

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

Lin Li
He Tian
Yanbin Lv *Editors*

Rule of Law in China

A Ten-year Review (2002–2012)



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

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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 30 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

Preface: Rule of Law in China—Current Status, Challenges and Outlook

Evaluations of the Current Status of Rule of Law in China

(I) Evaluations of the current status of rule of law in China by the law community and the legal community

Speaking of the rule of law, the Chinese law community, legal community and people from other circles have different opinions in recent years. From a general perspective, the evaluations of the current status of China's rule law by domestic mainstream media, law community and legal community can be divided into the following four types.

First, it is believed that great achievements have been made in building the rule of law in recent years and the current status of the rule of law is good. This viewpoint is supported by official media, leaders, and some experts and scholars.

Second, it is believed that the building of the rule of law in recent years has been characterized by “one step forward, two steps back,” whereas in the first 20 years of the reform and opening up it was more like “two steps forward, one step back.” Even though the number of scholars who hold it is not large, the view is nonetheless rather influential.

Third, it is believed that the building of the rule of law has retrogressed in recent years, which can be manifested by the retrogressive judicial reform and the resurgence of the rule of man in some areas. According to this standpoint, the current status of the rule of law is worrisome. This standpoint is upheld by some judges, procurators and attorneys from the judicial circles and also echoed by some teachers and students of law schools.

Fourth, it is believed that China is at a crossroads in building the rule of law and has no clear-cut ideas and objectives in choosing which course to follow, so studies and decisions in this regard are in dire need. A lot of scholars and experts support this point of view.

(II) Evaluations of the current status of rule of law in China by the civil society

Not long ago, some folk “jokes” sarcastically described the current status of rule of law in China as follows:

There are three basic laws of the land, which are what government and CPC party leaders and official think, what they believe and what they say.

There are three rules for litigation: The most significant cases are decided by political considerations, the average cases by consideration of their potential impact on society and the minor cases by consideration of the applicable law.

There are three sources of legal force of different types of laws: The Constitution derives its legal force from view originating outside China; laws and statutes on the books from organizational bylaws and local ordinances, which are in turn decided by leaders and ranking officials within relevant organizations.

The situation with the rule of law has three basic characteristics: law-making is subjected to exacting standards, violation and noncompliance are commonplace, and law enforcement is inconsistent and selective.

In terms of the ground for applying the law in deciding cases, passage by the National People’s Congress (NPC) accounts for ten percent, while interpretation by the Supreme People’s Court for the other ninety percent.

Folk sayings such as these about the current status of rule of law in China in China are rather intuitive, exaggerated, one-sided, negative and even groundless and over-generalized. Yet, what caused these comments? Have they reflected to a certain extent the public’s feelings and expectations of rule of law in China that need to be understood positively and taken seriously by us?

(III) Evaluations of local rule of law index

When it comes to the building of the rule of law at the local level, some local areas have referred to international and Hong Kong’s experience and started to try out the “rule of law index” for quantitative evaluations of the rule of law. These areas include Yuhang District of Hangzhou, Kunming, Nanjing and Wuxi of Jiangsu Province, Chengdu of Sichuan Province. By employing the quantitative analysis method, the calculated scores of these areas based on the hundred-mark system are all between 70 and 80 in recent years and have risen slightly in general. For example, in 2008, Yuhang District firstly announced the “rule of law index (level of public satisfaction) of Yuhang” as 71.6 in 2007 and the scores rose slightly year by year¹ to 71.84 in 2008, 72.12 in 2009, 72.48 in 2010 and 72.56 in 2011. The local rule of law evaluation index after being released has played an active role in boosting local building of rule of law. However, this has also been criticized in two aspects. First, China is a unitary state, so the space for local building of rule of law is quite limited and it is impossible to make substantial breakthroughs against the background of the “sluggish” building of the rule of law nationwide. Second, some

¹Director Mao Xinli of Yuhang Bureau of Justice talked about Yuhang’s rule of law index: *Rule of Law Index—Annual Health Examination of Yuhang*, http://hznews.hangzhou.com.cn/chengshi/content/2012-09/04/content_4367406.htm, visited on December 10, 2012.

areas have got high scores in the evaluation of “rule of law index,” but there is no substantive meaning because of unavailable references for comparison in method and coordinate system, which is, in practice, quite different from people’s true feeling.

Evaluating the current status of rule of law in China requires an attitude of seeking truth from facts and scientific spirit and method. For instance, from the perspective of time span, what’s the start time of the evaluation of rule of law in China, 1949, 1978, 1997, 2002 or 2007? Most people think that it is the recent few years in which China has witnessed the regressive building of the rule of law, and generally acknowledge the previous legal system reform, judicial reform and building of the rule of law. The rule by law as a fundamental principle is a milestone of the building of the rule of law in China. The year of 2012 was the 15th year after the formal establishment of the rule of law as a fundamental strategy. Therefore, the 15 years after 1997 should be taken as the time frame for evaluating the status quo of rule of law in China.

According to reports of the 15th, 16th and 17th national congress of the Communist Party of China (CPC), there are a total of eleven aspects to the rule of law, which will also function as indicators for purpose of assessment (see Table 1). These include ruling the country by law, political system reform, the ruling party’s governance by law, formation of the system of law, strengthening the implementation of the Constitution and the law, building a law-based government, advancing judicial reform, guaranteeing democratic rights, combating corruption and building a clean government, improving the public’s legal literacy and maintaining stability.” Analysis suggests that the “timely formation of the socialist system of law with Chinese characteristics” and improvements in the public’s legal literacy are the only two goals that can be said to have been achieved already.

