party cadres to strengthen ‘governance by law’ (*yifa zhili*, 依法治国) and clarifying the organisational boundaries within the Party.<sup>133</sup> Descriptions of ‘Xi Jinping Thought on the Rule of Law’ also instruct CCP cadres to ‘fully grasp’ the necessity of ‘forming a complete system of legal norms’.<sup>134</sup> Recent expositions of Xi Jinping Thought on the Rule of Law appear to have adopted a less aggressive tone against formalism than the earlier texts on the socialist rule of law (while retaining many of the same anti-formalist commonplaces).<sup>135</sup> This change of tone may signal support for the efforts to improve rule-based governance within the Chinese party-state.<sup>136</sup> Yet, while formalist strategies are an integral part of the Party’s project to rationalise its governance methods,<sup>137</sup> they also weaken the argument that Chinese legal thought constitutes an anti-formalist alternative to ‘formalist’ Western legal thought.

### Justifying judicial decisions

The image of Chinese law conveyed in the above-described political speeches, CCP policy texts and textbooks and legal scholarship does not necessarily correspond to the actual adjudicative techniques used in Chinese people’s courts. For a rhetorical study this question comes down to examining the differences between the ceremonial, deliberative and judicial (or ‘forensic’) genres.<sup>138</sup> This part analyses Chinese judicial speech in a selection of SPC Guiding Cases and Model Cases. These cases form a tiny sample of Chinese judicial speech. Nevertheless, they are representative of officially

<sup>129</sup>Huang (n 16) 102, 237, 267.

<sup>130</sup>Perelman, *The New Rhetoric* (n 10) 85; Huang (n 16) 10 (ch 1), 323; Zhu, *Fazhi ji qi bentu ziyuan* (n 16) 8.

<sup>131</sup>Alexy (n 41) 240–241; Martin Stone, ‘Formalism’, in Jules Coleman & Scott Shapiro (eds), *The Oxford Handbook of Jurisprudence and Philosophy of Law* (Oxford University Press 2002) 166, 172.

<sup>132</sup>*The Socialist Rule of Law Concept – A Reader* (n 15) 109; *Questions and Answers* (n 15) 170.

<sup>133</sup>Zhonghua Renmin Gongheguo Zhongyang Zhengfu (中华人民共和国中央政府) [PRC Central People’s Government], ‘Zhonggong Zhongyang Bangong ting yinfa “Guanyu chixu jieju kunrao jiceng de xingshi zhuyi wenti wei juesheng quanmian jiancheng xiaokang shehui tigong jianqiang zuofeng baozheng de tongzhi (中共中央办公厅印发《关于持续解决困扰基层的形式主义问题为决胜全面建成小康社会提供坚强作风保证的通知》)’ [General Office of the CCP Central Committee Issues “Notice on Persistently Solving the Problem of Formalism which Troubles Grassroots-Level in Order to Establish a Strong Working Style for the Decisive Victory for Comprehensively Building a Moderately Prosperous Society”] (14 Apr 2020) <[http://www.gov.cn/zhengce/2020-04/14/content\\_5502349.htm](http://www.gov.cn/zhengce/2020-04/14/content_5502349.htm)> accessed 14 May 2021 [hereinafter ‘Notice on Persistently Solving the Problem of Formalism’]. To be sure, Party documents denouncing formalism associate it with a bookish administrative working style, rather than a form of legal thought. Nevertheless, a bookish adherence to rules and legal formalism shares a common ground, at least as objects of critique. See, Samuli Seppänen, ‘Formalism and anti-formalism in the Chinese Communist Party’s governance project’ (2021) 10 *Global Constitutionalism* 290, 293–295.

<sup>134</sup>Chen (n 2); Huang (n 60) 19; Zhang (n 8).

<sup>135</sup>Compare the anti-formalist statements, eg, *The Socialist Rule of Law Concept – A Reader* (n 15) 30–31, 110; *Xi Jinping fazhi sixiang gailun* (n 2) 92.

<sup>136</sup>See Taisu Zhang & Tom Ginsburg, ‘China’s Turn Toward Law’ (2019) 59 *Virginal Journal of International Law* 306.

<sup>137</sup>Zhang Xiaojun, ‘The Historical Track of Internal Regulations of the Communist Party of China Ruled by Law’ (2019) 7 *China Legal Science* 3.

