

Research Series on the Chinese Dream
and China's Development Path

Huaide Ma · Jingbo Wang

Building a Government Based on the Rule of Law

History and Development



 Springer

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Research Series on the Chinese Dream and China's Development Path

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History and Development



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Series Preface

Since China's reform and opening began in 1978, the country has come a long way on the path of Socialism with Chinese Characteristics, under the leadership of the Communist Party of China. Over thirty years of reform, efforts and sustained spectacular economic growth have turned China into the world's second-largest economy and wrought many profound changes in the Chinese society. These historically significant developments have been garnering increasing attention from scholars, governments, and the general public alike around the world since the 1990s, when the newest wave of China studies began to gather steam. Some of the hottest topics have included the so-called "China miracle," "Chinese phenomenon," "Chinese experience," "Chinese path," and the "Chinese model." Homegrown researchers have soon followed suit. Already hugely productive, this vibrant field is putting out a large number of books each year, with Social Sciences Academic Press alone having published hundreds of titles on a wide range of subjects.

Because most of these books have been written and published in Chinese, however, readership has been limited outside China—even among many who study China—for whom English is still the lingua franca. This language barrier has been an impediment to efforts by academia, business communities and policy-makers in other countries to form a thorough understanding of contemporary China, of what is distinct about China's past and present may mean not only for her future but also for the future of the world. The need to remove such an impediment is both real and urgent, and the *Research Series on the Chinese Dream and China's Development Path* is my answer to the call.

This series features some of the most notable achievements from the last 20 years by scholars in China in a variety of research topics related to reform and opening. They include both theoretical explorations and empirical studies, and cover economy, society, politics, law, culture, and ecology, the six areas in which reform and opening policies have had the deepest impact and farthest-reaching consequences for the country. Authors for the series have also tried to articulate their visions of the "Chinese Dream" and how the country can realize it in these fields and beyond.

All of the editors and authors for the *Research Series on the Chinese Dream and China's Development Path* are both longtime students of reform and opening and recognized authorities in their respective academic fields. Their credentials and expertise lend credibility to these books, each of which having been subject to a rigorous peer-review process for inclusion in the series. As part of the Reform and Development Program under the State Administration of Press, Publication, Radio, Film, and Television of the People's Republic of China, the series is published by Springer, a Germany-based academic publisher of international repute, and distributed overseas. I am confident that it will help fill a lacuna in studies of China in the era of reform and opening.

Xie Shouguang

Acknowledgements

After a relatively short gestation period, the *Research Series on the Chinese Dream and China's Development Path* has started to bear fruits. We have, first and foremost, the books' authors and editors to thank for making this possible. And it was the hard work by many people at Social Sciences Academic Press and Springer, the two collaborating publishers, that made it a reality. We are deeply grateful to all of them.

Mr. Xie Shouguang, president of Social Sciences Academic Press (SSAP), is the mastermind behind the project. In addition to define the key missions to be accomplished by it and setting down the basic parameters for the project's execution, as the work has unfolded, Mr. Xie has provided critical input pertaining to its every aspect and at every step of the way. Thanks to the deft coordination by Ms. Li Yanling, all the constantly moving parts of the project, especially those on the SSAP side, are securely held together, and as well synchronized as is feasible for a project of this scale. Ms. Gao Jing, unfailingly diligent and meticulous, makes sure every aspect of each Chinese manuscript meets the highest standards for both publishers, something of critical importance to all subsequent steps in the publishing process. That high quality if also at times stylistically as well as technically challenging scholarly writing in Chinese has turned into decent, readable English that readers see on these pages is largely thanks to Ms. Liang Fan, who oversees translator recruitment and translation quality control.

Ten other members of the SSAP staff have been intimately involved, primarily in the capacity of in-house editor, in the preparation of the Chinese manuscripts. It is time-consuming work that requires attention to details, and each of them has done this, and is continuing to do this with superb skills. They are, in alphabetical order: Mr. Cai Jihui, Ms. Liu Xiaojun, Mr. Ren Wenwu, Ms. Shi Xiaolin, Ms. Song Yuehua, Mr. Tong Genxing, Ms. Wu Dan, Ms. Yao Dongmei, Ms. Yun Wei, and Ms. Zhou Qiong. In addition, Xie Shouguang and Li Yanling have also taken part in this work.

Ms. Liu Xiaojun is the SSAP in-house editor for the current volume.

