

# *Popularization of Legal Knowledge in Community Level*

—Analysis on the Foundations, Problems and Routes of the Rule of Law in Public Governance in Community Level

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**Abstract**—Legislation is an important guidance of grassroots social governance in China and its practical foundation embodies in two mutually-supporting aspects: reconciling social contradictions and guaranteeing the "one core and multiple" governance structure according to law. However, Legislation is not the purpose of grassroots social governance itself, and its practice cannot be separated from the constraints of Chinese grassroots social traditions such as "no litigation" and "public and private alike", which will cause many problems such as weak legal authority and law enforcement, unadaptable hard law and so on. It is necessary for further to promote the legalization process of grassroots social governance by strengthening the guidance of party building at the grassroots level, promoting the co-existence of hard law and soft law, and shifting the emphasis of law enforcement in grassroots level.

**Keywords**—public governance in community level, rule of law, guided by party building, soft law

## I. INTRODUCTION

Rule of law is an important guidance in public governance in community level in China. Since 18th CPC the Center keeps stressing on improving the public governance modes and increasing the level of rule of law in public governance. In the report of the 18th CPC, it stipulates: "quicken the space of building the following mechanisms and systems: a law-based social management system featuring Party Committee leadership, government execution, nongovernmental support and public participation." On the 3rd Plenary Session of the 18th CPC, it has decided: "we should improve the manners of public governance ...insist on rule by law, enforce legal guarantee and use legal frameworks and methods to reconcile social contradictions according to rule of law." On the 4th Plenary, it also stresses: "promote multilevel and multifield administration according to the law. We will take a systematic, law-based, and holistic approach to governance and try to resolve root causes of problems, if there are any." In the report of the 18th CPC, it points out: "improve the law-based public governance model under which Party Committee exercise leadership, government assumes responsibility, non-governmental actors provide assistance, and the public get involved. We'll strengthen public participation and rule of law in public governance, and make such governance smarter and

more specialized." Then, what is the foundation of rule of law in public governance in community level? What problems shall we encounter during the process? And what is the origin of these problems? What is the route of doing this? At present, there are few papers on these questions. This paper will try to give an answer to them.

## II. DOUBLE BASIS OF THE NATIONAL POPULARIZATION OF LEGAL KNOWLEDGE TO COMMUNITY LEVEL

What problems should we solve in public governance in community level? This is the question we should answer. Theoretically, we will achieve two goals in public governance in community level, one is order, and the other is vitality. Order means: "putting everything, every person in its proper position and playing each role." [1]The main goal in public governance in community level is to put everything and every person in its proper position and this position is usually defined by traditions, ethics and laws while it will embody in environmental order, relationship order, and security order and so on. Besides order, the community level should also have vitality in order to have more opportunities to develop. Order emphasizes on interior while vitality exterior. These two parts work together. President Xi Jinping used to point out: "national and public governance is a science. We should master the proper manner." [2]

Then, we come to question, why does our country need to popularize legal knowledge in community level? The answer is many problems arise in public governance in community level. For example, Liang Ping thinks public governance in community level faces four dilemmas: traditional public governance manners and its practical situation prevent the change of the governance manners in community level; the contradiction of localization and informality of social governance in social transition; the bigot of governance guidance on stability in the public governance in community level; the degrade of the authority of the community level and the rise of the authority of the traditional governance weaken the enforcement abilities in public governance in community level. Now we cannot give a complete solution to these problems. I think the basis to promote rule of law in public governance in community level can at least embody in two

aspects; to reconcile social contradictions according to rule of law and to guarantee the governance system of one core with many aspects according to rule of law. The former mainly stresses on social order in community level, and the latter on the vitality in community level.

#### *A. Reconcile social contradictions according to rule of law*

In reconciling social contradictions, the functionality of rule by law can be fully demonstrated. Since the reform and opening, especially in this new century, many contradictions arise. In the social bluebook of Y2013 issued by Chinese Social Science Research Group, it shows that: “recently, the number of collective incidents caused by social contradictions amount to ten thousand, even hundred thousand each year.” [3] Some research shows, after our GDP surpasses US\$1000, Chinese has come to the prominent period of social contradictions.[4]Social contradictions usually can be divided into two categories: one is family disputes, neighborhood conflicts, disputes between capital and labor, disputes between owners and property companies, all these have nothing to do with the government; the other contradictions are caused by governments policies and actions such as building garbage disposal incineration factory, land requisition and demolishing, improper legislation. No matter what kind of social conditions are, once improperly dealt with, the government would have to get involved.

