

China Insights

Lin Li

The Chinese Road of the Rule of Law

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The Chinese Road of the Rule of Law



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Series Foreword

Since the Opium War, modern China has come under attack and been bullied for its backwardness; this cultural circumstance has given many Chinese people a psychological inferiority complex, as China has lagged behind other countries technologically, institutionally, and culturally. Efforts to change the situation in which Western countries were strong but China was weak and to revitalize China needed to start with cultural criticism and culture renovation. Therefore, the Chinese people turned their eyes to the outside world and learned from Japan, Europe, the USA, and even Soviet Russia. We have always been overwhelmed by stress and anxiety and have had a burning desire to reverse the state of being bullied as a result of underdevelopment, poverty, and weakness and to catch up with and surpass the Western powers. In pursuing the more than one-hundred-year-old dream of building a powerful country and reviving China, we have focused on understanding and learning from others, but seldom, if ever, have others learned from and understood us. This has not greatly changed in the course of modernization since China's reform and opening up in 1978. The translation and introduction of many Western works in the 1980s and 1990s is a very good example. This is the history of the Chinese people's understanding of the relationship between China and the rest of the world since the beginning of modern times.

At the same time, in pursuing the dream of turning China into a powerful country and rejuvenating it through material (technological) criticism, institutional criticism, and cultural criticism, the Chinese people have struggled to find a path that would make the country prosperous and the people strong while preventing the country from being ruined and the race from being destroyed. This path first represents a thought, a banner, and a soul. The key issue has been what kind of thought, banner, and soul can save the country, making it prosperous and the people strong. For more than one hundred years, the Chinese people have constantly carried out experiments and attempts amidst humiliation, failure, and anxiety. They have experienced failure in adopting advanced Western technology and thought on the basis of safeguarding China's feudal system and practicing a constitutional monarchy after the collapse of the Western capitalist political path and a great setback in worldwide socialism in the early 1990s. The Chinese people ultimately

embarked on a path toward a successful revolution with national independence and liberation; in particular, they have adopted a path leading to the socialist modernization of China—a road toward socialism with Chinese characteristics—by combining the theoretical logic of scientific socialism with the historical logic of China’s social development. After more than 30 years of reform and opening up, China’s socialist market economy has rapidly developed; tremendous achievements have been made in economic, political, cultural, and social constructions; comprehensive national strength, cultural soft power, and international influence have substantially improved; and a great success has been achieved in socialism with Chinese characteristics. Although the latter project has not yet become full-fledged, its systems and institutions have basically taken shape. After more than one hundred years of pursuing dreams, China is rising among the nations of the world with a greater degree of confidence in the path it has chosen, the theory it has adopted, and the institutions it has created.

Meanwhile, we should be aware that given the long-standing cognition and cultural psychology of learning from Western countries; we seldom take the initiative in showcasing ourselves—historical China and current China in reality—to the world, though China has emerged as a great world power. Due to a deeply rooted view that “Western countries are strong and China is weak,” developed through Western-Chinese cultural exchanges, Western people and nations seldom have a sense of Chinese history or the current developments in China, let alone an understanding of China’s developmental path and such in-depth issues as the scientificity and effectiveness of China’s theory and institutions or their unique value for and contributions to human civilization. As self-recognition is not displayed, the “China Collapse Theory,” “China Threat Theory,” “China State Capitalism,” and other so-called theories coined by certain people with ulterior motives and differing political views have been widely spread.

During our development, based on “crossing the river by feeling the stones,” we have paid attention to learning from Western countries, understanding the world and learning to know ourselves through Western experience and discourse but have neglected self-recognition and efforts to let others know us. When we strive to become part of the world in a more tolerant and friendly way, we are not objectively, truly understood. Therefore, we should describe the path to the success of socialism with Chinese characteristics, tell Chinese stories, disseminate Chinese experiences, use international expressions to show a real China to the world, and help people around the world realize that the Western manner of modernization is not the endpoint of human historical evolution and that socialism with Chinese characteristics is also a valuable treasure of human thought. This is undoubtedly a very important task for an academic cultural researcher with a sense of justice and responsibility.

In this connection, the Chinese Academy of Social Sciences organized its top-notch experts and scholars and several external experts to write the China Insights series. This series not only provides an overview of China's path, theories, and institutions but also objectively describes China's current development in the areas of political institutions, human rights, the rule of law, the economic system, finance, social governance, social security, population policies, values, religious faith, ethnic policies, rural issues, urbanization, industrialization, ecology, ancient civilization, literature, art, etc., thus depicting China in a way that helps readers visualize these topics.