Our appreciation is also owed to Ms. Li Yan, Mr. Chai Ning, Ms. Wang Lei, and Ms. Xu Yi from Springer's Beijing Representative Office. Their strong support for the SSAP team in various aspects of the project helped to make the latter's work that much easier than it would have otherwise been.

We thank Ms. Qi Jun for translating this book and Ms. Sonia Jia Song for her work as the polisher. We thank everyone involved for their hard work.

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He has published more than 20 academic books including monographs such like *Studies on the Construction of Administrative Law System and the Cases, Theories and Practice of the State Compensation Law, Administrative Permission*, and 100 academic papers on the key academic journals such as *Chinese Legal Science, Jurisprudential Study*. He has been in charge of a number of major projects and planning projects funded by National Social Science, key research projects of the Ministry of Education, and research programs of the Ministry of Justice and Beijing Municipality. He directly participated in drafting laws including *State Compensation Law, Administrative Penalty Law, Legislation Law, Administrative Permission Law, Administrative Law Enforcement Law*.

He lectured in the 27th collective study of the Political Bureau of the Central Committee of the CPC on the subject of Reform on Administrative Management System and Economic Law System in December, 2005, and gave lectures on administration according to law to Ministries and other local governments on many occasions. He was the candidate at the state level for the New Century Talents Project sponsored by seven ministries including the Ministry of Personnel. He is the winner of several national prestigious awards, including the Fourth China Ten Outstanding Young Jurists, Eminent Young Teachers under the auspices of Fok Ying Tung Education Foundation, Capital Labor Medal, and Talents of Beijing Municipality for Outstanding Contributions to Science, Technology, and Management. He is also the receiver of government special subsidies approved by the State Council.

Jingbo Wang received her Bachelor's degree of law from Northwest University of Political Science and Law in 1993, a Master's degree of Law from Northwest University of Political Science and Law in 1996, and a doctoral degree of Law from China University of Political Science and Law in 2005. She is now the vice president of the Law-Based Government Institute of China University of Political Science and Law; professor; and advisor of doctoral students. Her representative publications are *Studies on the Issues of Administrative Law in Higher Education*, *Studies on EU Administrative Law*, *Urban Management and Administrative Law Enforcement*, and others. She has also edited a number of textbooks, including *Introduction to State Compensation Law*, *Administrative Law*, and *Law of Administrative Procedure*. Professor Wang has published more than 50 academic papers in journals such as *Jurisprudential Study*, *Political and Legal Forum*, *Administrative Law Review*, and so forth.

She has been in charge of over 10 R&D projects such as National Social Science Fund, *Researches on Social Society of the Ministry of Education*, *Researches on the Legal Construction and Theories of the Ministry of Justice*, *Philosophy and Social Science of Beijing*. She once went to University of Paris I and Yale University as a visiting scholar. She was awarded the third prize of the National Teaching Materials of Jurisprudence and Achievements in Scientific Research of the Ministry of Justice, the first prize of the First Outstanding Achievements in the Science of Law. In 2011, she was selected as the New Century Elite of the Ministry of Education.

Abstract

The book on a government based on the rule of law summarizes and analyzes China's experiences and lessons as it strives to build a government based on the rule of law. It takes an in-depth look at what the country has achieved, problems it has faced and still does, and direction for future development in this area. The contents of the book mainly include: the historical development, achievements, and motivation mechanism of the construction of the government based on the rule of law; the development of administrative legislation, survey of administrative legal system in China, and the characteristics of the administrative legislation development; reform of the administrative examination and approval system and reform of the administrative permit system; reform of Chinese social security system, welfare state and government benefits, and the development of Chinese administrative law; sources of due process concept, the experience in and the development trend of administrative procedure legislation in China; government information and its elements, disclosure, problems, and development trend; history and current situation of emergency response management, reform of the public emergency response mechanism, and improvement of emergency requisition laws and regulations; development of administrative review system, problems encountered in practice, causes and improvement; development and improvement of administrative litigation system, achievements, and current situation; and historical development of state compensation system, responsible government, and development of administrative accountability system. In the book, the authors base their studies on the practice of administration according to law in China, absorb and draw lessons from a large number of relevant research results at home and abroad and, on the basis of profound analysis of the construction of the rule of law in China, put forward targeted countermeasures and suggestions which accord with the developing trend of the construction of the rule of law in China.

