

BOOK REVIEW

HE WEIFANG, IN THE NAME OF JUSTICE: STRIVING FOR THE RULE OF LAW IN CHINA (BROOKINGS, 2012)

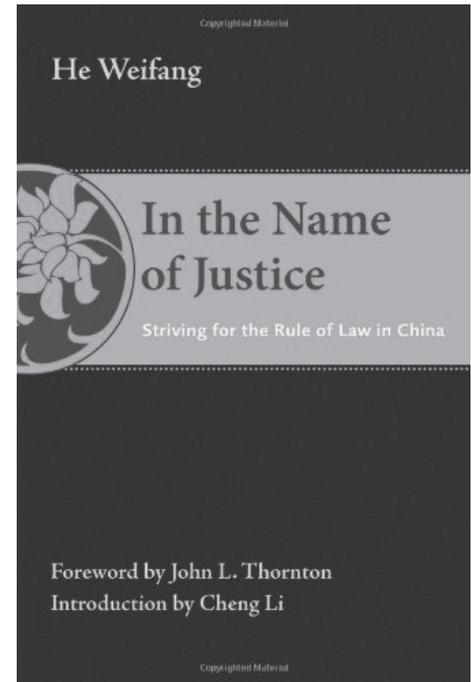
It is surprising that He Weifang is able to express the value of judicial independence, democracy, and constitutionalism in China, a country not known for a strong foundation of freedom of expression. It is correspondingly unsurprising that the law professor has experienced consequences for this outspokenness. He's activism led to a temporary transfer from his post at Peking University in Beijing to Shihezi, a remote town in northwest China, for two years after he signed the reformist Charter 08 in 2008. The document drew the ire of the Chinese government because it called attention to deficient human rights standards in the country and called on officials to protect freedoms of expression and religion, and it demanded an independent judiciary as well as the election of public officials. He's audacity in signing the charter despite the risks personifies He's status as an outspoken law professor and advocate for judicial reform and the protection of rights in China. In his book *In the Name of Justice*—a collection of blog posts, speeches, and letters—He presents a record of his thoughts on reform in China. The author advances the idea that a foundation of rule of law and constitutionalism will create momentum towards political reform and greater economic success for the Middle Kingdom.

Professor He begins his analysis by grounding it in China's legal history, focusing on the factors that have inhibited judicial development. For thousands of years the highest officials held all legal authority. On a national scale the emperor served as the head of all branches of government; he enacted and administered laws, and resolved conflicts. On the local level, the magistrates retained similar authority, acting as investigators and judges and answering only to the emperor. In He's analysis, this historical structure continues to guide the modern Chinese system and influences the centralization of authority that remains an impediment to judicial reform in the country. Serving as a further obstacle to

reform is the lack of a period of peace that could allow for new paradigms to take hold and grow. Unrest has marked China's history for most of the Twentieth Century, when between the uprisings and the Cultural Revolution the country has experienced a total of only thirty peaceful years.

In He's sketching of the development of the Chinese system, the power structures are not the only element building the modern framework. His analysis also examines Confucianism's role in China's judicial structure. Thanks to his time spent in Shihezi, He was able to commit time to studying classic Confucian texts. He identifies the divergence between Neo-Confucianist thinkers, who believe that traditional Chinese philosophies are appropriate for cultural issues but Western ideas such as democracy are appropriate for solving institutional problems, and traditional Confucianists, who believe only Confucianism should be the foundation for China's judicial system. Here He appears to align himself with the Neo-Confucianists, advocating for an approach that draws from the best of Confucianist and Western ideas and taking issue with traditionalists who prioritize filial piety above rule of law.