We hope that this series will help domestic readers more correctly understand the course of the more than 100 years of China's modernization and more rationally look at current difficulties, enhance the urgency for and national confidence in comprehensively intensifying reform, build a consensus on reform and development and gather strength in this regard, as well as deepen foreign readers' understanding of China, thus fostering a better international environment for China's development.

Beijing, China
January 2014

Zhao Jianying

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Chapter 1

Introduction: The Road and Theory of Socialist Rule of Law with Chinese Characteristics



The Decision of the CPC Central Committee concerning Several Major Issues in Comprehensively Advancing Governance by Law, adopted at the Fourth Plenary Session of the Eighteenth CPC Central Committee (hereinafter referred to as the Decision), has for the first time in history made an overall strategic arrangement in the form of the highest-level political document of the ruling party for the construction of the system of socialist rule of law with Chinese characteristics and a socialist state under the rule of law, for promoting and safeguarding the construction of socialism with Chinese characteristics, for modernizing the system and capacity of state governance, and for deepening in an all-round way various reforms under new situation by comprehensively advancing governance by law and strengthening the construction of the rule of law, thereby providing important institutional and legal safeguards for building China into a moderately well-off society in an all-round way and for realizing the Chinese dream of rejuvenating the Chinese nation. The Decision expounds the CPC's political idea and strategic thinking of ruling the country by law and draws a grand blueprint of construction of socialist state under the rule of law. As a programmatic document on comprehensive advancement of ruling the country by law, it is of profound realistic and historical significance.

1.1 Taking the Road of Socialist Rule of Law with Chinese Characteristics

The road of socialist rule of law with Chinese characteristics is the concentrated embodiment of the achievements and experiences, as well as the only correct road, of the construction of socialist rule of law in China. At its very beginning, the Decision unequivocally makes the important assertion that China must adhere to the road and construct the system of socialist rule of law with Chinese characteristics and build itself into a socialist country under the rule of law, thereby clarifying the connotation,

defining the nature, and pointing out the direction of the work of comprehensively advancing governance by law.

The question of road is the most basic question because road determines the fate and the future. The socialist road with Chinese characteristics is the product of the combination of the basic principles of scientific socialism and the actual situation and characteristics of the times in China, the basic achievements made by the CPC and the Chinese people in the long-term practice, and a correct road that is deeply rooted in the Chinese soil, reflects the will of the Chinese people, and adapts to the demands of the progress of China and development of times. The socialist road with Chinese characteristics means that China should, under the leadership of the CPC, proceed from the basic national situations, take economic construction as the center, adhere to the Four Cardinal Principles and to the reform and opening up, liberate and develop social productive forces, construct socialist market economy, socialist democratic politics, advanced socialist culture, socialist harmonious society, and socialist ecological civilization, promote the comprehensive development of the human being, gradually realize the common prosperity of the whole people, and built itself into a prosperous, democratic, civilized, harmonious and modernized socialist country. The road of socialist rule of law with Chinese characteristics is an indispensable and important component of the road of socialism with Chinese characteristics and the basis of comprehensive advancement of governance by law and construction a socialist state under the rule of law.

The road of socialist rule of law with Chinese characteristics is a choice made by history and the Chinese people, as well as an inevitable demand of social development in China. China is an ancient country with a history over 5000 years. The traditional Chinese legal system is a long-standing, well-established and unique legal system in the world. Ancient China had made great contributions to the legal civilization of mankind. After the Opium War in 1840, China was gradually reduced to a semi-colonial and semi-feudal society. To change the suffering fate of the state and the nation, some people with lofty ideals tried to transplant the western political system and the rule of law model into China. In an important speech given in commemoration of the 60th anniversary of the establishment of the National People's Congress, Party Secretary-General Xi Jinping pointed out that, after the Revolution of 1911, China had tried many different political systems, such as constitutional monarchy, restoration of the monarchy system, parliamentary system, multi-party system, and presidential system, and various political forces and their representatives had entered into political arena one after another, but none of them had found the correct solution to China's problem: China remained a poor and weak country rent by disunity and tyrannized and exploited by imperialist powers and Chinese people were still living in misery and humiliation. Facts have proved that the democratic revolution led by bourgeois revolutionists and various plans of copying western model of political system had all failed to complete the historical mission of national salvation and combating imperialism and feudalism, or to achieve political and social stability, let alone to provide institutional safeguard for national prosperity and people's happiness. Under the leadership of the CPC, Chinese people were finally able to overturn the "three big mountains", realize democracy, gain control of state political power,

become the masters of the country, and after revolution, construction, reform and development, gradually embark on the road of developing socialist democracy and constructing a socialist country under the rule of law.

