

# “Fengqiao Experience” and the Path of Grass-roots Social Governance

Keqin Guo<sup>1,a</sup>, Xianzhe Liu<sup>1</sup>, Junzhe Li<sup>1</sup>

<sup>1</sup>Zhejiang Gongshang University, Zhejiang, Hangzhou, 310018, China

<sup>a</sup>guokeqin2009070440@163.com

**Abstract:** *Improving the rule of law at the grassroots level and giving full play to the effectiveness of soft law are important points in improving the quality of life of residents. There are many contradictions between hard law and grassroots society, such as the dominance of hard law and the regional characteristics of grassroots governance, the regulation of hard law and the co-governance of grassroots society, the rigidity of hard law and the emotional ties in society, the stability of hard law and the rapid development of society. Zhuji Fengqiao town, a successful example of soft law pilot stage, has exhibited its distinguishing contents, including democratic consultation in the pilot process, multi-organizational linkage, large adjustment mechanism. The soft law as a means of grassroots governance in the national It is of great significance for the promotion of soft law as a means of grassroots governance nationwide.*

**Keywords:** *Grass-roots governance; Soft law; Fengqiao experience*

## 1. Introduction

The 20th report of the Communist Party of China calls for "strengthening and innovating social governance and building a social governance pattern featuring joint contribution, joint governance and shared benefits." Grassroots governance has increasingly become the most realistic problem in the practical application of national governance. However, the contradiction between the existing hard law and the basic social morality is gradually prominent, so it's a general trend to increase the weight of soft law in social governance.

## 2. The Practical Dilemma of "Hard Law"

"The rule of the hard law" is not suitable for grassroots governance. There is a tension between the characteristics of the hard law and the grassroots society. The main limitations of the hard law governance are as follows:

First, there is a conflict between the regionalism of the grass-roots society and the ambiguity of the hard law. Observing China's legislative system, China's grassroots governance relies heavily on vague and generalized top-level national system design, but lacks "localized" links. This has indirectly led to the "hard law" of grassroots governance failing to meet the wishes of grassroots people. Regional differences, differences in ethnic customs, and differences in local economic development levels are all factors that need to be considered for grassroots governance.

Second, there is a confrontation between the co-governance of the grass-roots society and the regulation of the hard law. Based on a comparative study of "Regulations on the Registration and Management of social organizations", "Labor Law" and "Social Insurance Law", it can be seen from the wording and length that "management" is stronger than "governance". The word "management" is often used to express the state of government being above society and taking over social affairs, while the word "governance" is more often used to express the cooperation of multiple social actors, in which the government's work form shifts to the directing and supervising type. In the mid to late 1920s, the socialist planned economy went bankrupt. A worldwide crisis of governmental governance erupted and non-governmental organizations rose one after another, which led to the transformation of grassroots society into a pluralistic shared governance. Under the consideration of uniting social forces and mobilize the whole society to participate in the construction, it is not difficult to find that the management attributes embodied in the "hard law" do not exactly match with the grassroots society.<sup>[1]</sup>

Third, there is a barrier between the "semi-acquaintance" attribute of the base and the rigidity of the

hard law. The basic level of Chinese society is a "semi-acquaintance society", which is between the human society and the stranger society. The determined, rigid and clear hard law isn't conducive to the maintenance of human relationship. Soft law, with its unique "resilience," is better adapted to the characteristics of a "semi-acquainted society," resolving conflicts in a way acceptable to the public and making the necessary concessions for a better public life. At the same time, it retains the characteristics of "law" and the space for citizens to defend their individual rights.

Fourth, the rapidly changing characteristics of grassroots society do not fit the stability characteristics of hard law. As a state-enacted law guaranteed by the state coercive force, the hard law has a clear formulation and application procedure. Therefore, it cannot adapt to the ever-changing grassroots social environment and has a natural lag. However, the soft law can just play a filling role. The formulation of soft law is characterized by consultation and communication, and the legislative process is often more concise. Owing to the lack of mandatory obligations, the provisions of the soft law can be more flexible. After the hard law standardizes specific issues, the soft law can also be incorporated into the hard law as a pre-test procedure for the new provisions of the hard law.