The report of the CPC delivered to the Eighteenth National Congress focused on the larger and holistic picture of the work of the Party and the state. The report also concisely and comprehensively evaluated the achievements in building the democratic rule of law over the past 5 years from a strategically advantageous position. According to the evaluation, “new steps have been taken in the development of democracy and the legal system; the socialist system of law with Chinese characteristics has taken shape; the building of a socialist country under the rule of law has produced outstanding results ... the reform of the judicial system and the working mechanism has seen new progresses.”

The legal community, the law community and the entire society at large should reflect together the cognition and evaluation of the current status of rule of law in China in the report of the CPC to its Eighteenth National Congress, in the strategic layout of the central government with respect to comprehensively advancing the rule by law and speeding up the building of a socialist country under the rule of law as soon as possible. In so doing, they could make new contributions to China’s undertaking of building democracy and the rule of law at the new historical starting point.

Table 1 Completion status of tasks in the last 15 years since the establishment of the rule by law as a fundamental state-building strategy

Task	Report to the 15th NCCPC	Report to the 16th NCCPC	Report to the 17th NCCPC	Complete status
Rule by law	The rule by law is that the broad masses manage national and social affairs through various channels and forms according to provisions of the Constitution and the law ...guarantee the implementation of various works of the state according to the law and gradually realize the institutionalization and legalization of socialist democracy	The essence of developing socialist democracy is sticking to organic unity of the CPC's leadership, the people's role as masters of the country and the rule by law	Comprehensively implement the rule by law as the fundamental strategy, accelerate the building of a socialist country under the rule of law	Some progress has been made, with mixed evaluations
Reform of the form of government	The main tasks of political system reform are: developing democracy, strengthening the legal system, separating government functions from enterprise management, streamlining government organs, improving the democratic supervision system, and maintaining stability and unity	Keep actively and steadily promoting political system reform, expanding socialist democracy, perfecting the socialist legal system, and building a socialist country under the rule of law	To deepen political system reform, there is a must to ... expand socialist democracy, build a socialist country under the rule of law and develop socialist political civilization	No obvious progress
Governance by law	The Party acts under the framework of the Constitution and the law. There is a need to guarantee in system and law the implementation of the Party's basic routes and principles, guarantee the Party's leading and	The Party's leadership focuses on politics, organizations and thoughts; putting forward legislative proposals, recommending important cadres and carrying out ideological publicity through developing	Stick to the Party's leading and core role in grasping the overall situation and coordinating all parties; improving the Party's qualification of scientific and democratic governance and governance by law; guarantee the	Very little progress

(continued)

Table 1 (continued)

Task	Report to the 15th NCCPC core role in grasping the overall situation and coordinating all parties	Report to the 16th NCCPC fundamental policies so as to give play to the role of Party organizations and Party members; sticking to governance by law and implementing the Party's leadership in the state and the society	Report to the 17th NCCPC Party's leadership in effective governance of the state	Complete status
Legislation	Form a socialist system of law with Chinese characteristics by 2010	Form a socialist system of law with Chinese characteristics by 2010	Adhere to scientific and democratic legislation and improve the socialist system of law with Chinese characteristics	Completed on schedule
Law enforcement	Safeguard the dignity of the Constitution and the law, adhere to equality of all people before the law, intensify the supervision over the implementation of the Constitution and the law and safeguard national unity in the legal system	Adhere to equality of all people before the law and ensure strict enforcement of the law	Strengthen the implementation of the Constitution and the law, stick to the equality of all people before the law, safeguard social equity and justice and maintain the unity, dignity and authority of the socialist legal system	Slow progress and unsatisfactory results
Law-based government	All government organs must administer by law, implement the accountability system for law enforcement and the system of assessment and examination; realize the legalization of national institutions' organization, function, compilation and working procedures	Strengthen the supervision over law enforcement, advance administration by law and raise the level of law enforcement	Press ahead with administration by law, accelerate administrative restructuring and establish a service-oriented government	Notable progress reasonable result

(continued)

Table 1 (continued)

Task	Report to the 15th NCCPC	Report to the 16th NCCPC	Report to the 17th NCCPC	Complete status
Judicial reform	Boost judicial reform, institutionally guarantee judicial organs' independent and impartial execution of judicial powers and procuratorial powers	Advance the judicial system reform, institutionally guarantee adjudication organs and procuratorial organs to independently and impartially exercise judicial powers and procuratorial powers	Deepen the judicial system reform, guarantee adjudication to independently and impartially exercise judicial powers and procuratorial powers	Some progress but final results remain to be seen
Democratic rights	Practice democratic election, democratic decision-marking, democratic administration and democratic supervision, guarantee the people to enjoy extensive rights and freedom according to the law and respect and safeguard human rights	Expand citizens' orderly political participation, guarantee the people to practice democratic election, democratic decision-marking, democratic administration and democratic supervision according to the law and enjoy extensive rights and freedom, and respect and safeguard human rights	Expand citizens' orderly political participation at every level and in every field; safeguard people's right to know, right to participation, right to expression and right of supervision; respect and safeguard human rights, guarantee the entire social members to equal participation and development rights according to the law	Some progress, but more needs to be done
Anti-corruption and build a clean government	Strengthen the supervision over cadres, especially leading cadres at all levels, prevent abuse of power, severely punish law-breaking activities of law enforcement personnel, and corruption through misuse of law	Reinforce the restriction and supervision over powers and establish a power operation mechanism featuring rational structure, scientific allocation, strict procedure and effective restriction	Perfect the restriction and supervision mechanism, guarantee that the power entrusted by the people is always exercised in the interests of the people	More has been done, with limited results