The road of socialist rule of law with Chinese characteristics is the road of development of the rule of law taken by the CPC on the basis of long-term practice of constructing socialist democracy and the rule of law since the establishment of the New China, especially the practice of comprehensively implementing the basic strategy of ruling the country by law, speeding up the theoretical research, practical exploration and institutional innovation on the construction of a socialist country under the rule of law, continuously deepening the understanding of socialism with Chinese characteristics, of socialist democratic politics with Chinese characteristics and of the policy of comprehensively advancing the rule of law and constructing a socialist state under the rule of law since the Fifteenth Party Congress. It is the correct road chosen by the CPC by proceeding from the national conditions and the realities in China, taking the construction of a moderately well-off society in an all-round way and realizing the great rejuvenation of the Chinese nation as its strategic objectives, summarizing the practical experience of construction of socialist rule of law in China, drawing on the beneficial results of development of the rule of law civilization in other countries, and absorbing the nutrients from the essence of the traditional Chinese legal culture; it is a historical achievement made by the CPC over a long period of time, especially since the Third Plenary Session of the Eleventh CPC Central Committee, by summarizing the successful experiences and profound lessons in the construction of socialist rule of law, namely, in order to safeguard people's democracy, the CPC must strengthen the rule of law, institutionalize democracy and bring it under the law, take ruling the country by law as its basic strategy of state governance, and actively construct socialist rule of law. The road of socialist rule of law with Chinese characteristics is the product of the unity of history and reality and the combination of theory and practice. It has its own space-time orientation and epoch characteristics in the following four coordinates of historical position.

Firstly, compared with the rule of law mode and road of western capitalist countries such as UK, France, Germany and US, which are of capitalist nature, the rule of law mode and road in China is of socialist nature. These two roads or modes of rule of law are of totally different natures and should never be confused with each other and China should never copy the rule of law mode of western capitalist countries. Practice has shown that "blindly copying the political systems of other countries would never work, even ruin the future of the nation because foreign political systems are not compatible with the national conditions in China and blindly copying them is like trying to draw a tiger, only to end up with the likeness of a dog." Adhering to the socialist nature and the socialist road of rule of law is a basic premise of comprehensively advancing the rule of law and constructing a socialist state under the rule of law. This is an issue of position, principle and direction that allows of no doubt and cannot be discussed. It is also an essential requirement of the construction of socialist rule of law with Chinese characteristics.

Secondly, compared with the rule of law mode and the rule of law road of the former Soviet Union and former socialist countries in Eastern Europe and contempo-

rary socialist countries like Vietnam and Cuba, the rule of law road taken by China is a socialist road of rule of law with “Chinese characteristics”. The historical gene of the Chinese nation, the historical and cultural traditions, and the current reality and social conditions in China have determined that China must take the road of socialist rule of law with Chinese characteristics and that it can only draw on, but never copy or clone, the mode and road of the rule of law in the Soviet Union, Vietnam and other socialist countries.

Thirdly, compared with the ideal socialist society expounded and described by classic Marxist writers, China is currently at the primary stage of socialism and will remain at this stage for a long period of time. Therefore, “the construction of the rule of law in China at the current stage still has many problems and cannot meet the demand of the development of various causes and undertakings of the Party and the state, the expectations of the people, and the objective of the modernization of the state governance system and governance capacity. The main manifestations of these problems are the followings: some laws and regulations have failed to reflect objective laws and the will of the people, lack pertinence and operability and there is a prominent tendency of departmentalization, scrambling for power and shirking responsibilities in the legislative work; the phenomena of non-compliance with law, slack enforcement of law, failure to bring lawbreakers to justice, detachment of powers and responsibilities in the law enforcement system, duplicate law enforcement, selective law enforcement, irregular, lax, non-transparent, and uncivilized, unfair, and corrupt enforcement of law and administration of justice are still prevalent and have caused great concern among the general public; some members of society lack the awareness of respecting the law, trusting the law, observing the law, applying the law and upholding their rights in accordance with the law; some state personnel, especially leading cadres, lack the consciousness of and the capacity for acting in accordance with law and the phenomena of knowingly violating the law, replacing the law by personal views, suppressing the law with power, and bending the law for personal gain still exist.” All these problems, which are inevitable at the primary stage of socialism, contravene the principles of socialist rule of law, harm the people’s interests, and impede the development of the Party and the state. Therefore no effort should be spared in solving these problems in the process of advancement of the rule of law in China.

Fourthly, compared to the traditional legal culture and legal system in Chinese history, the road of the rule of law taken by China today is a modern road of the rule of law. It is a mode of rule of law that adheres to openness, inclusiveness, and disciplinary innovation, and represents advanced productive force, advanced production relations and advanced culture. It is the result of long-term development, improvement and endogenous evolution on the basis of Chinese historical and cultural traditions and economic and social development and of drawing on the beneficial results of the rule of law civilization of all mankind. Therefore, the road of socialist rule of law with Chinese characteristics carries forward the fine tradition of traditional Chinese legal system and traditional Chinese legal culture by making the past serve the present and bringing forth the new through the old while at the same time adapts foreign things for Chinese use and advances with the times, thereby bringing state governance under

the rule of law in the process of promoting the modernization of state governance and building China into a strong modern socialist power in the process of peaceful rise of the Chinese nation.