### **3. The Exploration of "Fengqiao Experience" on Soft Law**

#### ***3.1. Expand Public Participation with Democratic Consultation***

The first part of "Fengqiao experience" is the democratic consultation system that enhances people's participation and sense of ownership. The grassroots soft law is essentially a contract of regional popular consent, and democratic consultation is one of the main ways for grassroots people to participate in the formulation of grassroots soft law, an important way to manifest the people's right to know, participate and vote, and a way to reduce the loopholes in grassroots governance programs.

Feng Yuan Village's "three up, three down" democratic discussion and decision system is a successful example of democratic consultation applied in practice. The specific practices are as follows: "one up, one down" for the village committee collecting issues from all households in the village; "two up, two down" for the program brewing and holding a democratic forum to further deepen the discussion; "three up, three down" "three up and three down" is to consider the decision. The proposed program will be submitted to the party meeting for consideration, and then voted by the villagers' representatives meeting after the organization of implementation, and finally the adopted matters will be printed and distributed to the villagers. Before the implementation of the Fengqiao ancient town renovation project, the town government widely used the characteristic system of democratic consultation, held 107 seminars, visited 6,936 families, won the understanding and support of the masses, creating the ancient town renovation "Fengqiao speed".<sup>[2]</sup>

#### ***3.2. Meet Individual Needs with Multi-organizational Linkage***

The second part of "Fengqiao experience" is the multi-organization linkage mechanism. Social organizations are the main body of soft law implementation. They usually carry out activities with "village rules and regulations" and "village customs". With the emphasis on grassroots construction, Zhejiang's new rural economy continues to grow. Villagers' individual needs are growing beyond subsistence. Once upon a time, there were few grassroots organizations in villages or communities. Village committees were responsible for large and small affairs, which not only put tremendous pressure on their work, but also failed to meet the individual needs of residents. The multi-organizational linkage mechanism takes on the task of village building in a targeted manner, and reduces the pressure on the village committee itself by deconstructing the needs of villagers and creating different organizations. At the same time the mechanism can maintain a high degree of inter-organizational linkage, forming a hive-like cooperation model with open, mutual assistance and flexible resources among organizations, which greatly improves efficiency and mass satisfaction.<sup>[3]</sup>

Fengqiao implemented the "1+5+x" model, and establish one social organization comprehensive governance service station and at least five village-level social organizations in each village to ensure full coverage of things in the village. The comprehensive governance center supervises each social organization with a set of strict evaluation system, and the idea of "The center becomes stronger first and then drive the whole picture" makes the village social organizations do not have uneven distribution of power and responsibility. In addition, Fengqiao Township reshapes the governance model of local elites, absorbing 326 villagers, and setting up the Federation of Villagers and Villagers Councillors in the township and village respectively.

### **3.3. Preserving the Humanistic Character with a Mediation Mechanism**

The third part of "Fengqiao Experience" is the mediation mechanism to save judicial resources and ease people's conflicts. The mediation mechanism is one of the most direct forms of applying soft law to govern the grassroots, which is different from the strict and binding procedures of hard law governance. The great mediation is to use the people's feelings as a lubricant to find solutions to conflicts, and to resolve internal conflicts within the people in an emotional and efficient way.

Litigation is costly, time-consuming, and easy to intensify the conflict. Fengqiao town has created a professional mediation team with 11 full-time mediators, distributed over the police station, court, traffic police squadron, prosecution office and other stations. The villages and communities now have 93 mediation cadres, who implement a conflict resolution screening and mentoring system. The masses can choose voluntary mediation or insist on legal disposal, which is more suitable for the characteristics of "semi-acquaintance society".

The advantages of mediation are extremely evident in practice. First, it is a conduit for nutritional transportation between soft law and hard law. The mediation process can discover the gaps in hard law and make the law more perfect. Secondly, mediation can synthesize whether the parties are equal in status, resources, and demands, so as to achieve a more harmonious justice in the substantive sense. Third, as the first level of screening mechanism, the Great Mediation Mechanism avoids the waste of administrative and judicial resources and improves the efficiency of social operation. Fourth, the "grand mediation mechanism" is not a "peacemaking" mechanism, but a rational assessment and analysis of the parties by professional mediators after understanding the case in all aspects. The professional mediators directly contact the relevant units to save the time and money cost of mediation, which is the government's guarantee mechanism for the people.