<sup>138</sup>Perelman, *The New Rhetoric* (n 10) 21.

sanctioned modes of argumentation in the Chinese people's courts.<sup>139</sup> These modes of argumentation can be seen in case notes, which summarise the holding of each case and illustrate their adjudicative techniques.<sup>140</sup>

A close reading of SPC Guiding Cases and Model Cases demonstrates that the Chinese judicial genre follows different genre conventions than the ceremonial and deliberative genres of Chinese legal thought. Whereas deliberative texts draw stark distinctions between legal formalism and various forms of anti-formalist legal reasoning, this distinction is rarely visible in SPC Guiding Cases and Model Cases.<sup>141</sup> Instead of relying on anti-formalist language, these cases commonly make use of textualist argumentative devices, which could be labelled (using the Party's own terminology) as 'dogmatic' or 'formalist'.

First of all, a number of SPC Guiding Cases and Model Cases rely on 'systemic interpretation' (*tixi jieshi*, 体系解释), a method which places legal norms into their overall normative context.<sup>142</sup> In Guiding Case No 70, for instance, different level people's courts considered a traditional area of regulation in China – the selling of salt – determining whether the addition of a certain harmful substance to salt, which was not specified in the applicable list of harmful substances, warranted administrative and criminal penalties.<sup>143</sup> The question was resolved through a general provision in the PRC Criminal Law, which prohibited the selling of food mixed with any harmful substances.<sup>144</sup> The Guiding Case note comprised no 'holistic' political considerations beyond a discussion on the harmfulness of the added substance.<sup>145</sup>

As mentioned above, some SPC Guiding Cases have been decided through simple tautologies, which can be described as 'dogmatic' or 'formalist'.<sup>146</sup> These and other quasi-logical argumentative strategies invoke the prestige of formal logic in legal argumentation – a strategy which the Party's deliberative policy papers criticise, as described above.<sup>147</sup> For instance, Guiding Case No 101 turned on the meaning of 'government information' (*zhengfu xinxi*, 政府信息), whose disclosure could be

<sup>139</sup>As of 25 May 2021, the SPC has released 156 Guiding Cases and about 150 batches of Model Cases, each of which includes reports on several cases. For background on Guiding Cases, see Susan Finder, 'China's Evolving Case Law System in Practice' (2017) 9 *Tsinghua China Law Review* 245; Mark Jia, 'Chinese Common Law? Guiding Cases and Judicial Reform' (2016) 129 *Harvard Law Review* 2213. The Guiding Cases and Model Cases are available at the SPC's website: SPC, 'The Guiding Cases' <<http://www.court.gov.cn/fabu-gengduo-77.html>> accessed 17 Jan 2023; SPC, 'Model Cases' <<http://www.court.gov.cn/zixun-gengduo-104.html>> accessed 17 Jan 2023.

<sup>140</sup>Lower-level people's courts are required to refer to and 'imitate' Guiding Cases. There is no requirement to reference Model Cases, which are published more frequently than the Guiding Cases. SPC, "'Guanyu anli zhidao gongzuo de guiding" shishi xize (〈关于案例指导工作的规定〉实施细则) [Detailed implementing rules on 'Rules concerning work on case guidance']" (13 May 2015), art 10 <<http://zxsfy.chinacourt.gov.cn/article/detail/2019/07/id/4988096.shtml>> accessed 26 May 2021.

<sup>141</sup>For an exception, see SPC, Zhidao anli 75 hao (指导案例75号) [Guiding Case No 75] (28 Dec 2016) [hereinafter 'Guiding Case No 75'].

<sup>142</sup>See SPC, Zhidao anli 20 hao (指导案例20号) [Guiding Case No 20] (8 Nov 2013); Zhidao anli 35 hao (指导案例35号) [Guiding Case No 35] (18 Dec 2014); Zhidao anli 77 hao (指导案例77号) [Guiding Case No 77] (28 Dec 2016); Zhidao anli 98 hao (指导案例98号) [Guiding Case No 98] (28 Feb 2018); Zhidao anli 112 hao (指导案例112号) [Guiding Case No 112] (25 Feb 2019). For methods of legal interpretation, see Zhang Wenxian (张文显), *Falixue* (法理学) [Jurisprudence] (5th edn, Beijing daxue chubanshe 2018) 295–297.

<sup>143</sup>SPC, Zhidao anli 70 hao (指导案例70号) [Guiding Case No 70] (28 Dec 2016) [hereinafter 'Guiding Case No 70'].

<sup>144</sup>Criminal Law of the People's Republic of China (as amended on 14 Mar 1997), art 144 <<https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>> accessed 26 May 2021.

<sup>145</sup>Guiding Case No 70 (n 145).