Adhering to the road of socialist rule of law with Chinese characteristics means adhering to the CPC's leadership, to the system of socialism with Chinese characteristics, and to the theory of socialist rule of law with Chinese characteristics. The road, theoretical system and institutions of socialism with Chinese characteristics are the bases of comprehensive advancement of the rule of law in China. The CPC's leadership is the most essential characteristic of socialism with Chinese characteristics and the most basic guarantee of socialist rule of law. The socialist system with Chinese characteristics is the fundamental institutional basis of the system of socialist rule of law with Chinese characteristics and the basic institutional guarantee of comprehensive advancement of governance by law. The theory of socialist rule of law with Chinese characteristics is the theoretical guidance and support of the system of socialist rule of law with Chinese characteristics and the guideline of comprehensive advancement of governance by law in China.

The above three aspects are in essence the core elements of the road of socialist rule of law with Chinese characteristics that determines and guarantees the institutional attributes and direction of development of the system of socialist rule of law with Chinese characteristics.

The CPC's leadership is the premise, the key and the guarantee of adhering to the road of socialist rule of law with Chinese characteristics. The Decision points out that adhering to the CPC's leadership is a basic demand of socialist rule of law, the foundation and lifeline of the CPC and the state that has a direct bearing on the interest and welfare of the people of all nationalities in the whole country, and an element inherent in the comprehensive advancement of the rule of law in China. The CPC's leadership is consistent with socialist rule of law. The socialist rule of law must adhere to the CPC's leadership and the CPC's leadership must rely on socialist rule of law. Only under the CPC's leadership can the rule of law be implemented, the people become the masters of the country, and the state and social life be brought under the rule of law in an orderly way. Implementing the CPC's leadership in the whole process and all aspects of governance by law is one of the basic experiences of construction of socialist rule of law in China. The CPC must use the rule of law thinking and rule of law method to promote governance by constitution and governance by law, and make sure that itself is able to lead the legislation, ensure the enforcement of law, support administration of justice, and take the lead in observing the law. Advancing governance by law in an all-round way will never weaken the CPC's leadership, but, on the contrary, will reinforce the ruling basis, strengthen the ruling authority, enhance the ruling capacity, and raise the ruling level of the CPC.

Adhering to the road of socialist rule of law with Chinese characteristics means adhering to the system of socialism with Chinese characteristics, which consists of the basic political system of people's congresses, the system of multi-party cooperation and political consultation led by the CPC, the system of regional national autonomy, the system of community level self-governance, the socialist legal system, the basic economic system of taking public ownership as the mainstay of the economy and

allowing diverse forms of ownership to develop side by side, and various economic, political, cultural and social systems as well as various concrete institutions built on the above-mentioned basic political and legal systems. Adhering to the road of socialist rule of law with Chinese characteristics relies on the system of socialism with Chinese characteristics as its fundamental institutional basis. The comprehensive advancement of governance by law and the construction of the system of socialist rule of law with Chinese characteristics and of a socialist state under the rule of law relies on the system of socialism with Chinese characteristics as its basic institutional safeguard. Without this institutional basis and fundamental institutional safeguard, the comprehensive advancement of governance by law will be like a tree without roots, the construction of socialist rule of law will become water without a source, the system of socialist rule of law will become a castle in the air, and the development of socialist rule of law with Chinese characteristics will inevitably go down the wrong path.

In order to unswervingly follow the road of socialist rule of law with Chinese characteristics, China must take the theory of socialist rule of law with Chinese characteristics as its theoretical and practical guidance and support. The theory of socialist rule of law with Chinese characteristics is the product of combination of universal principles of Marxism, the Marxist theories of state and law and the practice of construction of socialist rule of law with Chinese characteristics, an important component of the theoretical system of socialism with Chinese characteristics, the epitome of the spirit, the culture, the consciousness, the idea, the core values, as well as the theoretical system of socialist rule of law, and the theoretical basis and practical guidance of comprehensive advancement of governance by law and construction of a socialist state under the rule of law. The core of the theory of socialist rule of law with Chinese characteristics is to take Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the important “Three Represents” Thought, and the Scientific Outlook on Development as the guidance, implement in a deep-going way the spirit of a series of important speeches given by Party Secretary General Xi Jinping’s, adhere to the organic unity of upholding CPC’s leadership, the people being masters of the country, and ruling the country by law, unswervingly march the road of socialist rule of law with Chinese characteristics, and firmly uphold the authority of the Constitution and laws, the people’s rights and interests, social justice, national security and social stability, so as to provide powerful rule of law guarantees for the realization of the “Two Centuries” struggle objectives and the Chinese dream of the great rejuvenation of the Chinese nation.