Traditionally, the government will take on the main role in reconciling the social contradictions, such as the Bureau for Letters and Visits will be responsible for solving these problems. During this process, the official, the actual spokesman of the government, sometimes will have his own emotions even his own interest in solving these problems, thus, this kind of administration mode would be blamed for rule by man and arbitration. When the interest differentiations are not very obvious, the social contradictions are still single and the other social subjects such as village heads, religion leaders can play their role in reconciling these contradictions, the administration mode of the government can still work properly. However, when the above-mentions conditions are becoming serious, this administration mode will not work properly. What’s more, with the government involved in land requisition and demolishing, villages in cities renovation and so on, government itself becomes the core of the contradiction. In this situation, it will be very improper to solve these contradictions in the usual administration mode. The best way should be solving these problems according to the law.

#### *B. Guarantee the governance structure of one core with many aspects by rule of law*

One core with many aspects means the public governance structure is under the leadership of the executive party, and includes the executive party, the government, the society and the public. Under this structure, these bodies under the leadership of the executive party will take their positive actions and make full use of their advantages to promote social development. Compared with the traditional single management structure, this structure can be regarded as the ideal structure in public governance in community level.[5] Meanwhile, the executive party also realizes that it is hard to

achieve the goal of public governance in community level only by government and administration mode, therefore, the party sticks that public governance need many bodies to participate and cooperate in many important documents. However, this recognized structure should be gut anteed by rule of law.

In order to achieve this, the most important part is to regulate government powers and improve social and people’s rights according to law, otherwise, this structure cannot be formed. In reality, we have many ways to regulate government powers and improve social and people’s rights, for example, execute the regulations of government’s power list to restrict government’s powers; reform the registration management system of social organizations to separate some particular organizations from their administration management departments; strengthen information legislation to guarantee every people’s knowing and participation rights; establish legal statue of the residential quarter’s Hearings, Coordination and Evaluation so that the residents can get involved in community governance. Of course, if there are any illegal or breaching promise behaviors in public governance, they should get punished (these behaviors will do damage to the governance structure of “one core with many aspects”). Here, we can take an example, in November 2018, the Ministry of Civil Affairs gave punishment of warning and listed them into the abnormal list to Yongheng Charitable Foundation (not make its internal management system and project capital allocation public , no description of the parties concerned) and More Love Foundation (not description of the parties concerned and its transactions) according to the stipulations in Regulations for the Management of Foundation and Measures for Foundation Information Announcement.

### III. THE PROBLEMS AND ITS ORIGIN OF THE RULE OF LAW IN PUBLIC GOVERNANCE IN COMMUNITY LEVEL

Advancing the rule of law in public governance in community level has its logic basis, but its application is not very easy. Even in eastern seaside cities where their economy is developed, civilization is high and legislation is perfect, they also encounter some difficulties and problems, among which are weak legal authority, unadaptable of hard law and weak law enforcement.

#### *A. Weak legal authority*

Weak legal authority means the rule of law is not the governments’ and the society’s first choice when solving problems, even in some cases, they choose to ignore the existing law. From the analysis we can see that weak legal authority can be divided into two types: one is the authority of the rule of law is not strong in society and people’s mind; the other is the local government and officials do not pay enough attention on the authority of the rule of law. In the first situation, it mainly reflects in people would choose to believe in letters or visits rather than laws, and would like to make incidents greater.[6]Yang Xiaojun makes the following conclusion after he compared the data of the administrative litigation, reconsideration and petition from Y2003 to Y2009: “compared with legal approaches, people tend to choose letters and visits to defend their own rights.”[7]This idea would do great harm to the authority of the rule of law. Some people

point out: “letters and visits would, of course, give some people justice in their rights and responsibilities, but at the same time would do harm to the rule of law.”[8]In the second situation, it mainly reflects in the local officials not abiding to law. Some scholars point out that the excessive managing of the government, eroding social interests, monopolizing public decisions and excluding people’s involvement etc., are the main causes to trigger the collective incidents.[9]

In fact, it is the local government’s illegal actions such as do not announce and get the people involved in the process of decisions make, do not execute their duties according to the law, do not regulate the officials’ behaviors that trigger many social contradictions. For example, now many NIMBYs arise because the government does not make the policies of choosing the sites public.[10] These reflects that the local government ignores the fact that making the key decisions public is a basic requirement of the rule of law. It needs to point out that people do not believe in law and the officials do not respect law is working together: if peoples do not believe in law, it would strengthen the government’s adopting traditional administration mode, thus would develop their habits of doing everything not strictly in conformity with law, which in turn make peoples do not believe in law.