<sup>146</sup>Perelman, (n 10) 216. See SPC, Zhidao anli 60 hao (指导案例60号) [Guiding Case No 60] (20 May 2016) [hereinafter Guiding Case No 60]; Zhidao anli 100 hao (指导案例100号) [Guiding Case No 100] (19 December 2018); Zhidao anli 101 hao (指导案例101号) [Guiding Case No 101] (19 December 2018) [hereinafter Guiding Case No 101].

<sup>147</sup>Perelman, *The New Rhetoric* (n 10) 194. For Party ideologues' critique of this strategy, see *Questions and Answers* (n 15) 19; *The Socialist Rule of Law Concept – A Reader* (n 15) 30.

requested under the applicable government regulations.<sup>148</sup> A lower-level people's court had come to the conclusion that maritime investigation reports were not 'government information', and consequently did not have to be disclosed to the public.<sup>149</sup> The SPC reversed this decision, characterizing maritime reports as 'government information' and required their public disclosure.<sup>150</sup> The laconic Guiding Case note did not delve into the policy reasons for this decision, nor did it describe the interpretative methods through which the SPC had arrived in its decision.<sup>151</sup>

The SPC also uses interpretative strategies which are not strictly textual. For instance, the SPC has interpreted legal provisions by referring to the legislative intent of China's highest legislator, the National People's Congress,<sup>152</sup> and the presumed purposes of legislation.<sup>153</sup> The SPC has explicitly argued against the textual interpretation of legal rules on some occasions. In Guiding Case No 75 the SPC disavowed the practice of deciding cases on the basis of 'the literal expression' (*wenzi biaoshu*, 文字表述) of a rule.<sup>154</sup> This case concerned the admissibility of environmental public interest actions, which is a politically sensitive question in China.<sup>155</sup> The PRC Environmental Protection Law stipulated that social organisations 'engaged specifically in public service activities in environmental protection' could initiate public interest litigation against polluters.<sup>156</sup> The charter of the social organisation, which had brought the action in question, did not specifically state that its work involved 'public service activities in environmental protection'. This fact alone had been sufficient for the lower level people's court to dismiss the lawsuit.<sup>157</sup> The SPC overturned this decision, noting that a social organisation, which generally worked in environmental protection, could bring a public interest action even if its charter did not include the precise wording of the PRC Environmental Protection Law.<sup>158</sup> Both the original SPC decision and the Guiding Case note stated that judgments should be based on 'connotations' (*neihan*, 内涵) rather than on the 'literal expression' of rules.<sup>159</sup> The SPC did not discuss the sensitivities surrounding civil society activism in China, but it pointed out that the object of the public interest action in question deserved environmental protection.<sup>160</sup>

While the SPC's judicial reasoning sometimes makes an explicit distinction between formal rules and their social context, it is common to find the literal meaning or connotation of a rule, and its social context, intermingling in SPC Guiding Cases and Model Cases. Some cases establish the meaning of a legal concept in the context of the public's (presumed) understanding of that

<sup>148</sup>Guiding Case No 101 (n 148). For the relevant regulations, see Zhonghua Renmin Gongheguo zhengfu xinxi gongkai tiaoli (中华人民共和国政府信息公开条例) [PRC Regulations on the disclosure of government information] (1 May 2008), art 13 <<http://www.gov.cn/xxgk/pub/govpublic/tiaoli.html>> accessed 26 May 2021.

<sup>149</sup>Chongqing shi di si Zhongji Renmin Fayuan (重庆市第四中级人民法院) [Chongqing No 4 Intermediate People's Court], Luo Yuanchang su Chongqing shi Pengshui Miao zu Tujia zu zizhixian Difang Haishichu zhengfu xinxi gongkai an (2015) (罗元昌诉重庆市彭水苗族土家族自治县地方海事处政府信息公开案) [Luo Yuanchang vs. Chongqing Pengshui Miao and Tujia Autonomous County Local Maritime Affairs Department government information disclosure case] (2015) (18 Sep 2015).

<sup>150</sup>Guiding Case No 101 (n 148).

<sup>151</sup>*ibid.*

<sup>152</sup>SPC, Zhidao anli 85 hao (指导案例 85 号) [Guiding Case No 85] (6 Mar 2017).

<sup>153</sup>SPC, Zhidao anli 65 hao (指导案例 65 号) [Guiding Case No 65] (19 Sep 2016).

<sup>154</sup>Guiding Case No 75 (n 143).

<sup>155</sup>Alex Wang, 'Symbolic Legitimacy and Chinese Environmental Reform' (2018) 48 *Environmental Law* 699, 746.