The mediation rate of conflicts and disputes in Fengqiao Town in 2020 was as high as 98.7%, which is a strong proof that soft law plays a significant role at the grassroots level. Zhuji City has 858 mediation organizations, more than 3,500 mediators and 3,300 conflict and dispute information officers. Last year, Zhuji investigated and handled 5,627 conflicts and disputes of all kinds, with a successful mediation rate of 96.3% and no further intensification of conflicts. Zhuji basically realized the "contradictions do not hand over", mediation has become a strong cornerstone of Zhuji to maintain social harmony and stability.

## **4. Shortcomings of Soft Law Applying to Grass-roots Social Governance**

In the final analysis, the value of soft law reflects its function in social governance, which depends not only on citizens' sense of legal identity, but also on the stable legal system established by the state. Although the theoretical construction of "Fengqiao Experience" has become perfect, it has encountered the following three problems in the process of grass-roots governance practice.

The defect of the connotation spirit of soft law comes first. Soft law thrives in foreign countries, inevitably embodying the spirit of foreign public law. Its essential connotation is the spirit of freedom and public rationality.<sup>[4]</sup> Soft-law governance is actually public governance, relying on citizens' own will, so it needs the support of citizens' free spirit. When the development of individual free spirit reaches a certain stage, it will be manifested as public rationality in an ideal state. The establishment of public rationality should include a general concern for public affairs and a check on public power in order to reduce the unwarranted power brought about by the establishment of institutions.

The second is the excessive interference of administrative power in soft law governance. In our country's law, the grass-roots political power should implement the mode of autonomy only at the township level and below the village level. The essence of this model is to give full play to grass-roots democracy. However, in reality, grass-roots organizations that lack a standardized system are in a natural weak position when facing the township government with the background of state power. The soft law governance that needs to be established by grass-roots self-government forces is bound to be restricted by administrative power. It is a common phenomenon that villages in the jurisdiction copy the government's model of township regulations and people's agreements. Excessive intervention of state power violates the original intention of setting up soft law governance.<sup>[5]</sup>

Third, China's soft law lacks a complete system. At the level of soft law formulation, there are some problems such as nonstandard procedures and unreasonable contents. In the procedure of soft law formulation, the autonomy charter that should be made openly and transparently has been reduced to the rule of a few people in some areas. For example, Yancun Village and Nanganchi Village in Changgou

Town, Fangshan District, Beijing haven't even made village rules and regulations, and villagers' autonomy matters are generally carried out by "one thing, one discussion". In the content of soft law, the substance is often lacking. For example, in Dongyuan Village, Dongxiang, Gansu Province, there are too many propaganda slogans and too few specific measures, so there is no operability.<sup>[6]</sup> Some soft rules are copies of national policies and laws, and lack of practical operability. For example, in a certain community in Zhejiang, the regulation of regularly throwing garbage in response to the call of garbage sorting was implemented, but the regulation did not take into account the actual situation of the community, resulting in overtime garbage being piled up in the basement.

In the implementation of the soft law, the formulated soft law has become a dead letter, and citizens' lack of autonomy concept leads the masses to distrust the soft law and choose to go to judicial channels or petition. Moreover, there is a lack of review mechanism in the supervision of soft law. Although the township government enjoys the power of filing and review, it lacks the detailed rules of actual operation. Based on the principle of doing less and making fewer mistakes, in practice, it is often only prepared and not checked.

## **5. Optimization Path of Soft Law Governance**

As a new model of grass-roots governance, soft law governance inevitably leads to the above problems in theory and practice. After systematically analyzing the above problems, the author puts forward some targeted measures, hoping to bring a reasonable optimization path to grass-roots soft law governance.