(continued)

Table 1 (continued)

Task	Report to the 15th NCCPC	Report to the 16th NCCPC	Report to the 17th NCCPC	Complete status
<p>Improving the public's legal literacy</p>	<p>Carry out educations concerning the legal system in an in-depth manner, strengthen the legal awareness of all the people and focus on improving leading cadres' legal sense and ability of acting by law</p>	<p>Strengthen the publicity and education concerning the legal system, ensure that the people are better educated in law, especially improving civil servants' legal sense and ability of acting by law</p>	<p>Strengthen citizen awareness education, build up the philosophy of socialist democratic rule of law, freedom, equality, fairness and justice, and the socialist law-based idea, carry forward law-based spirit, build the social atmosphere of volunteer learning, abidance and utilization of laws</p>	<p>In its 25th year, target met on schedule, final results remain to be seen</p>
<p>Stability maintenance</p>	<p>Maintain stability and unity; for tensions among the people, there is a need to...correctly apply economic, administrative and legal means to handle and prevent the intensification of tensions</p>	<p>Safeguard social stability and correctly employ economic, administrative and legal means to properly handle the tensions among the people, especially the tensions involving the immediate interests of the masses</p>	<p>Advance institutionalized, normalized and procedural socialist democracy and politics and provide political and legal system guarantee for the long-term peace and order of the state and the Party; safeguard the lawful rights of the masses. Give full play to the active role of social organizations in expanding the public participation, reflecting the pursuits of the masses and strengthen social autonomy function</p>	<p>More has been done, but tensions have been increasing and more and harder work ahead</p>

Major Challenges Faced by China in Building the Rule of Law

China has achieved obvious and brilliant results in building the rule of law in the past 15 years, but it still has a far cry from the expectations of the masses. The rule by law as the fundamental strategy has been implemented, but the development remains unbalanced. The system of law has taken shape, but there is a need to make further improvement and development. Achievements in legislation are striking, but law enforcement, judicature, law abidance and legal supervision are still unsatisfactory. The achievements in improving the public's legal literacy have been tremendous in the past 25 years, but the law-based environment has not yet been improved. Just as General Secretary Xi Jinping pointed out in his speech delivered at the 30th anniversary of the promulgation of currently effective Constitution on December 4, 2012, "While fully acknowledging the achievements, we also need to see the deficiencies ... the supervision mechanisms and specific systems guaranteeing the implementation of the Constitution are not yet perfect." He also pointed out, "The phenomenon of failure to abide by the law, lax law enforcement and unpunished lawbreakers remains salient in some local areas and departments." According to him, "issues regarding law enforcement and judicature having a bearing on the people's immediate interests still remain prominent; some public servants abuse power, neglect their duties and break laws while in charge of their enforcement and even bend the law for personal gains, which have severely harmed the authority of the national legal system." Xi Jinping also said, "Citizens, including some leading cadres, need to improve their constitutional awareness further." Specifically speaking, China is still facing the following issues and challenges in building the rule of law and advancing the undertakings of the rule by law.

First, the development of socialist rule of law is not completely adaptable to the social, economic and cultural development. In some local areas, some departments, some sectors and some groups, the rule of man among some leading cadres, the absence of rule of law among citizens and the neglect and disregard of rule of law have picked up and spread somewhat.

Second, an essential requirement of socialist political civilization is to stick to an organic unity of upholding the Party's leadership, ensuring that the people are masters of the country and ruling the country by law. However, in some local areas and departments, they are actually united in the hands of the "head" of the Party Committee. In addition, the rule of law has been weakened by the "rule of man." The rule by law has evolved into a tool for some areas and departments to "maintain stability" and develop the economy² from the "the fundamental strategy" for the Party to lead the masses to implement the rule of law.

Third, both the socialist system of law with Chinese characteristics and the legislation quality need to be improved continuously. In legislation, we can still find

²Professor Ma Huaide pointed out, "Economic GDP is usually obtained by means of noncompliance with the rule of law and even by destroying the rule of law." Ma Huaide et al.: *Vision of China's Rule of Law*, published in *China Reform*, Issue 6, 2010.

Table 2 Public opinion on the current state of rule of law in China

Response	Percentage	Votes
Very good (90%)	3	768
Good (70%)	4	1022
So-so (50%)	14	3728
Bad (30%)	20	5403
Very bad (10%)	59	15,495
Total	100	26,416

Source <http://www.iolaw.org.cn/>, statistics by December 10, 2012

the existence of departmental interests, special group interests and departmental legislation contending for power and profit. We have not yet eradicated the phenomenon of department-based legislation, “interest-oriented departmental powers and legalized departmental interests.” Some legislation with obvious departmental or group interests has legalized the abnormal interest structure or power relationship. Some administrative departments have expanded powers and shirked responsibilities by virtue of unjust legislation, which have affected the authority of the socialist rule of law and the implementation of laws on the basis of institutional designs.

Fourth, after the formation of the socialist system of law with Chinese characteristics, the principal difficulty in building the rule of law in China is the issue related to the implementation of the Constitution and the law.³ The main manifestations include widespread noncompliance, lax or even complete absence of enforcement, impunity (see Table 2). Local protectionism, departmental protectionism and difficult law enforcement can be found from time to time. The rule of law lacks authority while judicature lacks credibility. Some citizens do not believe in law but in power, petition and relationship, and believe that “the settlement of an issue depends on how big a trouble you make.” Therefore, it is still an arduous task for us to strengthen the education on the rule of law and enhance the legal consciousness and law-based concept of the entire society.

