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FOCUS

CHINESE LEGAL SCIENCE IN THE 40 YEARS OF REFORM AND OPENING UP

40 YEARS OF THE RULE OF ADMINISTRATIVE LAW: ENHANCEMENTS, EXPERIENCE, AND EXPECTATIONS

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Abstract Based on major landmark events and the rule of law development, the administrative rule-of-law construction in China, over 40 years since the initiation of the reform and opening up policy, can be divided into four stages: the "recovery" stage; the "rapid development by focusing on administrative legislation" stage; the "implementing the basic policy of law-based governance of the country and focusing on law-based administration of government" stage; and the "simultaneous advancement and integrated construction in building the rule of law in China" stage. Over the past 40 years, China's administrative rule-of-law construction has achieved fruitful results in terms of theoretical shaping, system construction, and concept popularization. The future construction of the administrative rule of law should promptly respond to the theoretical needs put forward by state governance, administrative changes, emerging science, and technology development, and it should continue to improve the theoretical system of administrative law with Chinese characteristics; we should strengthen legislation in key areas, solve practical problems in the construction of a government under the rule of law, and promote the effect of law enforcement and system implementation. We should also focus on improving the awareness and qualities of the rule of law at all levels of leading cadres and form a good rule of law atmosphere in the entire society.

Keywords rule of administrative law, law-based administration of government, strengthening the rule of law in government, 40 years of reform and opening up

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INTRODUCTION

The founding of the People's Republic of China (PRC) in 1949 ended an old regime. After China systematically abolished the old legal system left by the Kuomintang, the Constitution of 1954 came into force, and a series of fundamental laws were promulgated, signaling the beginning of a socialist legal system in China. Yet the social movements that followed, including the Anti-Rightist Movement and the Cultural Revolution, interrupted the development of the legal system; the rule of administrative law that was about to emerge was destroyed. Between 1949 and 1978, despite the primary attempts made by scholars and practitioners,[1] a system of administrative law theories and norms did not yet exist, nor was the rule of administrative law applied to national political life. It was not until the Third Plenary Session of the 11th Central Committee of the Communist Party of China (CPC) in 1978, when improving the socialist legal system was required, that administrative law was resuscitated. Since reform and opening up, 40 years have passed since the rule of administrative law was developed in China. In this short period, we have pushed forward and overcome difficulties to reach a law-based administration of government and strengthen the rule of law in government, the results of which are fruitful. Reviewing this process, systematically summarizing its achievements and experience, and clarifying the direction of future development are of great significance for promoting the building of a law-based government in a new era.

I. THE PROGRESS OF THE RULE OF ADMINISTRATIVE LAW OVER THE PAST 40 YEARS

A. Phase I (1978–1985): The Recovery of the Rule of Administrative Law

In the Third Plenary Session of the 11th Central Committee of the CPC, the Central Committee made strengthening the socialist democracy and legal system a policy that

[1] For instance, XIA Shuzhang contended, in 1957, that compared to research on constitutional law, criminal law, and civil law, etc., the research on administrative law lagged behind social development and should be strengthened. See XIA Shuzhang, 加强行政法科学的研究工作 (*Strengthening the Research on the Science of Administrative Law*), 2 法学研究 (Chinese Journal of Law), 41–44 (1957).

must be upheld, and the rule by law regained its importance in national political life.[2] The development of the rule of administrative law was also soon back on the right track. In April 1979, LIU Hainian and CHANG Zhaoru published a paper in the *People's Daily* entitled "Improve and Strictly Implement Administrative Law"[3] that is commonly acknowledged as the first paper on administrative law since reform and opening up. Since then, WANG Mingsan from Southwest University of Political Science and Law, XIA Shuzhang from Sun Yat-sen University, and ZHANG Shangzhuo from China Law Society, among others, all wrote papers highlighting the importance of administrative law and the need to develop administrative law as a theory and discipline.[4] The consciousness of academic circles made the teaching and research activities of administrative law shift from long-term stagnation to recovery. Around 1980, some universities began to offer specialized courses on administrative law; for instance, Southwest University of Political Science and Law offered an administrative law course to senior students in the spring of 1982.[5] Anhui University, Peking University, and China University of Political Science and Law (CUPL) also began to offer master's degrees in administrative law.