<sup>156</sup>Zhonghua Renmin Gongheguo huanjing baohu fa (中华人民共和国环境保护法) [PRC Environmental Protection Law] (as revised on 24 Apr 2014), art 58 <[http://www.gov.cn/zhengce/2014-04/25/content\\_2666434.htm](http://www.gov.cn/zhengce/2014-04/25/content_2666434.htm)> accessed 26 May 2021.

<sup>157</sup>The first instance decision is cited in the SPC decision, which became the basis of Guiding Case No 75. See SPC, (2016) Zuigao fa min zai 47 hao ((2016) 最高法民再 47 号) [SPC 2016, Civil Division, Retrial No 47] (28 Jan 2016).

<sup>158</sup>*ibid.*

<sup>159</sup>*ibid.*; Guiding Case No 75 (n 143).

<sup>160</sup>Guiding Case No 75 (n 143).

concept.<sup>161</sup> Other cases make use of the kind of consequentialist arguments that CCP policy texts purport to promote, while keeping the decision within the text of the law. In a copyright infringement case, for instance, the SPC saved a plagiarised patriotic sculpture from demolition based on the ‘perspective of the effective use of public resources’.<sup>162</sup> The decision remained within the literal meaning of the law because the PRC Copyright Law authorised, but did not require, the destruction of infringing reproductions of copyrighted works.<sup>163</sup>

Explicitly consequentialist language is rarer in the SPC’s judicial practice than what the anti-formalist statements in Party literature suggest, but examples of it do exist. Consequentialist language was prominent in the Model Cases released in response to the COVID-2019 pandemic.<sup>164</sup> In these cases the SPC explicitly set out to enforce legislation so that economically viable businesses would not go under because of the temporary market disturbance caused by the pandemic.<sup>165</sup> Among other things, the Model Cases urged people’s courts to promote settlements and disallow liquidation for the non-performance of contractual obligations caused by the pandemic.<sup>166</sup> These Model Cases appear to manifest the consequentialist (or ‘substantive’) approach to adjudication in Party literature.<sup>167</sup>

To conclude, the Chinese judicial genre includes argumentative moves, which are critiqued in the Chinese ceremonial and deliberative genres. This may not affect the initial persuasiveness of deliberative statements about Chinese law: a foreign observer may well believe that Chinese legal thought is more substantively just and pragmatist than ‘Western’ legal thought, without having read a single Chinese judicial decision. Nevertheless, the argumentative moves in the Chinese judicial genre influence efforts to advocate Chinese legal thought in several ways. First, it is awkward that many argumentative strategies in the Chinese judicial genre fit Party ideologues’ descriptions of the supposedly outdated ‘capitalist’ form of legal thought. Second, the intermingling of formalist and consequentialist considerations in SPC decisions puts to question the very premises of the distinction between formalist and non-formalist legal thought. Such anomalies make it more difficult for Party ideologues and Chinese legal scholars to establish a coherent view about the paradigm-shifting advantages of Chinese legal thought. Third, at some point the sustained reception of Chinese legal thought in foreign countries may well involve the study of Chinese legal decisions. Such engagement could reveal that the ideals expressed in the Chinese ceremonial and deliberative genres have not been consistently turned into adjudicative practices in Chinese people’s courts, thereby reducing the persuasive force of Party ideologues’ descriptions of Chinese legal thought.

<sup>161</sup>In Guiding Case No 60, the SPC decided whether the ‘characteristic ingredients’ of a product marketed as extra virgin olive oil blend ought to have included extra virgin olive oil. See Guiding Case No 60 (n 148). See also SPC, Zhidao anli 109 hao (指导案例 109 号) [Guiding Case No 109] (25 Feb 2019).

<sup>162</sup>*Guanyu yinfa 2019 nian Zhongguo fayuan 10 da zhishi chanquan anjian* (关于印发 2019 年中国法院 10 大知识产权案件) [*Top 10 intellectual property cases in Chinese courts in 2019*] (Supreme People’s Court of the People’s Republic of China 2019), citing *Guizhou sheng Gaoji Renmin Fayuan (2019) Qian min zhong 449 hao minshi panjueshu* (贵州省高级人民法院 (2019) 黔民终 449 号民事判决书) [*Guizhou Higher People’s Court (2019) Guizhou Civil Division, Final Civil Judgment no 449*] <<https://www.chinacourt.org/law/detail/2020/04/id/150154.shtml>> accessed 26 May 2021.

<sup>163</sup>*Zhonghua Renmin Gongheguo zhuzuoquan fa* (中华人民共和国著作权法) [PRC Copyright law] (as revised on 26 Feb 2010), art 48 <<http://www.npc.gov.cn/npc/c30834/202011/848e73f58d4e4c5b82f69d25d46048c6.shtml>> accessed 26 May 2021.