### ***5.1. Expanding Education on the Concept of Grassroots Civil Governance***

In order not to let the perfect system design go up in the air, it is particularly important to improve people's cultural level and expand their knowledge level to adapt to the autonomous system. Cultivating people's concept of autonomy can expand the participation of grassroots people and make soft law more scientific while retaining the attributes of public opinion. At the same time, it can optimize the problem that soft law encroaches on citizens' personal life excessively in the name of "kindness" and under the pretext of "serving the public".<sup>[7]</sup>

The expansion of education can be carried out in various forms, such as holding regular symposiums and lectures on law popularization, setting up organizations with similar functions as universities for the elderly in villages, and regularly carrying out cultural themed activities, etc. The popularization of soft law foundation is interspersed in various forms, so as to achieve the purpose of promoting the concept of autonomy.<sup>[8]</sup>

### ***5.2. Promote the Full Sinking of Administrative Power***

In the face of the excessive interference of administrative power in grass-roots autonomy, we should continue to deepen the reform of law enforcement system of decentralization, tighten the expansion and penetration of administrative power, and fully give respect to the masses' self-management and self-optimization. At the same time, we should establish a reasonable and effective evaluation system for the quality of grass-roots work, rationalize the evaluation of local governments, refuse quantitative standards, and let the government change its mode to a service-oriented and overall-oriented government.

### ***5.3. Implement the "Soft and Hard" Governance Model***

First, it's beneficial to implement the "soft and hard" mode based on hard law and supplemented by soft law. First of all, we should strengthen the understanding of the origin, that is, the soft law must operate on the premise that it does not violate the national statutory law. In order to strengthen the foundation of hard law, it can start with the deployment and thinking training of social organization cadres in the village. Second, to absorb and transform to solve the conflict between hard and soft law. Transformation refers to embedding the will of the state to enact laws into the village rules and regulations, ensuring the implementation of the will of the state. After the village rules and regulations are formulated, they will be put on record and examined by the examination authorities, and the procedural mechanism and responsibility mechanism for filing and examination will be clarified, so as to urge the government to earnestly perform its statutory duties. Absorption means embedding the reasonable content of village rules and regulations into the national legislation system. When conditions

are suitable and mature, some village rules and regulations can be raised to the level of national legislation, so as to highlight the complementarity between village rules and regulations and national legislation.

## 6. Conclusion

On the road of exploring the feasible mechanism of soft law governance at the grassroots level, "Fengqiao Experience" is the best sample. The Fengqiao experience, with democratic consultation, mediation mechanism, and multi-organizational linkage mechanism as specific elements, can increase the color of democratic governance, and reflect the characteristics of soft law full of human feelings, flexibility and soft binding.

Although there are still many problems in the application of soft law in grassroots governance, expanding education on the concept of people's governance, promoting the sinking of administrative power, and implementing a comprehensive governance model of "soft and hard" is a feasible optimization path. The "Fengqiao experience" can guide us to use more open thinking to govern the grassroots, give people more participation, deepen the legal structure of grassroots governance, and contribute to the construction of China's rule of law.

## References

- [1] Luo Haocai, Song Gongde. *Taking soft law seriously--the general theory of soft law in the public domain and its practice in China*[J]. *Chinese Jurisprudence*, 2006(02):20.
- [2] Chu Cheng. *An analysis of the profound connotation of "Fengqiao experience" in the new era--a research summary of the innovation practice of Jiangxin community governance in Zhuji City, Zhejiang*[J]. *National Governance*, 2018(29):46.
- [3] Cao Mingyu, "Exploring the multi-organizational linkage system of third sector community-based elderly care services in Scotland, UK," *Chinese Administration*, 2020(01):144.
- [4] Xing Hongfei, Han Yi. *Interpretation of the connotation of soft law governance in Chinese context* [J]. *Administrative Law Research*, 2012(03):3-8.
- [5] Yin Yuhai and Yu Jiaying. *The development of soft law system in outer space and its value judgment* [J]. *Journal of Beijing University of Aeronautics and Astronautics (Social Science Edition)*, 2019, 32(01): 106-117.
- [6] Gao Qicai, etc.: *Laomayi Deleuse in Longyuan Township, China University of Political Science and Law Press*, 2014, 50.
- [7] Zhou Wei. *Exploring the innovation of grassroots social governance model in China* [J]. *Guangxi Social Science*, 2020(10):66-70.
- [8] Xu Yong. *County government, rural faction, and village governance: the structural transformation of rural governance* [J]. *Jiangsu Social Science*, 2002(02):29.