A Synopsis of Administrative Law came out in June 1983; WANG Mincan, the then deputy director of the Education Department of the Ministry of Justice and the editor-in-chief of the editorial division of law textbooks, served as the editor-in-chief, and ZHANG Shangzhuo served as the associate editor. This book is the first state-compiled

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[2] "To guarantee people's democracy, we should reinforce our socialist legal system, make democracy institutionalized and legalized, and give to these institutions and laws stability, consistency, and great authority, making sure that there are laws to follow, the laws should be followed and strictly enforced, and any violation will be prosecuted. From now on, we should make legislation an important agenda of the NPC and its Standing Committee. The procuratorial organs and the judicial organs should be necessarily independent; they should be loyal to the laws and institutions, to the interest of the people, and to the fact; they should ensure that all people are equal before the law, and nobody shall have prerogative." Report at the Third Plenary Session of the 11th Central Committee of the CPC (passed on Dec. 22, 1978).

[3] LIU Hainian & CHANG Zhaoru, 健全和严格执行行政法 (*Improving and Strictly Implementing Administrative Law*), 人民日报 (People's Daily), Apr. 10, 1979.

[4] WANG Mingsan, 我国行政立法浅议 (*A Brief Discussion of Legislation on Administrative Law in China*), 3 现代法学 (Modern Law Science), 50–52 (1981); XIA Shuzhang, 机构改革与行政学、行政法学的研究 (*Institutional Reform and the Research on Public Administration and Administrative Law*), 1 政治与法律 (Political Science and Law), 143–153 (1982); XIA Shuzhang, 机构改革与行政法 (*Institutional Reform and Administrative Law*), 人民日报 (People's Daily), Mar. 15, 1982; ZHANG Shangzhuo, 加强行政法学研究之我见 (*Personal View on Enhancing Administrative Law Study*), 3 政治与法律 (Political Science and Law), 57–62 (1982). Some articles above are included in JIANG Ming'an ed. 行政法 (文选) (*Administrative Law (Selections)*), reference book of the then Department of Law of Peking University (1984); Editing Group for Research Resources of Administrative Law, 行政法研究资料 (上) (下) (*Research Resources of Administrative Law, I & II*), textbook for internal teaching at China University of Political Science and Law Internal (1985).

[5] WANG Xuehui & WANG Liuyi, 时代缩影与历史传承：行政法治的一个备忘录——西政行政法学科 60 年 (*A Memorandum of Administrative Law: The 60 Years' Development of Administrative Law in Southwest University of Political Science and Law*), 17(5) 西南政法大学学报 (Journal of Southwest University of Political Science and Law), 56–63 (2015).

textbook on administrative law and plays an important role in the development of administrative law as a discipline.[6] In particular, the seventh chapter, "Administrative Action," written by WANG Mingyang, sets forth the classification of "abstract administrative action (抽象行政行为)" and "specific administrative action (具体行政行为)," discusses the content and effectiveness of administrative action, and touches upon the core of modern administrative law theory.[7] It still has academic reference value to this day. In 1984, the CUPL held a seminar on administrative law and invited De Meyer from Ghent University, Belgium, to give a lecture on Belgian administrative law. In 1985, CUPL was commissioned by the Ministry of Justice to organize an administrative law teacher-training class. Many well-known scholars active on the front line of administrative law teaching research in China participated in this seminar.[8]

In line with the emphasis of academic research on administrative law, the administrative litigation system was also established through civil legislation and single-line legislation in individual fields in Chinese statutory law. The Income Tax Law of the PRC on Chinese-Foreign Equity Joint Ventures (中华人民共和国中外合资经营企业所得税法), the Individual Income Tax Law of the PRC (中华人民共和国个人所得税法), and the Income Tax Law of the PRC for Foreign Enterprises (中华人民共和国外国企业所得税法), enacted between 1980 and 1981, all confirmed that enterprises and individuals have the right to file administrative lawsuits for tax disputes. Article 3, Section 2, of the Civil Procedure Law of the PRC (For Trial Implementation) (中华人民共和国民事诉讼法(试行)), passed in 1982, articulated that "the provisions of this Law are applicable to administrative cases that are prescribed to be reviewed by the people's court," which provided the legal basis for administrative litigation where a systematic institution was