With more than 30 years of efforts, the socialist system of law with Chinese characteristics has taken shape; the problem of there being no laws on the books has been solved; enforcement has become the key to building the rule of law. Then, what do you think about the current status of law enforcement in China (use percentage to represent the law enforcement)?

³Mr. Jiang Ping believes that the current status of rule of law in China still has a far cry from meeting the target of abiding by and implementing the Constitution. For instance, “The Constitution clearly states that courts make judges independently without the interference of administrative organs, social organizations or individuals. But some people are even saying that there should be no mentions of judicial independence. An important test for our Constitutional principles is whether judicial organs can realize true independence and make judges without interferences.” Strictly speaking, many existing sayings are unconstitutional. Jiang Ping et al.: *Vision of China’s Rule of Law*, published in *China Reform*, Issue 6, 2010.

Fifth, other issues and challenges include government duplicate and multi-level law enforcement and absent or disorderly law enforcement; order disobedience, prohibitions defy, administrative omission, dereliction of duty, illegal administration; deliberate lawbreaking by a handful law enforcement personnel, law enforcement for rent seeking, corruption through misuse of law and even serving as the umbrella of mafia-like criminal gangs. Some incorrect law enforcement tendencies have emerged, such as fishing law enforcement, rent-seeking law enforcement, uncivilized law enforcement, restrictive law enforcement, selective law enforcement, campaign-style law enforcement, weak law enforcement, hysteretic law enforcement. Rough law enforcement has triggered conflicts, even mass disturbance and malignant extreme events, which are more salient in land requisition and demolishing.

Sixth, judicial reform has been carried out vigorously and has solved some long-standing and knotty issues, such as institutional and mechanic issues restricting the building and development of courts and procuratorates and issues related to office conditions, funds and staffing. All preset objectives of judicial reform at various stages have been basically realized, but some deep-seated issues still exist, including issues related to judicial independence, judicial fairness, judicial authority, judicial efficiency, judicial credibility and interference in courts and procuratorates' independent exercise of powers within the framework of the law.⁴

Seventh, the phenomenon of passive corruption remains serious, and corruptions easily and frequently happen in some sectors. Public servants go for corruption through misuse of law, trading power for money, breaking the law while in charge of their enforcement and using words to replace the law, which have caused harms to the rule of law. Such issues as impartial or disorderly law enforcement and administrative omission remain protruding. A great challenge on the course of building the rule of law in China is how to use law-based thinking and methods to deal with and solve corruption issues.

Future Development of Rule of Law in China

The national “12th Five-Year Plan” proposed the task of building a democratic rule of law. The report of the Party to its Eighteenth National Congress mentioned the objectives of developing democratic rule of law for building a moderately prosperous society in an all-round way by 2020. The objectives include constantly

⁴For example, Professor Chen Weidong pointed out, “While fully acknowledging the great achievements in judicial reform over the past few years, we have to admit that many deep-seated issues have not yet been completely addressed and we are faced with greater difficulties. Judicial reform should be a multi-directional and comprehensive reform involving the setting of mechanisms and the coordination of power organs, requiring macro and strategic planning. However, current judicial reform is mostly in working mechanism, and deep-seated institutional reform has not yet been implemented.” Chen Weidong: *Several Suggestions on China's Judicial System Reform in the Coming Five Years*, published in *Henan Social Sciences*, Issue 2, 2012.

expanding democracy; further improving democratic system; and enriching democratic form. The objectives also include comprehensively implementing the rule by law as a fundamental strategy; basically establishing law-based government; continuously enhancing judicial credibility; and practically respecting and guaranteeing human rights. Based on these objectives and acting upon the actual requirement for China's future reform and development in politics, economy, society and culture, the general direction and trend of building the rule of law in China in the future include actively and steadily advancing the political system reform, comprehensively boosting the rule by law and accelerating the building of a law-based state. The general direction and trend of building the rule of law in China also include putting more emphases on leveraging the important role of the rule of law in state and social governance, maintaining the unity, dignity and authority of the rule of law, and guaranteeing social equity and justice and people's enjoyment of extensive rights and freedom according to the law.

In the process of implementing the "12th Five-Year Plan" and the spirit of the Eighteenth National Congress of the CPC, the overall thinking of building the rule of law in China should be trying to realize four basic transformations.

First, it is to stick to an organic unity of the Party's leadership, the people's role as masters of the country and the rule of law ("an organic unity of the three"). It is to actively and steadily advance the political system reform in the practice of ruling the country by law and on the track of building the socialist rule of law and lay more stress on giving play to the crucial role of the rule of law in state and social governance. As such, we can realize the transformation from the rule of law to the socialist constitutional government and realize "an organic unity of the three" in institution and in procedure.

Second, it is to further intensify the building of democratic rule of law, comprehensively press ahead with the rule by law and accelerate the building of a law-based state on the basis of the formation of China's system of law as scheduled. As such, we can realize the transformation from building the system of law to the building of the system of rule of law and realize the transformation of China from a great power under the law to the strong power under the rule of law as soon as possible.⁵

Third, after basically realizing the target that there are laws to abide by, the focus of building the rule of law in China will be transformed from legislation to strengthening the implementation of the Constitution and the law and from laws on paper to laws in life. As such, we can ensure that laws are strictly observed and enforced and lawbreakers are brought to justice and truly realize strict law enforcement, impartial judicature, law observation by the entire people, and the Party's action within the framework of the Constitution and the law.