Chapter 1

Building a Government Based on the Rule of Law in China, 1949–Present: A Historical Review



At its core, a government based on the rule of law is subject to regulation by law in its exercise of power. A government's mode of operation is closely related to the country's political system, especially, the governance model of the ruling party. In the early time of New China, the ruling party did not have a definite goal of constructing the rule of law. Instead, it adopted the rule of policy for a considerably long time. It is not until China carried out the reform and opened up to the outside world that the government stepped onto the path of the rule of law under the boost of the market economy. The development of government administration mode, therefore, basically consists of two stages: from 1949 to the time of reform and opening up, and after the reform and opening up.

The Chinese government began in earnest to build a government based on the rule of law soon after the founding of the People's Republic of China. "The Common Program of the Chinese People's Political Consultative Conference", which had been passed in September 1949, served as the symbol of this historical endeavor. This document called in no uncertain terms for abolishing all oppressive laws, regulations and statutory system put in place by the Kuomintang (KMT) reactionary government, and replacing them with those that serve to protect and work for the people. However, it is much easier to abolish an old system than to establish a new one. At the time, the ruling party could ill-afford—philosophically, methodologically or practically—to give priority to the construction of a legal system. In 1954, the Constitution of the People's Republic of China was passed and released. However, the gradual development of rule of law was undermined by the Anti-rightist Movement, the Cultural Revolution and many other political movements. In an era when such mantras as "Rebellion is always justified" and "Destruction unto the legal system" held sway, the idea of the rule of law had no chance for survival.

The tragedy of the Cultural Revolution has taught the Chinese people a lesson, which is that safeguarding democracy calls for the strengthening of the rule of law, and establishing democratic institutions and systems of laws that can withstand changes in national leadership, or the personal opinions and focus of attention of the leaders.

1.1 The Development in China of the Government Based on the Rule of Law

The development in China of the government based on the rule of law can be divided into three stages since 1978.

1. Embryo: 1978–1988.

The third Plenary Session of the 11th Central Committee of the Communist Party of China (CPC) held in 1978, which marked the beginning of reform, opening-up and modernization, also ushered in a new era of the construction of the rule of law in China. The idea was embodied in the Constitution of 1982, according to which the fundamental task of the country is to bring together all and any available resources and invest them toward the construction of a modern socialist country, that China would be committed to developing a socialist democracy and improving a socialist legal system, and that “all state apparatus, armed forces, political parties, social organizations, enterprises and institutions shall abide by the Constitution and laws.”¹ Even though it had been written into the Constitution that all the state organs are bound by it, law scholars realized that the rule by law and the rule of law are inherently different: the rule by law refers to the combination of static laws and system, and leaves open the possibility of interference by human agents while the rule of law refers to the various aspects of the operation of the legal system, including its status, mode and process. The latter offers more protection against dictatorship and the whims of any individual or group of individuals. In the late 1970s and into the early 1980s, a national debate began on the relative merits of “the rule of man” and “the rule of law”. The debate played an important role in propelling the country’s senior leadership toward announcing in the Report of the 15th CPC Central Committee the government’s fundamental and long-term commitment to building a socialist country based on the rule of law. This commitment was codified into the Amended Constitution at the 2nd Session of the 9th National People’s Congress in 1999.

Meantime, as it guided the country’s efforts to reform the economic system, the government tried to define its own role and proper place in the nation-building endeavor. Reform and opening-up and attracting foreign investment were issues of top priority. Legislation in the areas of foreign investment and foreign trade, therefore, was the main task of the legal system. Since the reform aiming at free trade and relaxation of rules and restrictions, imposing limits on the power of the government was a notable feature of legislations related to China’s international cooperation, joint venture, and sole proprietorship using foreign capital. In 1988, senior party leadership clarified at the 13th National Congress of the CPC that administrative legislation must be improved and basic norms and procedures for administrative work must be established to consolidate the achievements of structural reform and

¹Deng Xiaoping, *Emancipating the Mind, Seeking Truth from Facts, Looking Ahead in Unity, Selected Works of Deng Xiaoping*, Vol. 2, People’s Publishing House, 1978, p. 146.

advance the institutionalization of administrative management. We should improve current regulations governing administrative organs and introduce rules specifying their size in order to subject their establishment and staff scale to legal and budgetary constraints. A multi-level administrative responsibility system is needed to improve work quality and efficiency. An administrative procedural law is needed to strengthen supervision over administrative work and personnel and investigate cases of neglect or dereliction of duty and other breaches of law or discipline by administrative personnel. Although the Report proposed to enact a series of legislations regarding administrative work, policies remained the primary regulative instrument in this area.