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[6] WANG Mincan & ZHANG Shangzhuo eds. 行政法概要 (*A Synopsis of Administrative Law*), Law Press (Beijing), (1983). Some treatises argue that it was the first textbook of administrative law after reform and opening up, but this argument is incorrect. Prior to the publication of the book, YANG Da, TONG Diantai, and FANG Yan et al., upon the request of the State Law Teaching and Research Office of Peking College of Political Science and Law, edited a textbook in Jun. 1982, which was also titled *A Synopsis of Administrative Law*, for internal administrative law teaching; in Apr. 1982, NIU Chuancheng, WANG Mingsan, and HE Shanzheng et al., upon the request of the State and Legal Theory Teaching and Research Office of Southwest College of Political Science and Law, completed the *Introduction of Administrative Law of the PRC* (中华人民共和国行政法概论) for internal teaching; in Jun. 1983, LIAO Huanglong, FANG Shirong, and ZHANG Xinsheng, upon the request of the State Law Teaching and Research Office of Hubei College of Economics, edited the *Introduction of Administrative Law* (行政法概论). Accordingly, *A Synopsis of Administrative Law*, published by Law Press in Jun. 1983, should be defined as the first published, state-compiled textbook on administrative law.

[7] CHEN Xinmin, 雨过天晴丽日来——谈中国大陆行政法发展与台湾地区行政法学的影响 (*The Sunshine after the Rain: The Development of Administrative Law in the Chinese Mainland and the Impact from Taiwan Administrative Law*), in CHEN Xinmin, 公法学札记 (*Notes on Public Law*), Law Press (Beijing), at 298 (2010).

[8] YING Songnian, compiled by HE Haibo, 与法同行 (*In the Company of Law*), China University of Political Science and Law Press (Beijing), at 66–67 (2015).

still missing. The administrative litigation system has developed rapidly since then. Until the eve of the enactment of the Administrative Litigation Law of the PRC (中华人民共和国行政诉讼法) in 1989, there had been more than 130 statutes and regulations providing that citizens and organizations could bring administrative actions before the people's courts. More than 1,400 administrative tribunals (行政审判庭) had already been established within the people's courts at all levels.[9] The prototype of administrative litigation emerged.[10] The aforementioned achievements in the rule of administrative law were closely related to the constitutional atmosphere created by the Constitution of 1982.[11]

The gradual development of academic research and administrative litigation in practice indicates that China's rule of administrative law began to be resuscitated in the relatively active environment of legal system construction that followed reform and opening up. Nonetheless, due to the influence of legal nihilism that pervaded in the previous decades, the gaps in theory and talent could not be filled in a short time. Also, given the lack of a systematic guide at the macro level and a practical strategy, the rule of administrative law in this phase was distant from its prosperity.

B. Phase II (1986–1996): Rapid Development by Focusing on Administrative Legislation

The Administrative Legislation Research Group (行政立法研究组), which played a critical role in the modern history of administrative legislation in China, was established in October 1986. The research group was under the Legislative Affairs Commission of the Standing Committee of the National People's Congress (NPC). TAO Xijin, the first director of the Bureau of Legislative Affairs of the State Council (国务院法制局) and then advisor to the NPC Legal Committee, organized the research group.[12] JIANG Ping, then vice-chancellor of CUPL, was in charge of the research group, with LUO Haocai and YING Songnian as associate directors; other group members included XIAO Xun, GAO Fan, FEI Zongyi, ZHANG Yaozong, FANG Yan, ZHU Weijiu, JIANG Ming'an, ZHANG

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[9] See the explanation of the Administrative Litigation Law of the PRC (Draft), given by WANG Hanbin in the Second Session of the Seventh NPC, in WANG Hanbin, 社会主义民主法制文集 (*Papers on Socialist Democracy and Legal System*), China Democracy and Legal System Publishing House (Beijing), at 316 (2012).