<sup>164</sup>See eg, Supreme People’s Court, *Quanguo fayuan fuwu baozhang yiqing fangkong qijian fugong fuchan dianxing anli (di san pi)* (全国法院服务保障疫情防控期间复工复产典型案例 (第三批)) [Nationwide model cases for ensuring the resumption of work and production during the prevention and control of the epidemic (third batch)] (22 Apr 2020) <<http://www.court.gov.cn/zixun-xiangqing-226771.html>> accessed 26 May 2021.

<sup>165</sup>*ibid.*

<sup>166</sup>*ibid* Cases No 8 and 10.

<sup>167</sup>See text accompanying nn 109–111 above.

### From the domestic to the global stage

The above sections have demonstrated that in China there exist different registers of speech on the global significance of Chinese legal thought. The most ambitious statements about the global significance of Chinese legal thought are deeply embedded in domestic Chinese politics. Indeed, stating that Xi Jinping Thought on the Rule of Law constitutes a globally significant theoretical breakthrough is a performative act in Chinese domestic politics.<sup>168</sup> It is unlikely that the Party ideologues' ceremonial speech could induce foreign lawyers to adopt Chinese ceremonial language at home, let alone make Xi Jinping Thought on the Rule of Law a paradigm-shifting development on par with, say, global human rights language. Being aimed at a domestic Chinese audience and being backed up by domestic uses of political power, Chinese ceremonial speech does not offer foreign audiences compelling reasons to undergo a profound ideological conversion or rhetorical transformation. Nevertheless, as previously pointed out, Chinese ceremonial speech also includes a foreign-orientated genre, which comprises terms such as 'open cooperation, mutual benefit and win-win'.<sup>169</sup> This genre facilitates development cooperation between China and its development partners, thereby providing the Chinese government a chance to influence foreign lawyers. At present, there are few concrete examples of successfully exported Chinese legal institutions,<sup>170</sup> but at least opportunities for such exchanges exist.

CCP policy papers draw stark distinctions between China and foreign countries. This argumentative strategy seeks to persuade Chinese audiences about the legitimacy of the Chinese party-state, but it does not explain why Chinese legal thought should be seen as globally relevant. To the extent that Party ideologues and Chinese legal scholars provide such reasons, they describe the advantages of specific versions of Chinese legal thought in terms of anti-formalism, pragmatism and ability to focus on the truth – or the 'essence' – of a matter.<sup>171</sup> Such arguments are potentially persuasive to foreign audiences because they make use of globally popular rhetorical commonplaces, such as the preference for substance over form and good consequences over bad consequences. Arguments building on such commonplaces will appear familiar and plausible in foreign contexts.

Nevertheless, the familiarity of these arguments also means that they will not appear as paradigm shifting as the Chinese ceremonial genre supposes. Global legal thought has comprised anti-formalist and pragmatist arguments for over a century now,<sup>172</sup> and there is little in the Chinese insistence on pragmatism and substantive justice that is new for jurists from the global south.<sup>173</sup> This also seems to be true of the supposedly Chinese form of pragmatism, which seeks to provide moral objectives for policy-making and adjudication.<sup>174</sup> Moreover, in many developing countries pragmatism and instrumentalism have given way to the global human rights discourse, which explicitly opposes the instrumentalist dilution of formal legal rights and processes.<sup>175</sup> Arguments about the advantages of Chinese legal thought may, therefore, appear dated in many parts of the world.

<sup>168</sup>Chen (n 2).

<sup>169</sup>ibid.

<sup>170</sup>For some examples, see Erie & Do (n 3).

<sup>171</sup>See text accompanying nn 107–108, 119 and 130 above.

<sup>172</sup>Kennedy (n 103) 37–38.

<sup>173</sup>For instrumentalist arguments in African legal thought, see eg, Yash Ghai, 'The Role of Law in the Transition of Societies: The African Experience' (1991) 35 *Journal of African Law* 8, 11–12; Yash Ghai & JPWB McAuslan, 'Constitutional Proposals for a One Party State in Tanzania' (1965) 1 *East African Law Journal* 124, 135.

<sup>174</sup>For Chinese pragmatism, see Huang (n 16) 31 (preface). Prominent Pan-African intellectuals approached policymaking from a self-consciously African ethical point of view in the 1960s and 1970s before abandoning this project for international socialism. See David and Marina Ottaway, *Afrocommunism* (Africana Publishing Company 1981) 7; Kwame Nkrumah, 'African Socialism Revisited' (Marxists Internet Archive) <<https://www.marxists.org/subject/africa/nkrumah/1967/african-socialism-revisited.htm>> accessed 1 Jun 2021.