2. Concerted efforts and rapid progress: 1989–2003.

Enactment and promulgation of the Law of Administrative Procedure of 1989 marked the beginning of a new chapter in the country's efforts to build the rule of law in China. The 1989 Law and the Regulations on Administrative Review of 1990 have played an important role in ensuring the rights of citizens, regulating administrative conduct, and supervising administrative organs, and have laid a solid foundation for the administration according to law. The administrative procedure system facilitated the establishment of the principle that the government is subject to the rule of law in its administrative acts. Ren Jianxin from the Supreme People's Court proposed in the Report of the Supreme People's Court delivered to the 4th Session of the 7th National People's Congress (NPC) on April 3, 1991, that efforts should be made to guarantee fairness and justice in the trial of civil and administrative disputes, that the legitimate rights and interests of the citizens and legal persons should be protected, and that the government should discharge its administrative duties and responsibility in accordance with the rule of law." And again in 1992, the Supreme People's Court proposed, echoing the earlier statement, that "through the trial of the administrative disputes and the enforcement of the judgments thereof, the rights and interests of the citizens, legal persons and other organizations are protected and the government's performance of its administrative duties based on the rule of law should be supervised and strengthened." On the 1st Session of the 8th NPC on March 15, 1993, to meet the needs of the administrative procedure system, then on behalf of the State Council, Premier Li Peng pointed out in the Government Work Report delivered that "governments at all levels should abide by the law while performing their duties and handling affairs." On Nov. 14, the sentence "the governments at all levels should abide by law in performing their duties and handling affairs" was written into Decision of the Central Committee Regarding Some Issues of the Socialist Market Economy.² "The principle of administration based on the rule of law was proposed after the establishment of the administrative litigation system, which is the legal foundation thereof."³ This indicates that, rather than acting proactively, the government took up

²The words in the document of the Communist Party of China are, "To enhance and improve the judicial and administrative law enforcement and law enforcement supervision, maintain social stability, guarantee the economic development and the legitimate rights and interests of citizens. Governments at all levels shall abide by law in performing their duties and handling affairs."

³Ying Songnian, *The Outline of Administration Based on the Rule of Law*, *China Legal Science*, Issue 1, 1997.

the issue of administration based on the rule of law largely because of the pressure it had come under. Recollection by legal scholars who participated in drafting the Law of Administrative Procedure in those early years also serves to corroborate this.⁴

The Interim Regulations on State Civil Servants of 1993 has changed the situation that a civil servant who once got promoted can never be demoted or removed from his position and established a system of selection, appraisal, rewards and punishment, resignation and dismissal of civil servants. The State Compensation Law of 1994 established the state compensation system under which any citizens, legal entities or other organizations injured by the exercise of the state power shall be compensated. The Law of Administrative Punishment of 1996 provides that the rights and interests of the concerned person shall be guaranteed when administrative punishment is imposed. The State Council passed and released the Decision on Comprehensively Promoting Administration based on the Rule of Law in November, 1999, requiring governments at all levels and their departments to enhance the system construction, strictly abide by law in administration, strengthen the supervision thereof, and constantly improve the capability and level of handling affairs according to law. The 16th National Congress of the CPC set the development of socialist democracy and politics and construction of the socialist political civilization as one of the important goals of building a moderately prosperous society in all aspects in China. And it explicitly required “enhancing the supervision over law enforcement and promote

