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T076｜Does Rule of Law Mean Power Is Constrained by Law?

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《依法治国，是否就等于权力受法律约束？》

The claim

Put in its strongest form, the official claim is straightforward. When the PRC (Mainland) says it practices 依法治国 — governing the country according to law — it means that law stands above every holder of power, and that this is what constrains them. The Constitution says so in plain terms, the 2021 white paper describes a supervision system reaching every field and every corner, and the anti-corruption campaign is offered as proof that the constraint bites. On this view, "rule of law" and "power constrained by law" are the same thing, and anyone who doubts it is importing a foreign model — multiparty rotation, separation of powers — that China has explicitly rejected as unnecessary. The claim deserves to be taken seriously: it is not that law is decorative, but that law, properly enforced through China's own institutions, does the constraining work.

What the record actually says

The record supports the first half of that claim and complicates the second. Article 5 of the Constitution (as amended in 2018) states: "中华人民共和国实行依法治国，建设社会主义法治国家" — "The People's Republic of China practices law-based governance and builds a socialist country under the rule of law." It continues: "一切国家机关和武装力量、各政党和各社会团体、各企业事业组织都必须遵守宪法和法律" — every state organ, armed force, political party and social organisation must obey the Constitution and the law — and "任何组织或者个人都不得有超越宪法和法律的特权" — no organisation or individual enjoys privilege above the Constitution and the law.

The white paper sets the same test for itself. Its preface says a system should be judged by, among other things, whether "执政党能否依照宪法法律规定实现对国家事务的领导，权力运用能否得到有效制约和监督" — whether the ruling party can lead state affairs in accordance with the Constitution and the law, and whether the exercise of power can be effectively checked and

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supervised. It adds that what matters is not only what the rules say but "更要看这些制度和法律是不是真正得到了执行" — whether the institutions and laws are actually enforced — and "更要看权力是否真正受到人民监督和制约" — whether power is genuinely subject to supervision and constraint by the people. Its section on the exercise of power calls power a "双刃剑" (double-edged sword) and promises to "把权力关进制度的笼子里" — put power in the cage of institutions — through party discipline, supervision commissions, people's congress oversight, auditing, public supervision and the courts. But the same paper is explicit about what it will not use: solving abuse of power, it says, "不能靠所谓的政党轮替和三权分立，要靠科学有效的民主监督" — cannot rely on so-called party rotation and separation of powers, but on scientific and effective democratic supervision.

The rebuttal

Three features of the same record undercut the equation. First, the maker of the law is also its interpreter. Under the Constitution, the National People's Congress supervises the implementation of the Constitution, and its Standing Committee interprets the Constitution and supervises its implementation. No court is given the power to declare a law unconstitutional. The white paper confirms the arrangement from the other side: the Communist Party "领导立法、保证执法、支持司法、带头守法" — leads legislation, ensures law enforcement, supports the judiciary and takes the lead in abiding by the law. A system in which the legislator leads legislation, the interpreter sits inside the legislature, and the judiciary is "supported" rather than independent has no institution that can say no to the lawmaker.

Second, the constraint is self-imposed at the top. Article 1 entrenches the Party's leadership as "中国特色社会主义最本质的特征" — the most essential feature of socialism with Chinese characteristics — and forbids any organisation or individual from undermining the socialist system. Article 5's promise that no one stands above the law therefore operates inside a framework in which one organisation's leading position is itself beyond

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legal challenge. Power is constrained by law, but the definition of the law — and of who leads — is not itself subject to legal constraint.

Third, the cage can be rebuilt by its occupant. The 2018 constitutional text sets the President's term as the same as the National People's Congress, with no term limit stated, while the Premier, Vice-Premiers and State Councillors "连续任职不得超过两届" — may not serve more than two consecutive terms. The white paper celebrates a general system of fixed terms for leading cadres, but the Constitution itself shows that term limits apply to some offices and not to the most powerful one — because the same body that is constrained by the Constitution also amends it.

The test

Four questions separate rule of law from rule by law, and the sources answer the first three themselves. Can an independent body invalidate a law? On this record, no: interpretation belongs to the Standing Committee. Can a citizen ask a court to strike down an act of the lawmaker? The record provides no such path. When the Party or the Congress itself is the alleged violator, which institution enforces the Constitution against it? The record names supervisors — congresses, supervision commissions, auditors, the media, the public — but every one of them operates inside the system it supervises, and none can overrule the lawmaker. The fourth question is empirical, and the white paper invites it: it cites figures showing public satisfaction with the government "每年都保持在 90%以上" — above 90% every year — without naming the figures' source. Satisfaction is not the same as constraint, and a satisfaction claim presented without a source cannot carry the weight of the constitutional claim. The honest verdict is therefore mixed: 依法治国 plainly constrains officials — the anti-corruption enforcement the white paper describes is real, and ordinary law-breaking by officials is punished. But at the level of the makers, interpreters and enforcers of the law, the constraint runs in one direction only: downward. Law binds the governed and the lower official; the sovereign lawmaker remains, by design, its own judge.

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Source note

Primary sources, both fetched and read live on 2026-11-19: (D) 国务院新闻办公室《中国的民主》(China: Democracy That Works), 2021-12-04, preface and §§三（五）、四（五） — https://bb.china-embassy.gov.cn/chn/xwdt/202112/t20211207_10463217.htm ; (L) 《中华人民共和国宪法》, amended 2018-03-11, Articles 1, 3, 5, 62, 67, 79, 87 — https://www.cac.gov.cn/2018-03/22/c_1122572643.htm . All Chinese quotations above were verified word-for-word against those fetched pages; the English renderings are the drafter's own translations. No pre-1998 material is used; all structural points are drawn from the 2018 constitutional text and the 2021 white paper. The opposing position as stated — the equation "依法治国 = 权力受法律约束" — is a reconstructed inference from the sources' language, not a verbatim official sentence; the claim in this essay is therefore narrowed to what D and L actually state, as quoted. No facts beyond D and L are asserted; the anti-corruption enforcement described is reported as the white paper's own account, not independently verified.

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