<sup>175</sup>See eg, Makau Mutua, 'Justice Under Siege: The Rule of Law and Judicial Subsistence in Kenya' (2001) 23 *Human Rights Quarterly* 96, 99; Tsegaye Regassa, 'Sub-National Constitutions in Ethiopia: Towards Entrenching



Having said that, the novelty of an idea is not the only, or even the principal, factor in establishing a sense of persuasiveness for an argument. Even if CCP ideologues fail to make a convincing argument about the novelty of Chinese legal thought,<sup>176</sup> they may still try to make use of analytic distinctions, transference of value and pragmatist arguments discussed above to make a compelling case for the global relevance of Chinese legal thought. Moreover, large part of the globalisation of law occurs through non-discursive means, and also Chinese legal speech may spread irrespective of its persuasiveness.<sup>177</sup>

The Guiding Cases and Model Cases form a contrast to the self-descriptions of Chinese legal thought in the Chinese ceremonial and deliberative genres. Instead of attempting to establish difference to foreign law, the Chinese judicial genre makes use of the same legal analytic distinctions, pragmatist claims and other rhetorical devices that are typical of legal argumentation elsewhere.<sup>178</sup> The Chinese judicial genre also makes copious use of formalist argumentative devices, such as quasi-logical tautologies and analytic definitions. This is understandable. Formalist language provides Chinese people's court judges a useful means to insist that they follow legislation as adopted by China's CCP-controlled legislature.<sup>179</sup> Such language also allows Chinese judges to highlight the professional nature of their adjudicative practice.<sup>180</sup> Nevertheless, far from being absent from Chinese legal thought, legal formalist arguments play a central role in Chinese legal thought. Indeed, CCP ideologues characterise the Party's own regulations as a logically rational system of norms.<sup>181</sup> Formalist language is appealing also to China's liberally minded and politically centrist legal scholars, who use formalist arguments to promote rule-following within Chinese state organs and the CCP itself.<sup>182</sup> As native speakers of the language of law (and of rules in general), lawyers can assert power more easily when decision-making is supposed to occur with reference to formal rules.<sup>183</sup>

The analysis above makes it difficult (but obviously not impossible) to describe the essence of Chinese legal thought through a legal theoretical moniker, such as 'pragmatism',<sup>184</sup> 'instrumentalism',<sup>185</sup>

---

Constitutionalism at State Level' (2009) 3 *Mizan Law Review* 33–68. Huang Zongzhi acknowledges that the specific concepts of Chinese legal thought can easily be used to cover up corruption: see Huang (n 16) 122.

<sup>176</sup>Perelman, *The New Rhetoric* (n 10) 281–282 (describing novelty as an 'argument of direction').

<sup>177</sup>See Mattei, 'A Theory of Imperial Law' (n 96) 383.

<sup>178</sup>For continental European legal argumentation see eg, Alexy (n 41) 230–231. For the historical development towards western legal language in China, see Feng (n 16) 152–153.

<sup>179</sup>Perelman, *The New Rhetoric* (n 10) 106.

<sup>180</sup>For professionalism in the SPC, see Björn Ahl, 'Retaining Judicial Professionalism: The New Guiding Cases Mechanism of the Supreme People's Court' (2014) 217 *The China Quarterly* 121, 124–125.

<sup>181</sup>Wang Zhenmin, *Zhongguo Gongchandang dangnei fagui yanjiu* (中国共产党党内法规研究) [*Study on CCP intraparty regulations*] (Renmin chubanshe 2015) 11; Song Gongde, *Danggui zhi zhi* (党规之治) [*Governance through intraparty regulations*] (Falü chubanshe 2016) 125–126.

<sup>182</sup>See eg, Zhang Qianfan, 'Constitutional conundrums under the Party-State' (China Heritage) <<http://chinaheritage.net/journal/the-professor-a-university-the-rule-of-law/>> accessed 26 May 2021.

<sup>183</sup>Ng & He (n 70) 199–200 (describing Chinese judges' sense of professionalism as technocratic).

<sup>184</sup>In the description of Chinese law, legal pragmatism has meant: (i) the overemphasis of instrumental aspects of the law; (ii) the conception of law as an outcome of reality; (iii) the assumption that law is a servant of policy; (iv) and the tendency not to take individual rights seriously. See Yu (n 123) 39–40. For other descriptions of pragmatism in Chinese law, see eg, Eva Pils, 'Asking the Tiger for His Skin: Rights Activism in China' (2006) 30 *Fordham International Law Journal* 1209, 1213–1215; Taisu Zhang, 'The Pragmatic Court: Reinterpreting the Supreme People's Court of China' (2012) 25 *Columbia Journal of Asian Law* 1–11.