⁴Jiang Ping, Professor of the China University of Political Science and Law, said when he recalled on drafting the *Administrative Litigation Law* in the book entitled *Legislation on “Citizens Suing the Government”*: “in 1986, ‘market economy’ was not explicitly proposed in China, but a tendency of a shift to market economy appeared. It, therefore, is significant to limit the power of the government. In April, 1987, to celebrate the first anniversary of the *General Principles of the Civil Law*, the NPC Law Committee, the Supreme People’s Court, the Propaganda Department of the Central Committee, the Ministry of Justice, and so forth held a seminar attended by Wang Hanbin, the secretary general of the NPC Standing Committee and the Director of the NPC Legislative Affairs Commission, Tao Xijun, the chief of the drafters of the old civil code, and the consultants and professors, including me, who participated in drafting the *General Principles of the Civil Law*. The seminar was evidently more than a celebration. It also looked into the future of the legislation of the civil law and other pertinent laws in China. Honorable Mr. Tao’s remarks drew great attention from the participants. He asserted that about 40 years had passed since the founding of New China, but the legal system had not been established in China. There was “System of Six Laws” in the Kuomintang period, then how many laws should be included in the new system? He suggested to establish a “New System of Six Laws”, namely the criminal law, criminal procedure law, civil law, civil procedure law, administrative law, and administrative procedure law under the Constitution, among which the first four are available while the latter two are absent. Laws regarding administration, therefore, should be enacted as soon as possible.” Wang Hanbin said in his concluding remarks that Mr Tao’s advice should be given a serious consideration, but we were in lack of the knowledge and experience of legislation of administrative law. He, hence, suggested that a research group of legislation of administrative law, composed of law experts, scholars, the Legislative Affairs Commission of the Standing Committee and the specific entities, including the Supreme People’s Court and the legislative affairs bureaus, be established under the leadership of Mr. Tao, and with the Legislative Affairs Commission taking charge of the specific jobs and expenses. Wang said that he would be the director of the group, while Luo Haocai and Prof. Ying Songnian the deputy directors thereof and that the other members would be Jiang Ming’an, Zhu Weijiu, Jiang Bixin, Xiao Xun from the Legislative Affairs Commission, and the people from the Legislative Affairs Office of the State Council and other departments thereof. It was decided later that making the Administrative Procedure Law be the priority task.

administration in line with the rule of law". The amendment of "the rule of law" to the Constitution has ushered in China a new era of building a socialist country based on the rule of law in all aspects. The Law of Legislation of 2000 regulates legislative activities, expressly prescribing the fundamental principles and procedures of legislation, which is of great significance for improving the quality and level of legislation and promoting democratic and scientific legislation. The year of 2003 saw the government transforming from "the rule by law" to "the rule of law". That the 17th National Congress of the CPC set the goals of putting people first, scientific development and that more attention paid to social fairness marks a further transformation of the role of the government. China's access to the WTO also has contributed to the transformation of the Chinese government in administrative mode.

The idea of administration based on the rule of law was established and gradually took root in the government with the passage of the Law of Administrative Procedure. However, to perfect the administrative legal system is still the main task for the government.

3. Rapid development: 2004–present.

In 2004, that the State should respect and safeguard human rights of the individuals was written into the Constitution. Putting people first and respect for human rights have become the principles of government administrative acts. In the same year, the State Council released the Implementation Outline of Comprehensively Promoting Administration Based on the Rule of Law (hereinafter the Implementation Outline) more explicitly put forward the concept of the government based on the rule of law, set building a government based on the rule of law as the ultimate goal of promoting the administration according to law in all aspects, and made a ten-year plan for it. The Implementation Outline also pointed out the necessity and urgency, and provided the guiding ideology, goals, fundamental principles, requirements and main content of promoting the administration in accordance with the rule of law. The establishment of the goal of building a government based on the rule of law is the prerequisite for the Chinese government implementing the strategy of rule of law and building a country under the rule of law, and the outcome of its practice of the rule of law for a period of time. It indicates that the Party had achieved better understanding of the rule of law. The Administrative Permission Law of 2004 aims at promoting the transformation of governmental functions and creativity of the administration mode. In 2007, the Report of the 17th National Congress of the CPC included improving the construction of a government based on the rule of law into the requirement for realizing a well-off society in all aspects, and put forward more definite and specific requirements. The Report mentioned two main tasks: fully implementing the basic principle of the rule of law, and speeding up the construction of a socialist country based on the rule of law. "Fully" and "speeding up" here further clarified the direction and tasks of building a government based on the rule of law.

The Emergency Response Law of 2008 regulates the government in responding to unexpected events and strengthens the protection of civil rights and freedom. The Regulations on the Government Information Disclosure, effective since May 1, 2008, requires the government to disclose information to the public so as to guarantee the

citizen's right to know, which marks China had made a substantial progress in building a transparent and open government. The Opinions on Deepening the Reform of the Administrative System passed at the 2nd Plenary Session of the 17th National Congress of the CPC in Feb., 2008, once again stressed enhancing the construction of administration based on the rule of law and the construction of the administrative system, regulating power, business and people in accordance with law, improving the supervision mechanism, strengthening accountability system, and ensure that power go with responsibility and be subject to supervision and that anyone who misuses the power be held responsible." The Opinions also made specific requirements for regulating administrative decision making, enhancing and improving legislation of the government, the administrative law enforcement system and procedure, the system of administrative review, administrative redress and administrative compensation, the system of government performance management and administrative accountability system, the system of supervision over the executive power, and the construction of the team of civil servants.