⁵"The rule of law can help found a state, stabilize the state, save the state and strengthen the state, which are the summary of experience in human civilization development." Hu Jianmiao: *Move towards a Powerful Country under the Rule of Law*, published in *Journal of Chinese Academy of Governance*, Issue 1, 2012.

Fourth, it is to use law-based thinking and law-based method to serve the Party and the state's overall work situation and pay more attention to giving play to the crucial role of the rule of law in safeguarding the Party's rights, building political rights and guaranteeing civil rights. In so doing, we can realize the transformation of the rule of law from superficially "maintaining stability" to solving deep-seated issues related to social equity, justice and power corruption. Also, we could use the rule of law to better consolidate and develop the legitimate authority of the Party and the state's political power, further entrench the political, social, public opinion and legal foundations for the Party to lead the people to govern the state and manage state affairs, and provide a strong law-based guarantee for China's long-term peace, stability and the great rejuvenation of the Chinese nation.

Specifically speaking, there is a need to focus on strengthening the building of the rule of law and comprehensively advancing the rule by law in the following aspects.

(I) Put a high premium on building the rule of law; comprehensively advance the rule by law. The Party's leadership is the fundamental guarantee of the people's democracy and the rule by law. To implement the spirit of the Eighteenth National Congress of the CPC, comprehensively advance the rule by law and accelerate the building of a socialist country under the rule of law, there is a must to further facilitate the ruling party's emphasis on, leadership in and support for building the rule of law. Firstly, the ruling party needs to further value the rule by law and the building of the rule of law, consciously stick to governance by the Constitution and the law, and administer and act by law. The ruling party needs to practically implement the rule by law as the fundamental strategy for governing the state and dealing with politics, and practically act within the framework of the Constitution and the law. Secondly, in the practice process of advancing the rule by law and governance by law, the Party's leading cadres at all levels and all public servants need to take the lead and set an example while the ruling party needs to lead the legislation, take the lead in law abidance and guarantee law enforcement. In this process, no organization or individual shall have the privilege over the Constitution and the law. We must not allow using words to replace the law, using power to suppress the law and interfering in law enforcement. Thirdly, the Central Committee of the Party needs to focus on studying and solving issues in the following aspects while advancing the rule by law. There is a need to convene a plenary session of the Central Committee on the rule by law (or building the socialist democracy and rule of law) and make special decisions on building China's democratic rule of law and rule by law. The Central Committee needs to establish a special leading organization for the rule by law and develop a development strategy and implementation plan on the rule by law. Fourthly, it is to positively and steadily propel the political system reform and the development of the rule of law through comprehensively implementing the rule by law as the fundamental strategy under the leadership of the Party.

(II) Give full play to the important role of the rule of law in socialist modernization and comprehensively building a well-off society. The rule of law is an important symbol of human civilization progress and an important guarantee for

realizing the strategic deployment of the Eighteenth National Congress of the CPC and the building of a moderately prosperous society in an all-round way. The effort should be made in the following aspects. Firstly, based on the requirement that socialist market economy is law-based economy, we need to continuously improve the market economic system of law and give full play to the role of the rule of law in allocating market resources, regulating and controlling market order and protecting market players' rights. Secondly, based on the requirement that socialist democracy is law-based politics, we need to perfect the Constitution and the public law system, adjust political relations according to the law, regulate political behaviors and restrict public powers. We also need to safeguard democracy and freedom as well as other fundamental human rights and give full play to the role of the rule of law in developing political civilization and governing the state. Thirdly, based on the requirement that harmonious socialist society and comprehensively prosperous society are democratic and law-based society, we need to strengthen and improve the system of socialist law and give full pay to the role of the rule of law in comprehensive building a moderately prosperous society and social governance. Fourthly, based on the overall plan of intensifying socialist cultural development, we need to carry forward law-based spirit, build up law-based ideas and cultivate law-based thinking. We also need to comprehensively advance law-based cultural development and give full play to the role of the rule of law in the development of spiritual civilization and ruling the county by virtue. Fifthly, based on the requirement for a coordinated development between man and nature, we need to improve and enhance law-based systems in environmental and ecological protection, energy resource utilization, pollution prevention and control and give full play to the role of the rule of law in ecological civilization development. Sixthly, based on the requirement for a great rejuvenation of the Chinese nation and the principle of "one country, two systems," we need to attach more importance to a coordinated development between international law and domestic law and between the law of Hong Kong, Macao and Taiwan and the law of the mainland. We also need to lay more stress on the governance of Hong Kong and Macao according to the law and give full play to the role of the rule of law in maintaining state sovereignty, guaranteeing national interests and realizing national reunification and peaceful development.