### *B. Unadaptable of hard law*

The problems arising in public governance in community level are very complicated. It is hard to solve all these problems only by the existing laws. Moreover, some hard law would face the problem of unadaptable. Take the collective incidents as example, Annual Report on the Development of Rule of Law in China (2014)points out that China has built the law system including the Emergency Response Law and Regulations on Letters and Visits, but from the stipulations and working mechanism, we can see that when dealing with the collective incidents, we mainly rely on afterwards measures, and once there is, the Police Station will take main responsibilities to solve.[11]So, we can see that if we need to put law in execution, we still need many mechanisms to support it. It is unavoidable that some hard laws cannot be adapted especially in the transition period in the community level. On one hand, compared with the new issues arising in the community level, the introduction of law is relatively retarded, for example the supervision of the speeches in net; on the other hand, law cannot reach every aspect, and for example neighborhood conflicts, the contradiction arising from breeding dogs. Cao Yunqing makes a list to illustrate the insufficiency of solving the family conflicts by law: “According to the law, the parent’s property can be inherited by siblings equally, but I have visited some places and found the actual situation is not so. Usually the property will be inherited by sons, if no son, by nephews. I asked them the reasons. Someone told me that daughter can of course inherit the property, but if she does so, although it is legal, the whole village will blame on her.” [12]So, when we want to popularize legal knowledge in community level, we should restrict the adaptable into some scope, otherwise, it will damage the authority of the rule of law in these places.

### *C. Weak law enforcement*

When we popularize legal knower in community levels, we will face some problems: who will execute laws, who will supervise laws, how to allocate the relative cost of the law enforcement. Many regulations in public governance in the community level are related to the individuals, and its purpose is to regulate their daily behaviors, for example no smoking in public areas, no littering casual, dog leash. All of these require the strong enforcement of local government. Because of shortage of hands, the government cannot send persons every day in every community to check. The usual way is the government can only send persons to execute laws when these violations will cause new contradictions or great danger. Sometimes the government would have campaign-style law enforcement at intervals. As many researches show the campaign-style law enforcement actually opposes the gist of the rule of law. The core of modern laws is law should have stability, and the stability can be realized according to the law procedures.[13]Relying on campaign-style law enforcement excessively can weaken the authority of law in the people’s mind, and sometimes it will provide opportunities to the potential offenders.

These are the three problems in the process of the popularization of legal knowledge to the community level, and they are closed related and have almost same origins. First, rule of law is a mode or a tool in public governance in community level. In the eyes of the officials in community level including judges, rule of law itself is not the purpose of public governance in the community level (order and vitality). Just as Suli observed: to the judges in community level, preventing contradictions intensifying and no terrible things happens are good matters. This is why when the judges are dealing with some intensifying cases, they would suppress both parties, sometimes, even take strict methods (occasional illegal in some degree) to solve the problems and satisfy all.[14]Second, apart from rule of law, other methods such as rule of virtue, autonomy, jointnomy can be used. Even the traditional administration mode (including letters and visits) can gain new vitality with the development of times. Once they meet difficulties in law enforcement, they would choose to rely on the original methods. At last, during the transitional period of modernization, the execution of rule of law cannot get rid of the cultural traditional restriction such as no litigation, no distinguish between what is one’s own and what is public’s own. These traditions influence people’s daily behavior, for example, people would think it is shame to go to court, which also means uncivilized.[15]Some people especially in the developed cities would ignore the government’s regulations and put private affairs to the hand of the government in community level.