The theories explored in the book are consistent with He's overall work and speeches on the subject of human rights in the region. In a portion of the *In the Name of Justice* that is a transcription of a lecture given to students at his alma mater, Southwest University of Political Science and Law in Chongqing, He spoke on constitutionalism, a theme that arises frequently in his book. Because the book is a collection of lectures and articles, some of He's most important points are woven through multiple sections of the book. In the speech He identifies two flaws with China's current constitutional framework and these critiques are indicative of his view that the Chinese government is failing to protect human rights. First, the constitution has been poorly implemented because there do exist rights that are guaranteed in the text, but these provisions have not been either enforced or promoted effectively. The language protects freedom of expression, yet He argues that the rights



cannot be fully actualized when privately owned media is virtually non-existent. He asks how it can be legal to suppress a right that is guaranteed in the constitution. Though he understands the government leaders' concern that free speech will lead to political unrest, He believes that the order gained by suppression is short-lived and that the speech eventually leads to greater economic development. In an effort to persuade his intended audience, He often finds an external benefit from the enforcement of rights, but hidden in his argument seems to be the acknowledgement that these rights are important on their own.

The second flaw that He identifies with the Chinese constitution is with its design, which fails to reflect certain modern western constitutional ideals, such as the market economy and decentralized authority. According to He, the text was written in the 1980s when the state was still influenced by Mao's Cultural Revolution and strong crackdowns on insolent behavior were common. This influence persists and even today it is believed that China executes more prisoners than the rest of the world combined, according to Amnesty International. In the eyes of He, this practice is particularly egregious, especially

when used as punishment for economic crimes. He is a strong believer that the death penalty should be abolished, in part because it destroys personal dignity, and in the book He uses anecdotes to portray the ineffectiveness of capital punishment as well as torture. Though he calls for its abolishment, He seems to gloss over the practice in the United States because of the relatively low number of execution. It is clear that He greatly respects Western ideas and his adoration is pervasive when He discusses constitutionalism. For example, he quotes a number of Western thinkers and explores concepts like freedom of expression by distinguishing Chinese practice from those of the United States by juxtaposing his homeland's practice against stories of public criticism of American political leaders. It is thus striking that He is willing to overlook the U.S. executions—which Amnesty tabulated at 43 in 2012—despite nearly universal condemnation of the practice. The UN Human Rights Committee found in 2006 that the United States unfairly targeted minority groups for capital punishment, which arguably involves a greater loss of dignity. He likely values the dialogue on the issue in the United States. Again connecting the practice to China's political reality, He laments that there is no public debate on capital punishment in China.

The prologue to *In the Name of Justice* is He's open letter concerning the events in Chongqing that led to the political collapse of Bo Xilai, the secretary of the Chinese Communist Party (CCP) for the region, and the resulting political fallout for the CCP. The issue creates an effective prism through which to view He's conceptualization of the interplay between China's judicial and political processes. From 2009 through 2011, Chongqing police and judicial authorities worked together to speedily prosecute thousands of criminals. Bo Xilai initially received praise for his hard stance on crime, but his tactics are considered by many to have been severe and the trials under his watch were marred by a lack of due process. In a letter to the Chongqing police chief, Wang Lijun, He urged authorities to respect rule of law, which had been neglected during Bo Xilai's campaign. After the letter was published, Wang Lijun left Chongqing and sought asylum at an American consulate and Bo Xilai was replaced amidst disgrace. The impact of He's letter is unclear, but his reputation domestically, as a professor at one of the top Universities in China and widely read and respected blogger, and internationally, as one of *Foreign Policy* magazine's top global thinkers, is likely one of the reasons that the government has not further cracked down on his activism and he is able to continue advocating for reform without suffering greater consequences.

Though He might accurately be characterized as critical of China's policies, it would not be true to describe his critiques as empty condemnation of political leaders. The book contains the manuscript from a panel hosted by Southwest University where He responds to a question about China's growing global unpopularity by critiquing the state policy toward Tibet and the press but then goes on to note a more nuanced articulation that is often ignored outside of China and that recognizes the progress that has been made in the country, saying that within the last fifty years people with far less controversial views than his own would have been imprisoned. He quotes Mencius, a Confucianist who presented the metaphor of the person who becomes despondent because they were not able to put out the flame of inhumanity with a single glass of water. Instead, He suggests that the issues facing China are too complex for a single glass of water but the issues can be solved quicker with resolve. He's ideas seem not to be an attack on the status quo but a prescription on how China can maintain its ascension.

Drew Mitnick, a J.D. candidate at the American University Washington College of Law, reviewed In the Name of Justice: Striving for the Rule of Law in China, for the Human Rights Brief.