In order to unswervingly adhere to the road of socialist rule of law with Chinese characteristics, China must advance in an all-round way the general objective of ruling the country by law, construct the system of socialist rule of law with Chinese characteristics, and build China into a socialist state under the rule of law. As the Decision clearly points out, this general objective requires that “the Chinese people, under the leadership of the Chinese Communist Party, persist in the system of socialism with Chinese characteristics, implement the theory of socialist rule of law with Chinese characteristics, shape a perfect system of legal norms, a highly effective system for the implementation of the rule of law, a strict system for rule of law supervision, and a powerful system of rule of law guarantees, develop a sound sys-

tem of intra-Party regulations, simultaneously advance governance by law, exercise of the ruling power by law and administration by law, persist in the unified construction of a law-based country, a law-based government and a law-based society, realize scientific legislation, strict law enforcement, fair administration of justice, and observance of law by the entire population, and promote the modernization of the state governance system and governing ability.”

This general objective has the following significances: firstly, it announces to the world that China will unswervingly take the road of the socialist rule of law with Chinese characteristics, which is the concentrated embodiment of the achievements and experiences of the construction of socialist rule of law and the only correct road of constructing a socialist state under the rule of law. The CPC must send a correct and clear message to the whole society on the question of what road the rule of law China should take. Secondly, it clearly pinpoints the key link in comprehensive advancement of governance by law in China, which involves many aspects of work. In the practical work, there must be a key link that can be used to grasp the overall situation and propel the work in various fields. This key link is the construction of socialist system of the rule of law with Chinese characteristics. The work in all fields of governance by law must be planned and carried out around this key link.

Thirdly, constructing the system of socialist rule of law with Chinese characteristics and building a socialist state under the rule of law is a necessary requirement of the modernization of the system and ability of state governance as well as of comprehensive deepening of the reform. It is conducive to promoting the modernization of the system and ability of state governance, to advancing in an all-round way various aspects of the work of ruling the country by law within the framework of deepening the reform in an all-round way, and to the continuous deepening of the reform on the track of the rule of law.

1.2 Adhering to the Theory of Socialist Rule of Law with Chinese Characteristics

The theory of socialist rule of law with Chinese characteristics, which is a scientific theoretical system based on the road and the system of socialist rule of law with Chinese characteristics and the practice of advancing governance by law in an all-round way in China, consists of following main components:

First, the system of theories and thoughts on the values of socialist rule of law with Chinese characteristics, which involves the categories and contents of political philosophy, philosophy of law, and the theoretical system of socialism with Chinese characteristics and consists of following five parts: (1) Marxist theories of the state and law, including Marxist outlooks on the state, political parties, democracy, law, the rule of law, human rights, equality, justice and power, as well as Marxist legal thinking; (2) The spirit, consciousness, ideas, values, and principles of socialist rule

of law, the socialist principle of constitutionalism,¹ the thought, ideology, culture, and doctrine of the socialist rule of law, etc.; (3) the systems of theory, discipline and curriculum of socialist law science with Chinese characteristics; (4) the rule of law attitude, mentality, preference, feeling, perception, standpoint, and believe of citizens and civil servants; and (5) theories on the general principles, values, functions, doctrines, methodologies, and knowledge of the rule of law.

Second, the theoretical system of institutional norms of socialist rule of law with Chinese characteristics, which involves such categories and contents as basic institutions, legal norms, procedure, and structure of the rule of law and mainly consists of the following four parts: (1) Theories on state constitution and constitutionalism, such as those on the fundamental political system provided for in the Constitution (the people's congress system) and other basic political systems (the system of regional national autonomy, the system of multiparty cooperation and consultation under the leadership of the CPC, the system of democratic self-governance at the grassroots, and the system of special administrative regions), those on basic economic, social, and cultural systems in China, the system of socialist democratic election, the system of human rights protection, the legislative system, and the socialist legal system with Chinese characteristics; (2) theories on the system of socialist rule of law with Chinese characteristics, such as the system of supervision over the implementation of the constitution, the system of laws and administrative regulations, the system of the implementation, supervision and safeguarding of the rule of law, and the system of intra-Party regulations; (3) theories on the law-based government with Chinese characteristics, administration by law and administrative law enforcement system, judicial power, judicial system, judicial procedure, legal supervision system, the system of fair administration of justice, and the system of exercising the ruling power by law; (4) basic theories on the general system, institutions, procedures, rules, norms and framework of the rule of law.