<sup>185</sup>The concept of instrumentalism is closely related to pragmatism. In Chinese legal studies instrumentalism has meant the use of law as an instrument of policy. Stanley B Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford University Press 1999) 131, 300; Randall Peerenboom, *China's Long March toward Rule of Law* (Cambridge University Press 2009) 23, fn 23. Donald Clarke observes that legality is 'a subset of the various tools of governance available to the state.' See Clarke (n 31) 89.

‘formalism’<sup>186</sup> and ‘legalism’,<sup>187</sup> or even through a combination of these terms.<sup>188</sup> Any attempt to superimpose a structure on various Chinese argumentative strategies will merely constitute another rhetorical move in an already crowded discourse of rhetorical moves.

From the rhetorical perspective, legal theoretical concepts, such as formalism and anti-formalism, appear as argumentative commonplaces, which allow Party leaders, ideologues, and jurists to achieve (or attempt to achieve) various political objectives in specific instances.<sup>189</sup> For the Party leadership, a statement urging Party cadres to strictly observe the law provides a means to remind lower-level Party cadres about the hierarchical relations in the Chinese party-state and to address specific governance issues, such as local protectionism.<sup>190</sup> At the same time, it is also in the Party leadership’s interests to emphasise the importance of adhering to the Party’s ideological line through explicitly anti-formalist statements.<sup>191</sup> The faithful adherence to the normative order set forth by the Party leadership is, therefore, not reducible to the ‘formalist’ interpretation of laws and Party rules alone, nor can it be understood as ‘pragmatism’ or ‘instrumentalism’. Instead, these concepts are used to signal different aspects of the Party leadership’s governance project: a bureaucratic governance project, which occurs through formal rules, and a law-transcending political project, which occurs through Party leaders’ unfettered political agency.<sup>192</sup> The (Nietzschean) application of rhetorical theory leads to the conclusion that the Party’s governance project has no authentic or true nature, which exists beyond the rhetorical uses of language.<sup>193</sup> Even the notion of a coherent mode of ‘legal thought’ dissipates through the rhetorical perspective. The Party’s governance project, and all other speech acts in the Chinese legal system, take on a different form in each instance in which they are manifested or described.

The difficulty of capturing the essence of Chinese legal thought through legal theoretical concepts does not mean that the rhetorical moves in Chinese legal speech are the same as the rhetorical devices in liberal democracies or elsewhere.<sup>194</sup> There may be differences between the ordering and frequency of (say, formalist and anti-formalist) argumentative commonplaces between China and other jurisdictions. Arguments about essences have given rise to an idiosyncratic Chinese political language, which is visible, for instance, in Mao Zedong’s famous typology of social contradictions.<sup>195</sup> Analysing society through contradictions became anachronistic in the 1990s and 2000s,

<sup>186</sup>In Chinese legal studies ‘formalism’ has connoted ‘the formalistic reliance on institutions and procedures without regard for substantive justice’. See Pitman B Potter, ‘Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China’ (1994) 138 *The China Quarterly* 325, 338. For the meaning of formalism in Western jurisprudence, see Schauer (n 106).

<sup>187</sup>‘Legalism’ in the study of contemporary China refers to the willingness of the government ‘to operate in accordance with the written law’, and is associated with the ‘rule by law’ rather than the more substantive ‘rule of law’. See Zhang & Ginsburg (n 137) 387. See also Mary Gallagher, *Authoritarian Legality in China: Law, Workers, and the State* (Cambridge University Press 2017) 30–31.

<sup>188</sup>For instance, the Chinese legal system may be described as being both formalist and pragmatist – that is, as a legal system that is formalist in terms of the officially sanctioned modes of legal reasoning and pragmatist in terms of how law is actually applied. See Hualing Fu & Michael Dowdle, ‘The Concept of Authoritarian Legality: The Chinese Case’, in Weitseng Chen & Hualing Fu (eds), *Authoritarian Legality in Asia: Formation, Development And Transition* (Cambridge University Press 2020) 63, 68; Carl Minzner, *End of an Era: How China’s Authoritarian Revival is Undermining Its Rise* (Oxford University Press 2020) 104.

<sup>189</sup>For argumentation through opposites, see Burke (n 10) 57.

<sup>190</sup>See text accompanying above n 133.

<sup>191</sup>See eg, Notice on Persistently Solving the Problem of Formalism (n 134).