[10] WANG Wanhua, 新中国行政诉讼早期立法与制度——对 104 部法律、行政法规的分析 (*Inchoate Legislation and System of Administrative Litigation of China: Analysis on 104 Laws and Administrative Regulations*), 4 行政法学研究 (Administrative Law Review), 49–65 (2017).

[11] YANG Haikun, 走向法治政府：历史回顾、现实反思、未来展望——写在中国行政法研究会成立三十周年之际 (*Pursuing a Government Ruled by Law: Retrospection, Reflection on the Presence and Future Outlook*), 山东大学学报 (哲学社会科学版) (Journal of Shandong University (Philosophy and Social Sciences)), 44–57 (2015).

[12] QIN Xiya, 专访中国政法大学终身教授应松年：中国行政立法 30 年 (*Exclusive Interview with YING Songnian: 30 Years of Administrative Legislation in China*), 第一财经日报 (China Business News), Nov. 1, 2013.

Huanguang, WANG Xiangming, PI Chunxie, GUO Yang, and others. In addition, TAO Xijin, GONG Xiangrui, ZHANG Shangzhuo, DUAN Zhiqian, YAN Jiaqi, QI Yifei, CHEN Hanzhang, and WANG Mingyang served as advisors to the research group.[13] The basic goal of the research group was set in its founding conference: "[it shall] fully examine China's current situation and the demands of economic and political reforms, and widely collect information about domestic and foreign administrative legislation. Building on this basis, it shall propose a framework that covers the substance of administrative laws that are needed to be enacted in China and submit this framework to the legislature as a reference. The research group on administrative legislation shall also provide advisory opinions to other important administrative legislation at its best."[14]

With the establishment of the Administrative Legislation Research Group as a symbol, China's administrative rule-of-law construction entered a stage of rapid development, with legislation as its guide. The reason it was labeled "legislation-oriented" is that most academic research and system building during this period centered on administrative legislation, which showed a clear goal-directedness.[15] Due to the conditions at the time, this model not only concentrated relatively limited research resources to meet the needs of rule-of-law construction in China but also provided a platform and channel for scholars to participate in the legislative process and promote the rule of administrative law. Meanwhile, focusing on administrative legislation helped clarify the basic concepts, scope, priorities, and paradigm of administrative law, and thus helped shape a system of administrative law that confronted China's problems.

In 1987, the idea of the rule of administrative law was elucidated in the report at the 13th CPC National Congress in a relatively forward-looking and systematic fashion. The report asserted that "to consolidate the achievements of institutional reform and legitimize administrative management, we should improve administrative legislation and offer fundamental norms and procedures to guide administrative activities." It also laid down specific requirements that organic law for administrative agencies should be improved and laws on the authorized strength of administrative agencies and administrative litigation should be drafted.[16] Guided by this idea, the Administrative Legislation Research Group was a driving force in the legislative process of several statutes that were historical milestones.

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[13] ZHANG Wei, 法学界一个战斗的团队——行政立法研究组成立 30 周年掠影 (*A Fighting Group in the Legal Academia: A Glimpse of the Research Group on Administrative Legislation on its 30th Anniversary*), 法制日报 (Legal Daily), Oct. 13, 2016.

[14] Id.

[15] It is reflected in many aspects. For instance, a search of "hearing" on cnki.net, returned six related papers published in 1995, in contrast to 64 papers published in 1996. The increase in published papers correlates with the implementation of the Administrative Penalty Law, which articulated hearings, in 1996.

[16] ZHAO Ziyang, 沿着有中国特色的社会主义道路前进——在中国共产党第十三次全国代表大会上的报 (*Marching on the Path of Socialism with Chinese Characteristics: Report to the 13th National Congress of the Communist Party of China*), Oct. 25, 1987.