Third, theories on the actual operation of the socialist rule of law with Chinese characteristics, which involve such categories and content as the application of the rule of law theory, the rule of law behavior, the rule of law practice and the operation of the legal system and mainly consist of the following five parts: (1) Theories on various links in the construction of the rule of law, including scientific legislation, strict law enforcement, judicial fairness and respect for the law by the entire population; (2) theories on various aspects of implementation of the rule of law, such as ruling the

¹The principle of constitutionalism mainly includes the following principles: the principle of popular sovereignty, according to which people are the masters of the country; the principle of the rule of law, namely the supremacy of the Constitution and laws; the principle of human rights, namely respecting and safeguarding human rights; the ruling principle, namely the principle of democratic politics and scientific and law-based exercise of the ruling power; the principle of fair, efficient and clean administration of justice; and the principle of supervision over power. The principle of the rule of law mainly has the following content: the universality, the openness, the definiteness, the stability, and the predictability of the rule of law; the non-retroactivity of law; the equality before the law; *nullum crimen sine lege*; the organic unity of the Party's leadership, the people being masters of the country and ruling the country by law; combing the rule of law with the rule of virtue; and proceeding from the national conditions while learning from and drawing on the positive results of development of the rule of law civilization of mankind.

country by law, administration by law, exercising the ruling power by law, running the armed forces by law, and acting by law; (3) theories on various fields of development of the rule of law, including those on a state under the rule of law, government under the rule of law, society under the rule of law, economy under the rule of law, rule of law politics, and rule of law culture; (4) theories on running the Party in accordance with regulations and exercising ruling power by law, including those on the requirements that the ruling party acts within the scope of the Constitution and laws, exercises leadership over the legislation, ensures the enforcement of law, supports administration of justice and takes the lead in observing the law; and (5) basic theories on the general patterns, characteristics, mechanisms, behaviors and modes of the operation of the rule of law.

Fourth, theories on relations of socialist rule of law with Chinese characteristics, which involve such phenomena and contents as the external relations affecting the existence and development of the rule of law, the coexistence of and interaction between the rule of law and various factors and mainly consist the following seven kinds of relations: (1) relations between the socialist rule of law with Chinese characteristics and the road, theory and system of socialism with Chinese characteristics, the deepening of reform in an all-round way, the building of a moderately well-off society in an all-round way, and the Chinese dream of the great rejuvenation of the Chinese nation; (2) relations between the socialist rule of law with Chinese characteristics and the market economy, democratic politics, harmonious society, advanced culture, and ecological civilization; (3) relations between the socialist rule of law with Chinese characteristics and morality, discipline, policy, intra-Party regulations, customs, village regulations and agreements, social norms on self-governance and other social norms; (4) relations between the socialist rule of law with Chinese characteristics and democracy, freedom, human rights, equality, justice, security, order, dignity, harmony, authority, peace, and happiness; (5) relations between the socialist rule of law with Chinese characteristics and promotion of development, upholding of stability, establishment of order, and resolution of conflicts and disputes; (6) relations between the socialist rule of law with Chinese characteristics and political parties, religion, ruling the country by virtue, running the Party in accordance with regulations, modernization of state governance, and good law and good governance; and (7) relations between the socialist rule of law with Chinese characteristics and the rule of law civilization of mankind, western legal theories, traditional Chinese legal system, theories of international governance, and the advancement of the global rule of law.

The main features of the socialist rule of law with Chinese characteristics are determined by its nature, road and theory. The rule of law is a symbol of the progress of human civilization. The socialist rule of law with Chinese characteristics is a unique and exotic flower in the garden of the rule of law civilization of mankind, a theoretical, institutional and practical system of socialist rule of law that is compatible with the actual situation in China, has Chinese characteristics, and embodies the objective law of social development. The socialist rule of law with Chinese characteristics is a huge system that consist of content at the following three levels: at the first level are theoretical value and spiritual culture of socialist rule of law with Chinese

characteristics, including the values of socialist rule of law, the spirit, consciousness, theory, belief and culture of the rule of law, and the authority of the constitution and laws—which constitute the spiritual support and theoretical basis of socialist rule of law with Chinese characteristics; at the second level are the institutional and operation systems of the socialist rule of law with Chinese characteristics, including a complete system of legal norms, a highly efficient implementation system, a strict supervision system, a powerful safeguarding system, a sound intra-Party regulations system—which constitute the legal institutional support and operational mechanism of the socialist rule of law with Chinese characteristics; at the third level are the behaviors, activities and practical operation of the socialist rule of law with Chinese characteristics, including scientific legislation, strict enforcement of law, fair administration of justice, and observance of law by the entire population, the principle that laws must be observed and strictly enforced, and lawbreakers must be prosecuted, and the principles of exercising the ruling power by law, administration by law, acting by law, resolution of disputes by law—which constitute the practical bases and ways of realization of the socialist rule of law with Chinese characteristics.