(III) Continuously promote democratic legislation and scientific legislation, and constantly improve the system of law. According to the requirement of the Report of the CPC to its Eighteenth National Congress, there is a need to "promote scientific legislation, improve the socialist system of law with Chinese characteristics, strengthen legislation in key areas and extend people's orderly participation in legislation channels." In this connection, the effort should be made in the following aspects. Firstly, we need to further modernize the legislative system and the legislative mechanism, arrange legislative resources as a whole, improve the quality of legislation and prevent "legislative corruption." Secondly, we need to actively press ahead with democratic and scientific legislation, guarantee the public participation in legislation, make legislation better reflect the people's will and the Party's propositions and realize "distributive justice" in legislation. Thirdly, we

need to further reinforce social and cultural legislation and rights protection legislation and make the socialist system of law with Chinese characteristics richer in content, more rational in layout and more complete in system. Fourthly, in line with the national condition and reality of “one country, two systems, three law systems, four legal fields,” we need to positively plan the building of “the system of law with Chinese characteristics” and provide a solid basis of law for the reunification, strength, prosperity and great rejuvenation of the Chinese nation. Fifthly, we need to further beef up and bring forth legislative theories, boost codification-based legislation and enact and revise laws as a whole. We also need to comprehensively promote post-legislation evaluation, and guarantee adaptable and coordinated development of legislation with the development of the politics, economy, society and culture.

(IV) Practically strengthen the implementation of the Constitution and the law.

“What’s difficult is not the making of the law but the implementation of the law.” Life of the Constitution and the law lies in their implementation. The formation of China’s system of law has put forward more outstanding and urgent requirements for the implementation of laws. For examples, “laws must be strictly observed and enforced; lawbreakers must be brought to justice” while solving the issue that there must be laws for the people to follow.⁶ According to the spirit of the Eighteenth National Congress of the CPC, the efforts must be devoted to the following aspects. Firstly, according to the overall goals and objectives of accelerating the building of a socialist country under the rule of law, we need to shift the focus of building the rule of law and governing the state by law to the implementation of the Constitution and the law and make the Constitution and the law play a more important role in China’s reform and opening up as well as modernization. Secondly, we may establish a constitutional council that is in parallel with other special committees in National People’s Congress to review the legitimacy and constitutionality of laws, administrative regulations and local laws and regulations. Thirdly, according to the provisions of the Constitution and the legislative law, we need to comprehensively launch the constitutional review mechanism, strengthen law and regulation recording review, and institutionalize and normalize the review of legitimacy and constitutionality. Fourthly, we need to actively and steadily revise the Constitution based on the spirit of the Eighteenth CPC National Congress, fully exercise the authority of interpreting constitution, and guarantee the stability and adaptability of the Constitution through constitutional interpretation. Fifthly, we need to take law enforcement as the primary basis for the evaluation of legislation, law enforcement and judicial works and as the important contents for the assessment of the performance of judicial personnel and leading cadres. Sixthly, we need to

⁶“The laws adopted at the National People’s Congress should be effectively implemented, but that is not the fact. For instance, since the implementation of the *Bankruptcy Law* on June 1, 2007, the total number of bankruptcy cases is less than 10,000. In 2009, the number of bankruptcy cases was only 3120, but nearly 800,000 enterprises exited the market by means of cancellation or revocation with regulatory authorities for industry and commerce. That means most enterprises didn’t exit the market through law-based channels but through administrative cancellation and revocation.” Li Shuguang et al.: *Prospect of China’s Rule of Law*, published in *China Reform*, Issue 6, 2010.

keep enhancing the improving the public’s legal literacy for the public, especially for leading cadres, strengthening law-based idea, increasing law-based awareness, developing law-based behaviors. We need to try to “improve the ability of leading cadres in using law-based thinking and method to deepen the reform, boost the development, dissolve conflicts and maintain stability.”

(V) Comprehensively advance administration by law, and accelerate the building of law-based government. Administration by law is a key link of comprehensively advancing the rule by law and an important aspect of deepening the political system reform. The Report of the CPC to its Eighteenth National Congress clearly pointed out the need to “advance administration by law and practically realize strict regulation of impartial and civilized law enforcement” and to basically build a law-based government by 2020. To comprehensively advance administration by law and accelerate the building of law-based government, the efforts need to be made in the following aspects. First, we need to keep increasing the awareness and capability of public servants at all levels in administration by law. We need to strengthen the capacity of leading cadres at all levels in using law-based thinking and method to deepen the reform, promote the development, resolve tensions, maintain stability and build law-based government. We also need to deepen the reform of administrative system on a law-based track. Second, we need to further improve the administrative decision-making system, perfect scientific and democratic decision-making procedures in accordance with the law and put in place a major decision-making tracking, feedback and appraisal system. Third, we need to further strengthen and improve institutional construction, improve government legislative works and eliminate departmental legislation. We also need to improve the normative document development and release procedures, establish a regulation and normative document evaluation and clear up system, and reinforce the recording and review of regulations, rules and normative documents. Fourth, we need to further enhance the building of the administrative law enforcement team and guarantee strict, impartial and civilized law enforcement. We need to perfect administrative law enforcement systems and mechanisms, improve administrative law enforcement procedures and regulate administrative law enforcement acts. Fifth, we need to resolutely prevent and punish administrative corruptions, keep strengthening administrative supervision and accountability, practically enhance administrative supervision efficiency and vigorously promote government information publicity. Sixth, we need to resolve social conflicts and disputes according to the law, improve the social conflict and dispute mediation and adjudication system, modernize the administrative review system and better respond to administrative suits.