## **IV. THE ROUTE TO PROMPT THE POPULARIZATION OF LEGAL KNOWLEDGE IN COMMUNITY LEVEL IN NEW TIMES**

Mode of rule of law in public governance in the community level is obviously very important. Some scholars think the rule of law in public governance is one of the strategic measures in the establishment of social rule of law. [16] In comprehensively advancing the rule of law, rule of law in public governance in the community level have new

opportunities. The basic methods to advance rule of law lays in publicizing, education and changing viewpoints. Mr. Fei Xiaotong mentioned: “the establishment of the legal order cannot just base on formulating some law provisions and establishing some courts, the most important thing is to see how people use them.” [17]

Moreover, we should have a reform in social structure and ideas. Apart from publicizing and education (which is a long-time project) should also speed the process of rule of law from strengthening party building in community level, promote the coexistence of hard law and soft law, shift the emphasis of the public governance to the community level.

*A. Strengthen party building in the community level and optimize the political environment of rule of law in community level*

The defining feature of public governance in community level is the leadership of the Communist Party of China. To promote the rule of law in public governance in community level, the first thing we should do is to strengthen the guidance of party building in community level, so as to optimize the political environment in the practice of the rule of law in community level. As is pointed out above, the problem of weak legal authority arising from the popularization legal knowledge to the community level is mainly caused by the local governments’ and officials’ not paying much attention to the law. Therefore, to strengthen the guidance of party building should mainly put emphasis on making the Party members in the community level should take the lead on respecting, learning about, observing, and applying the law, strengthening their law beliefs and set up action guidance in doing everything according to the law.[18]The report on 19th CPC clearly states:

“Every Party organization and every Party member must take the lead on respecting, learning about, observing, and applying the law. No organization and individual have the power to overstep the Constitution or the law; and no one is allowed in any way to override the law with his or her own orders, place his or her authority above the law, violate the law for personal gain, or abuse the law.” In fact, only when the Party organization and the Party members respect law can we solve the problem of weak legal authority thoroughly. Otherwise, the law will be ignored in the community level. Specifically, in the background of exercising Party self-governance fully and with rigor, emphasis should be put on improving the Party members’ idea and ability to reconcile social contradictions and optimize public governance structure according to mode of rule of law, and idea and ability to make public decisions, negotiate with people and serve the people according to mode of rule of law.

*B. Promote the coexistence of hard law and soft law and improve the tolerance of the flexibility of rule of law*

Soft law is a concept against hard law. Luo Haocai mentions soft law has many features such as the diversity in forming subjects and forms, focusing on self-restriction and stimulation, emphasizing on open and negotiation, and its execution mainly rely on self-restriction and public opinions. It can play the role in regulating behaviors, saving the cost of legislation and enforcement of the law, respecting social labors

and make the regulation system more flexible.[19]Because of the complex in public governance in community level, it is very hard to reconcile social contradictions and guarantee the governance system of “one core with many aspects” just according to the hard law, we must adopt soft laws. Through the coexistence of hard law and soft law, we can solve the problem of unadaptable of hard law and strengthen the authority of law at the same time. Xi Jinping stresses: “in public governance, besides the relative laws and regulations we should also have Citizens’ Behavior Guidance, Village Regulations, Industry Regulations, and Team Charters. These will bind the organization and its members and they can also serve as the grounds for dealing with social affairs.”

[20]Therefore, during the process of promoting public governance in community level, every level governments should also guide and support its enterprises, societies and mass autonomous organization to establish some soft regulations, such as Residents Autonomous charters.

*C. Shift the emphasis of enforcement to the community level*

In short term, the problem of weak enforcement ability in community level will still exist. Apart from reducing the burden of enforcement of hard law through establishing soft law, we can also shift the emphasis of enforcement to the community level. Shifting the public governance emphasis to the community level is the assignment of the Center, and we should establish its structures accordingly. Tang Shoudong and Sunying discussed the working mechanism from service downward (establish legal service center, legal support working station, law hotline and so on) and talents downward (recommend excellent law professionals to work for the community level).[21]Based on the discussion above, this paper thinks the emphasis should be put on the shifting of the enforcement and its purpose is to increase the enforcement ability. Simply speaking, we should build a strong enforcement team including city management, market supervision (including food and medicine supervision) and environment supervision. But the difficult lies in how to attract young persons to join us and how to keep them. Therefore, we should support them from top devising and local innovation, such as enlarge the team, give them more chances to get promotion and raise their incomes.

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