Under the precondition of adhering to the socialist rule of law with Chinese characteristics and on the basis of proceeding from the national conditions and taking the road of socialist rule of law with Chinese characteristics, China must also pay attention to drawing on and absorbing the useful foreign experiences of construction of the rule of law and the achievements made by all mankind in the development of the rule of law civilization, conform to the trend of the times, and continuously enrich and improve the civilization of socialist rule of law with Chinese characteristics. The socialist rule of law with Chinese characteristics has strong inclusiveness and openness as well as unique cultural characteristics. China should respect the rule of law principles of human political civilization (such as the principle that the government can do nothing except those specifically authorized by law whereas citizens can do anything except those specifically prohibited by law, the principle of *nullum crimen sine lege*, the principle of administration by law, the principle of judicial fairness, and the principle that administration of justice is the last line of defense for social justice), carry out research on the relevant principles of the rule of law (such as the principle of equality of everyone before the law, the principle of non-retroactivity of law, and the principle of the normativity, openness, predictability and justiciability of law), and draw on the rule of law procedures of other countries (such as administrative, criminal, and civil procedures, legislative voting procedure, and administrative decision-making procedure). In a word, “China should adopt an all-inclusive attitude towards the colorful world, study with an open mind the good things in other countries, digest and absorb them and transform them into our own while at the same time maintaining independence and keeping the initiative in our own hands and never indiscriminately copy foreign ideas and institutions. In advancing governance by law, China should “borrow useful experiences of the rule of law from foreign countries, but never blindly copy foreign rule of law ideas and modes”. This is a basic stance and attitude that China must take in adhering to the theory and taking the road of socialist rule of law with Chinese characteristics.

In adhering to the theory and taking the road of socialist rule of law with Chinese characteristics, we must continuously enhance our theoretical self-confidence in the theory of socialist rule of law with Chinese characteristics, our path self-confidence in the road of socialist rule of law with Chinese characteristics, our institutional self-confidence in the system of socialist constitution with Chinese characteristics and the system of socialist rule of law with Chinese characteristics, and our practical self-confidence in the great exploration of advancing governance by law in an all-round way and constructing a socialist state under the rule of law, so as to make new contributions to the construction of the rule of law, to the building of China into a moderately well-off society in an all-round way, and to the realization of the Chinese dream of the great rejuvenating the Chinese nation.

Chapter 2

The Historical Process of Constructing Socialist Rule of Law with Chinese Characteristics



2.1 The Historical Process of Constructing Socialist Rule of Law with Chinese Characteristics

The socialist rule of law with Chinese characteristics was established through the total destruction of the old legal system of the Kuomintang Regime and the adoption of the Soviet mode of socialist legal system in accordance with the Marxist theory of state and law and in light of the action situation of the New-Democratic Revolution in China. After the establishment of the People's Republic of China (PRC) in 1949, the construction of the socialist rule of law with Chinese characteristics has undergone two stages of development—which can be further divided into six periods—along with the tortuous political, economic, social and cultural developments in China.

2.1.1 Construction of the Legal System During the Period Between the Founding of the New China and the Beginning of the Reform and Opening up

2.1.1.1 Laying the Cornerstone of the Legal System of the New China: Between the Establishment of the PRC in October 1949 and the Promulgation of the Constitution in September 1954

The period between the establishment of the PRC in October 1949 and the promulgation of the Constitution in September 1954 was the foundation-laying period of the socialist legal system in China. In the early years of the New China, the legal system mainly served the purposes of upholding the new-born political power, consolidating the proletarian dictatorship, and suppressing class enemies. In February 1949, on the eve of the establishment of the New China, the Central Committee of the Communist Party of China (CPC) promulgated the Instructions to Abolish the Six Codes of the

Kuomintang Regime and Establish the Judicial Principles of Liberated Areas, which announced that: "Under the people's democratic dictatorship, the Six Codes of the Kuomintang Regime should be abolished. The people's judicial work should take the new people's laws, rather than the Six Codes, as its basis." This provision removed the obstacles to and laid the foundation for the complete abolition of the false legal system of the Kuomintang Regime, including the Six Codes and the corresponding legislative, law enforcement and judicial systems, the establishment of the legitimacy of the political system of the People's Republic of China, and the construction of the system of law and the corresponding legislative, law enforcement and judicial systems of the New China. Mr. Zhang Youyu once pointed out that: "We were absolutely right to abolish the Six Codes of the Kuomintang Regime soon after the Liberation because they represented the legal system of the Kuomintang Regime. Without abolishing this legal system, we would not be able to establish our own revolutionary legal system."