(VI) Keep deepening judicial system reform, ensure judicial independence, and realize impartial judicature. Judicial system reform is part and parcel of China’s political system reform, a major initiative to comprehensively advance the rule by law and an important foundation for implementing the Constitution and the law. To deepen judicial system reform, the efforts should be made in the following aspects. First, we need to have a profound reflection and comprehensive assessment of the effects of judicial reform in the past 15 years on the basis of in-depth surveys and

researches, summarize experience, correct errors and deviations and adjust the thinking so as to provide a practical basis for deepening judicial system reform. Second, we need to act upon the national situations, mirror foreign advanced experience, carry out in-depth studies and identify judicial theories with Chinese characteristics so as to provide a scientific and theoretical guidance to China's new round of judicial system reform. Third, according to the strategic planning of the Eighteenth National Congress and in line with the political system reform and the new situation of and new requirement for comprehensively advancing the rule by law, we need to better the top-level design and scientific planning of the new round of judicial system reform. Fourth, according to the Constitutional political framework and law-based principle, we need to better handle the relations between the NPC and judicature, between politics and law committees and judicature, between the media and judicature, between the public and judicature and among public security organs, procuratorial organs and people's courts. We also need to ensure adjudicative bodies and procuratorial organs to exercise judicial powers and procuratorial powers independently and impartially. Fifth, we need to put a high premium on making judicature play its function as the last line of defense for the settlement of conflicts and disputes, re-establish a virtuous cycle mechanism of judicature for ending social conflicts and disputes and constantly enhance judicial credibility and authority.⁷ Sixth, we need to further intensify judicial transparency and openness, strengthen judicial democracy and professionalization, eradicate the administrative, localized and bureaucratized trend of judicature and give full play to the relief role of judicature in state and social governance.

(VII) Further strengthen law-based guarantee of human rights. The Party's Report to the Eighteenth National Congress clearly proposed the objective of "comprehensively building a well-off society by 2020 and realizing practical respect and guarantee of human rights." This is a struggling objective and strategic task with high requirements and great difficulties yet outstanding significance. For that to happen, the endeavors should be made in the following aspects. First, we need to comprehensively deliver the fundamental principle of "human rights protection and guarantee" as stipulated by the Constitution and the *Party Constitution*, guarantee the public's enjoyment of extensive rights and freedom according to the law and comprehensively improve various legal provisions and legal system for China's protection of human rights. Second, we need to continuously move forward with the legalization of constitutional basic rights, study the formulation of the laws related to press release, the form of an association, the freedom of religious belief, the national compensation, the civil servants' property declaration and the individual information protection, etc. We also need to abolish such laws or regulations as the *Regulations on Reeducation Through Labor*. Third, we need to further revise

⁷For example, "The biggest corrupt practices of 'big mediation' and 'active judiciary' have just made responsibility and 'accountability' out of the question, and even triggered the situation that no one takes responsibility in the name of individual accountability for democratic politics." Ji Weidong: *Top-level Design of China's Rule of Law in the Great Transformation*, published in *Caijing*, Issue 5, 2012.

the criminal law and significantly reduce the kinds of death penalties while applying death penalty in a more strict and prudent way. Fourth, we need to further strengthen the protection of the public's economic, social and cultural rights, and focus on addressing long-standing and knotty issues, such as "inaccessible education, medical care, housing, polarization and unequally distributed wealth, unfair distribution of income." The emphasis should also be put on safeguarding the rights of vulnerable groups and realizing social equity and justice as well as common prosperity through the rule of law. Fifth, we need to earnestly implement a new round of *National Human Rights Action Plan (2012–2015)* and beef up our studies on the United Nations *International Covenant on Civil and Political Rights* to be deliberated and approved by the National People's Congress in due time.

(VIII) Use law-based thinking and method to fight against corruption and protect rights. The basic meaning of using law-based thinking and method to combat corruption includes the following aspects. Firstly, we need to admit the "evil nature of human beings" when facing public powers. That means no one can behave like a saint before the great temptation of public powers. Everyone has weakness, shortcomings and limits. They may make mistakes and abuse powers. Secondly, we should use systems to regulate powers, use democracy to supervise powers, use powers and rights to restrict powers and use virtue to restrict powers. This is to reduce the opportunity of power corruption and increase the cost of power corruption. Thirdly, we should not only prioritize the top design for anti-corruption and power governance but also emphasize the design of specific institutions, procedures and mechanisms. We should not only focus on educating and punishing the subject of public powers and preventing public powers from committing corruptions. Emphasis should also be put on preventing corruption channels and conditions, such as market behaviors, economic behaviors and social behaviors from eroding public powers. We should fill the institutional, systematic and mechanical gaps and eradicate corruption on its "soil and hotbed."

To use law-based thinking and method to safeguard rights, firstly, we need to safeguard the Party's rights, stick to the Party's leadership and use the rule of law and governance by law so as to maintain and strengthen the authority and legitimate foundation of the Party's leadership and governance. Secondly, we need to safeguard the political power, stick to the rule by law, use the rule by law and the rule by the Constitution to establish national and social law-based order and build long-term peace and order, social harmony and stability and national unity and prosperity on the basis of the rule of law. Thirdly, we need to safeguard civil rights, stick to people's democracy and use the law-based justice distribution, justice execution and justice correction mechanisms to realize social equity and justice, guarantee that people live and work in peace and happiness and fully realize human rights. We also need to fully guarantee the Party's rights, political rights and civil rights through the rule of law and thus realize an organic unity of the Party's leadership, the people's role as masters of the country and the rule by law.

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General Report on China's Rule of Law 2002–2012



He Tian and Jing Zhou

The Report of the CPC to its Sixteenth National Congress in November 2002 made governance by law an important part and goal for developing socialist democracy. The report emphasized that the essence of developing socialist democracy is to organically unify the Party's leadership, the people's role as masters of the country and the rule of law. According to the report, the leadership of the CPC is the fundamental guarantee for people's democracy and governance by law; enabling the people to become masters of the country is an essential requirement of socialist democracy; governance by law is a fundamental strategy for the ruling party to lead the people to govern the country. Thereupon, ruling the country by law was defined as the fundamental strategy.