In May, 2008, in order to fully boost the administration in accordance with law and build government based on the rule of law, given the significant position of city and county governments in the political system in China and the urgency to improve their capability and level of administration in line with law, the State Council released the Decision on Strengthening the City and County Governments' Administration According to Law, stressing such important goals as vigorously raising the awareness and capability of administration according to law of the personnel in city and county governments, perfecting the decision-making mechanism of the city and county governments, establishing and improving the supervision and control system of regulatory instruments, strictly implementing the administrative law, enhancing supervision over administrative acts, and strengthening the social autonomous function and so forth.

In October, 2010, the State Council passed and released the Opinion on Strengthening the Construction of a Government Based on the Rule of Law considering the effect of the Implementation Outline. The Opinion consists of 29 subtopics, such as raising the awareness and capability of administration according to law of government workers, particularly leading cadres, strengthening and improving the system construction, adhering to democratically and scientifically making decisions according to law, strictly regulating and justifying law enforcement, fully promoting the openness of government affairs, strengthening administrative supervision and accountability, legally resolving social conflicts and disputes, and enhancing institutional leadership, supervision, inspection and so forth. In addition, the Opinion also stresses the tasks and priorities of administration according to law in the following period.

1.2 Achievements Made in the Construction of a Government Based on the Rule of Law in China

Since 1978, China has made significant achievements in reform and opening-up. In the past more than 30 years, China has made profound transformation and rapid development in all respects: transformation from planned economy to socialist market economy, and from an omnipotent and all-controlling government to a limited and service-oriented government based on the rule of law. To build a government based on the rule of law is a key but difficult task. The past 30-year development indicates that the concept of administration according to the rule of law has been rooted in people's mind, that the theories of government based on the rule of law have kept developing, that governments' capability and level of administration according to law have been improved constantly, and that the supervision over administration has been increasingly perfected. The remarkable achievements made in the construction of a government based on the rule of law in China are mainly as follows:

1. The government and civil servants understand the idea of administration according to law better now than ever before, and are fully committed to the goal of building a government based on the rule of law in China.

Since the reform and opening-up, an increasing number of people have accepted modern administrative and associated concepts, such as administration according to law, government based on the rule of law, due process, that rights constitute the ground for demanding compensation, and that the exercise of any power must be subject to independent oversight. The Report of the 16th National Congress of the CPC stressed the need to enhance oversight for law enforcement, and to improve administration according to law. The Report of the 17th National Congress of the CPC called for enhancing the enforcement of the Constitution and the laws, ensuring that all citizens are equal before the law, striving for social fairness and justice, safeguarding the uniformity, dignity and authority of the socialist legal system, and promote administration according to law". The governments at all levels and their personnel at large, particularly CPC members and its leaders, are now more aware of the importance of administration according to law, and more capable of meeting relevant requirements in their work. The concept of administration according to law has become the fundamental principle for the majority of government organs. In particular, the government officially declared in the Implementation Outline passed and released by the State Council in 2004 the construction of a government based on the rule of law to be a key task for the nation. This declaration provided efforts to build administration according to law with both direction and theoretical support.

2. A large number of laws and rules and regulations have been enacted and promulgated, and legislation has greatly improved both methodologically and in terms of quality.

In the three decades of reform and opening-up, China has made tremendous progress in legislation and enacted and promulgated a great number of laws and rules and reg-

ulations regarding administrative work. The socialist legal system is now basically in place. The State Council has enacted and promulgated 3668 rules and regulations since 1979, 3087 of which are in effect.⁵ These administrative laws and rules and regulations regulate the governments' administrative conduct, secure and promote reform and opening-up and socialist modernization. In recent years, the administrative organs that have been given legislative power have been improving their legislative work with respect to methods and mechanism, introduced higher-order rules governing the formulation, review and assessment of and record keeping for first-order rules and regulations, and made great strides toward establishing a uniform and scientifically-sound procedures for making rules and regulations. Legislation has become increasingly transparent and enjoyed growing involvement of the public. The open government legislation has become prevalent, and a system has been established for the government to hear the people's voice in various ways. For those bills that are of particular significance or potentially have large impact on people's lives, hearings, forums and seminars are held. Other times the bills are made public so that stakeholders can voice their opinions. These measures have done much to ensure that the legislative process is as adequately informed by and accord proper weight to the opinions, wills and fundamental interests of those who are concerned and the society at large.