<sup>192</sup>For this project, see eg, Larry Cata Backer & Keren Wang, ‘The Emerging Structures of Socialist Constitutionalism with Chinese Characteristics: Extra-Judicial Detention and the Chinese Constitutional Order’ (2014) 23 *Pacific Rim Law & Policy Journal* 251, 340–341.

<sup>193</sup>Nietzsche maintained that the persuasiveness of philosophical theories was based on rhetorical tropes: see Nietzsche (n 51) 23–25.

<sup>194</sup>See eg, Link (n 47) 244–278.

<sup>195</sup>According to Mao Zedong, antagonistic contradictions are contradictions between enemies, whereas non-antagonistic contradictions are contradictions among the people. Understanding these contradictions was the ‘essence’ of Marxism itself, Mao argued, since contradictions revealed the essence of all things. If the essence of the matter was deemed to be a

but there are signs that this argumentative trope is being rehabilitated in contemporary China.<sup>196</sup> The Chinese ceremonial genre also emphasises harmony between the individual, the state and the Party in a way that ideological speech in liberal democracies does not do.<sup>197</sup> There are specific commonplaces in the Chinese legal discourse (such as the ubiquitous references to ‘Party leadership’) which emerge from China’s Marxist-Leninist political system.<sup>198</sup> The specific genre of Chinese dissident speech is also absent from contemporary liberal democracies.<sup>199</sup> Politically motivated speech, in general, takes on a more ambiguous form in China than in liberal democracies. As a result of ideological censorship even mainstream Chinese legal scholars must be evocative about their views.<sup>200</sup> Moreover, Chinese ideological taboos – such as the inability to critically examine the value of Party leadership – make it difficult for Party ideologues and Chinese legal scholars to produce compelling arguments for foreign audiences. Acknowledging weaknesses in one’s position and recognising an audience’s counterarguments against it are useful persuasive strategies.<sup>201</sup> While many other factors explain the reception of foreign legal thought, language and persuasion play a role in the globalisation of law.

## Conclusion

In conclusion, the rhetorical perspective described in this article helps scholars to appreciate, and make explicit, various performative speech acts within a legal discourse. For instance, it would be a mistake to take CCP ideologues’ characterisations of the nature of Chinese law as evidence of its actual nature. The rhetorical analysis of different genres of Chinese legal discourse reveals that such characterisations are motivated, among other things, by an effort to legitimise CCP rule and to signal the authoritarian and non-discursive nature of the Chinese party-state. Such arguments play an important role in domestic Chinese politics, but they may be less effective on the global stage. In the Party ideologues’ imagination, the globalisation of law is at least partly a persuasive process, and Chinese domestic rhetorical conventions do not always support the Chinese government’s ideological advocacy efforts abroad. The persuasiveness of the Chinese legal discourse depends ultimately on foreign audiences’ rhetorical conventions. These conventions, and foreign audiences’ reactions to Chinese ideological advocacy, merit further studies.

---

contradiction between the people and the enemy, ‘dictatorial methods’ were to be applied; if the essence of the contradiction was merely non-antagonistic, the contradiction could be resolved through the more lenient methods of discussion, education and self-criticism. Mao (n 128); Jiang, *Chengfa yu fazhi* (n 16) 52.

<sup>196</sup>For the anachronistic nature of Maoist contradictions during the reform era, see Sarah Biddulph, *Legal Reform and Administrative Detention Powers in China* (Cambridge University Press 2009) 104, 355. Huang Wenyi explains that the Maoist ‘contradiction analysis’ is a method of Xi Jinping Thought on the Rule of Law: see Huang (n 60) 23.

<sup>197</sup>Xi Jinping, *The Law Based Governance of China* (n 84) 21–22.

<sup>198</sup>See text accompanying above n 63; Xi Jinping *fazhi sixiang gailun* (n 2) 78–80.

<sup>199</sup>For an example of critique against the Chinese political system (in a particular traditionalist style of a scholar speaking truth to power), see Xu Zhangrun, ‘Imminent Fears, Immediate Hopes’ (Geremie R Barmé tr, China Heritage) <<http://chinaheritage.net/journal/imminent-fears-immediate-hopes-a-beijing-jeremiad/>> accessed 25 May 2021.

<sup>200</sup>Davies (n 82) 81, 86.

<sup>201</sup>Such acknowledgements give the impression of sincerity and increase the audience’s confidence in the speaker. See Perelman, *The New Rhetoric* (n 10) 457.

**Cite this article:** Seppänen S (2023). Chinese Legal Thought on the Global and the Domestic Stage: A Rhetorical Study. *Asian Journal of Comparative Law* **18**, 158–178. <https://doi.org/10.1017/asjcl.2023.5>