Over the 2002–2012 period, China has kept expediting scientific legislation, modifying laws and regulations and improving the socialist system of law. When it comes to the building of law-based government, China has regulated power operation and improved transparency by firmly centering on the objectives of streamlining administration and delegating power to the lower levels and implementing effective governance. In terms of judicial reform, openness has been taken as the driving force and key focus to improve judicial credibility and maintain judicial impartiality. The efforts in anti-corruption and power governance have been strengthened unprecedentedly. A batch of major cases have been investigated and handled, but more emphases have been laid on preventive works. The criminal law system has been improved constantly, and litigant rights have been further guaranteed. In the aspect of civil, commercial and economic rule of law, legislation has been improved step by step and the efforts have been strengthened in institutional construction and law enforcement to maintain the lawful rights and interests of market players. China has also gradually improved the social rule of law, boosted the perfection of social security system,

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improved the food safety monitoring level and worked harder to protect and improve the environment. In foreign-related fields, China has kept safeguarding its territorial sovereignty according to the law, actively engaged in multi-field international legal cooperation and positively fulfilled its international legal obligations.

1 Legislative Work

Over the 2002–2012 period, China has made substantial progress in institutional construction, but there is still much room for improvement. On January 24, 2011, a symposium on the formation of the socialist system of law with Chinese characteristics was convened. Wu Bangguo, Chairman of the Standing Committee of the NPC, asserted the formation of the socialist system of law with Chinese characteristics. This system of law is composed of laws, administrative laws and regulations, local laws and regulations and multi-level laws and regulations with the Constitution at the core and with constitution-related law, civil and commercial law and laws of multiple legal departments as the backbone. This indicates that China has put an end to the state of “no laws to abide by”. That said, the formation of the system of law does not mean the founding of a country under the rule of law. Legislation needs to be further enhanced scientifically and democratically and China still has a long way to go.

Making laws to make laws available is the primary goal of legislative work after the implementation of the reform and opening up. After more than 30 years of efforts, China has established its system of law. At the Third Session of the 11th National People’s Congress held in March 2011, Chairman Wu Bangguo clearly pointed out in the work report that the socialist system of law with Chinese characteristics has taken shape. According to his statement, this system of law is based on China’s national conditions and reality, adapts the needs of the reform and opening up and the socialist modernization drive, and reflects the will of the Party and the people in concentration. He also pointed out that this system of law is composed of laws, administrative laws and regulations, local laws and regulations and multi-level laws and regulations with the Constitution at the core and with constitution-related law, civil and commercial law and laws of multiple legal departments as the backbone. After the formation of the system of law with Chinese characteristics, the focus of legislative work has been shifted from filling legislative gaps to promoting institutional improvement and improving the quality of legislation. More emphasis has been laid on the openness and public participation in legislation.

1.1 Fully Exercise Legislative Powers and Form a Socialist System of Law with Chinese Characteristics

Legislation is the precondition for building the socialist rule of law and governing the country by law and also the institutional guarantee for realizing equality and fair-

ness and promoting social harmony. China has made new progress in legislation over the 2002–2012 period. The Second Session of the 10th National People's Congress held on March 14, 2004 adopted the Fourth Amendment to the Constitution of 1982. This time, 14 articles were amended. The main amendments included: establishing the constitutional status of the important thought of "Three Represents", providing constitutional guarantee for the coordinated development of "three civilizations", consolidating and developing the most extensive patriotic united front. The main amendments also included: safeguarding and promoting the healthy development of non-public sectors of the economy, protecting the right of citizens to own private properties and to inherit private properties, and providing the constitutional guarantee for the improvement of the social security system. The amendments also established the principle of "the state respects and protects human rights" and provided constitutional guarantee for establishing and improving an emergency system.

With the Constitution at the core, the National People's Congress and its Standing Committee, the State Council and its subordinates, and even local departments have fully exercised their respective legislative powers and advanced with the times to reflect the people's will, safeguard the people's interests and provide the legal guarantee for socialist construction by means of legislation. As of the end of August 2011, China had enacted the existing Constitution, 240 effective laws, 706 administrative laws and regulations and over 8600 local laws and regulations, which means the socialist system of law with Chinese characteristics had taken shape.

1.2 Adjust the Legislative Structure and Realize the Overall and Coordinated Development of Legislation

In recent years, China has gradually adjusted the previous legislative structure with economic legislation at the core. The emphasis of legislative contents have been transformed from economic legislation to the comprehensive and balanced development of economic legislation, social legislation, civil legislation, criminal legislation, especially to the vigorous advancement of social legislation, with more emphasis on people's livelihood. Before 2003, social laws only accounted for 2–6% in legislation while the economic laws accounted for as high as 40–60%. Now, the proportion of social laws has increased year by year. At present, the proportion of social laws at the national level stands at 20–30%. In some local areas, the proportion of social laws has reached 50–60%.

Increasing the proportion of social laws has reflected the requirement for building a harmonious socialist society and conforms to the increasingly important goal of "safeguarding the people's livelihood". The old *Compulsory Education Law* was adopted at the Fourth Session of the 6th National People's Congress on April 12, 1986 and enforced on July 1, 1986. The NPC Standing Committee adopted the revised *Compulsory Education Law* on June 29, 2006. On September 1, 2006, the revised *Compulsory Education Law* was enforced. *Compulsory Education Law* is