3. Governmental function has been changing, capability of administrative law enforcement has been strengthened, and the service mentality has taken roots.

Since the beginning of reform and opening-up, the government has been adjusting its role and function, especially in the areas of economic regulation, market supervision, social management, and public services. The governments at all levels acknowledge that the market should be given the space it needs to regulate itself, that social intermediaries and trade organizations should be allowed to practice self-governance based on the rule of law, and that citizens, legal entities and other organizations should have the right to make decisions on some particular matters so as to reduce unnecessary government intervention on economic and social affairs. The governments at all levels should make every effort to establish an administrative law enforcement mechanism with definite powers and responsibilities, code of conduct, effective supervision and strong security, and abolish such "the chronic illnesses" as abusive or lackadaisical law enforcement. Pursuant to the Administrative Punishment Law, and the Administrative Permission Law, in many places, the local governments have experimented with comparatively consolidated the powers of administrative punishment, administrative permit and comprehensive law enforcement; clarifying the subjects of the administrative law enforcement and the administrative permitting matters. The phenomena such as multiple law enforcement agencies doing the same thing, needless repetition, and laxity in law enforcement have largely been eliminated. Governments at all levels and the departments thereof have gradually established and completed

⁵The above data are from the Laws and Regulations—Chinalawinfo, URL: http://www.pkulaw.cn/cluster_form.aspx?Check_gaojijis=1&menu_item=law&EncodingName=&db=chl, last access on May 10, 2014.

the review, evaluation and record keeping systems for administrative law enforcement, accreditation system for administrative law enforcement entities, system of accountability, and the system of the administrative discretion. The administrative law, therefore, has seen a high degree of compliance. The Working Rules of the State Council of 2008 expressly provides that building a “service-oriented government”, further enhancing the government’s role as a service provider and strengthening the service mentality of civil servants, simplifying public service procedure, reducing public service fees, and reforming the administrative model. To better serve the people, more local governments and the departments thereof have introduced measures meant to increase the efficiency and quality of services and so forth.

4. The system and mechanism of supervision over the administrative review and administrative procedure have been improving.

Absolute power leads to absolute corruption. Supervision mechanism, therefore, is vital to guarantee that the government exercises its power properly, and that the powers of the government correspond to its responsibilities. In the past 30 years, a mechanism of inner-outer combined supervision over the administration has been established. The National People’s Congress and its Standing Committee supervise the government by questioning and “file for record” of rules and regulations while The Chinese People’s Political Consultative Conference did it by giving opinions or advice. The supervision made by the organs such as the monitory and audit organs have been enhanced. The governments at all levels are willingly subject themselves to the supervision of the particular supervisory organs. Meanwhile, the inner system of the administration has been improving the supervision mechanism, and building and perfecting the mechanism of supervision over the rules and regulations and other regulatory instruments. The role of the hierarchical supervision of the administrative review system has become increasingly apparent. Courts enhance supervision over administration by administrative procedure. In recent years, the courts have expanded their jurisdiction over the administrative disputes. The governments at all levels actively appear before the court to answer the complaint or defend themselves, and willingly enforce the judgments or rulings entered by the people’s courts.

Throughout history of China’s administration according to law, enormous progress has been achieved. However, we should also notice that due to the unique history and tradition of China, the administration according to law and the government based on the rule of law is driven from up to down. This up-to-down driving will usually undermine or damage the executive capability of the governments at all levels, which make the writs held back and enforcement thereof unsmooth. Nowadays, the administrative legal system has been improving in China, and the achievements in legislation are universally recognized, but the implementation of many administrative acts is far from satisfactory for the reason that governments are not fully motivated to promote rule of law. Therefore, only by inner-and-outer regulation and up-and-down interaction internalizing the concept of administration according to law into the work directive of the government and conduct rule of the government officers can the goal of building a government based on the rule of law be realized