In September 1949, the Common Program of the Chinese People's Political Consultative Conference, which served as an interim constitution at that time, and the Organic Law of the Central People's Government were adopted at first plenary session of the Chinese People's Political Consultative Conference. Article 17 of the Common Program provided that: "All laws, decrees and judicial systems of the Kuomintang reactionary government which oppress the people shall be abolished. Laws and decrees protecting the people shall be enacted and the people's judicial system shall be established." These two constitutional laws and other related laws had laid the foundation of the system of law in the early years of the New China.

To meet the needs of political struggle and construction of the legal system in the early years of the New China, the state established a "pluralistic legislative system" for this period of political transition. Under this system, the Chinese People's Political Consultative Conference was responsible for adopting basic state laws; the Central People's Government was responsible for adopting and interpreting state laws and decrees and supervising over their implementation; the Government Administration Council had the power to promulgate resolutions and orders and supervise over their implementation, to abolish or revise the resolutions and orders adopted by various ministries, commissions, bureaus and councils under it and by local governments at various levels that contravened state laws, decrees or the resolutions and orders adopted by the Government Administration Council, and to submit bills to the Central People's Government; people's government councils of greater administrative areas, provinces, cities, and counties had the power to adopt decrees, regulations, and separate regulations in accordance with general principles of organic law of local governments; and organs of self-government of regional national autonomous areas had the power to adopt separate regulations. Such a legislative system had raised the legislative efficiency and markedly speeded up the legislative work at both the central and the local levels, as evidenced by the following laws and regulations adopted in China during this period of time: (1) those establishing organs of state power, such as Common Program of Chinese People's Political Consultative Conference; Organic Law of Chinese People's Political Consultative Conference; Organic Law of the Central People's Government; General Principles of Organic Regulations for

Conferences of People's Representatives from Various Circles; General Principles of Organic Regulations for People's Government Councils of Greater Administrative Areas; General Principles of Organic Regulations for the Government Administration Council of the Central People's Government and Its Subordinate Organs; Provisional Organic Regulations for People's Courts; Provisional Organic Regulations for the Supreme People's Procuratorate of the Central People's Government; General Principles of Organic Regulations for Conferences of People's Representatives from Various Circles of Provinces; General Principles of Organic Regulations for Conferences of People's Representatives from Various Circles of Cities; and General Principles of Organic Regulations for Conferences of People's Representatives from Various Circles of Counties; (2) those aimed at suppressing bandits and counter-revolutionaries, consolidating political power, and upholding social order, such as Regulations on Punishing Counter-Revolutionaries; Provisional Measures for the Control of Counter-Revolutionaries; Regulations on Public Security in Cities; and Regulations on Public Security in Rural Areas; (3) those aimed at restoring the national economy, maintaining economic order and punishing corruption, such as National Guidelines on the Implementation of the Tax Law; Decision on the Unification of Financial and Economic Work; Regulations on the Punishment of the Crime of Interfering with National Currency; Interim Measures for the Prohibition of Carrying State Currency into or out of the Country; Interim Measures for Providing Relief to Unemployed Workers; Regulations on Labor Insurance; Interim Regulations on Private Enterprises; Regulations on the Punishment of Corruption; Measures for Dealing with the Problems of Corruption and Waste and Overcoming Bureaucratism; and Provisional Customs Law; (4) those on land reform and social democratic reform, such as Land Reform Law; Decision on the Identification of Class Status in Rural Areas; Measures for Dealing with Land Properties of Overseas Chinese in the Land Reform; and Marriage Law.

The judicial system of the New China was established along with the establishment of the new-born people's political power. On 1 October 1949 the Central People's Government Council appointed at its first meeting Mr. Shen Junru as the President of the Supreme People's Court and Mr. Luo Ronghuan as the Procurator-General of the Supreme People's Procuratorate of the Central People's Government. On 22 October of the same year, the inaugural meetings of the Supreme People's Court and the Supreme People's Procuratorate of the Central People's Government were held in Beijing, at which Mr. Shen Junru and Mr. Luo Ronghuan formally took office as the President of the Supreme People's Court and the Procurator-General of the Supreme people's Procuratorate of the Central People's Government, respectively. In 1951, the Central People's Government promulgated the Provisional Organic Regulations for People's Courts, Provisional Organic Regulations for the Supreme People's Procuratorate of the Central People's Government, and General Principles of Organic Regulations for Local People's Procuratorates at Various Levels, which provided for the structures, the functions and the powers of people's courts and people's procuratorates at various levels, thereby laying the foundation for the construction from top to bottom of the organizational systems of people courts and people's procuratorates at various levels.