According to the original plan, the first mission of the Administrative Legislation Research Group was to draft an overall statute — the general administrative law or the outline of the administrative law — that was equivalent to the General Principles of the Civil Law of the PRC (中华人民共和国民法通则), although the result did not turn out well. Then the research group shifted its attention to litigation rules and began to draft the administrative litigation law. The group finally completed the Administrative Litigation Law (Proposal) (行政诉讼法 (试拟稿)) in August 1987[17] and submitted the draft to the Legislative Affairs Commission of the NPC Standing Committee in August 1988.[18] The Administrative Litigation Law was passed in April 1989, which offered a robust judicial remedy to citizens whose legitimate interests were injured by administrative agencies. The Administrative Litigation Law paved the way for the promulgation of the State Compensation Law of the PRC (中华人民共和国国家赔偿法) in 1994, which fulfilled the promise by the Constitution that "citizens who have suffered losses as a result of infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law." The State Compensation Law systematically carried out the state compensation system provided in the General Principles of the Civil Law and the Administrative Litigation Law and further reinforced the national supervision mechanism.[19] Accompanying the Regulations on Administrative Reconsideration (行政复议条例) enacted in 1990,[20] a system of administrative supervision and remedies with Chinese characteristics was established in China; the system used administrative reconsideration, administrative litigation, and state compensation as three vehicles. The Administrative Penalty Law of the PRC (中华人民共和国行政处罚法) was enacted in 1996; this statute covered issues that included the taxonomy, creation, procedure, enforcement, and remedy of an administrative penalty. It embodied principles of *Vorrang des Gesetzes* (the supremacy of the law) and *Vorbehalt des Gesetzes* (the reservation of the law) and is innovative for its creation of hearings in China.

More systematic and insightful theories began to emerge as the practices of the rule of administrative law evolved and theoretical research went deeper and deeper. The book

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[17] XING Li, 行政立法研究组写出 "行政诉讼法 (试拟稿)" (*Research Group on Administrative Legislation Drafted the Administrative Litigation Law (Proposal)*), 1 法学 (Law Science), 52 (1988).

[18] HE Haibo, YAN Chong & YAN Chiheng, 法治的脚步声——中国行政法大事记 (1978–2014) (*The Pace of the Rule of Law: Memorabilia of Chinese Administrative Law 1978–2014*), China University of Political Science and Law Press (Beijing), at 55 (2015).

[19] YING Songnian, 我国民主与法制的新进展——祝国家赔偿法颁布实施 (*Recent Development of China's Democracy and Legal System: Celebrating the Promulgation and Implementation of the State Compensation Law*), 2 行政法学研究 (Administrative Law Review), 1–6 (1994).

[20] In fact, when the Administrative Litigation Law was under deliberation, a corresponding mechanism of administrative reconsideration was being designed and was scheduled to come out with the mechanism of administrative litigation. Given that the legislation of an Administrative Reconsideration Law might take a while, the State Council enacted the Regulations on Administrative Reconsideration. See YING, fn. 8 at 110.

Administrative Act Law (行政行为法) was published in 1993; YING Songnian was the editor-in-chief and MA Huaide was the associate editor. This book illustrated the theory on the administrative act in a systematic fashion and directly influenced several laws enacted in the following years.[21] LUO Haocai proposed the well-known "balance theory" (平衡论) in the same year, which raised the theoretical research of administrative law to a new level.[22] In this period, the work of comparative law became prominent, as many classic foreign treatises on administrative law were introduced to China. In 1986, *Administrative Law*, written by Bernard Schwartz, was translated and published in China;[23] *Japanese Administrative Law*, written by Hiromasa Minami, was translated by YANG Jianshu et al. and published in 1988.[24] WANG Mingyang, known as the "Prometheus" of Chinese administrative law, published his *Administrative Law of the United Kingdom* in 1987,[25] *Administrative Law of France* in 1988,[26] and *Administrative Law of the United States* in 1995.[27] His trilogy on comparative administrative law is a comprehensive collection based on first-hand resources, and it reiterates with local insights the theories and institutions of administrative law in three developed countries. The words in his books are easy to read, and the thoughts flow from one sentence to another. His trilogy marked the arrival of the "WANG Mingyang era."

The emergence and application of numerous findings made by researchers signaled that administrative law as a subject had been "resuscitated" and was burgeoning. Compilations of research on administrative law began to appear around this time. *Chinese Administrative Law Resuscitates: Summary and Comments*, edited by ZHANG Shangzhuo, was published in 1991.[28] *Review of Research on Administrative Law in the PRC (1949–1990)* was published in June 1991; this book was co-edited by XU Chongde

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[21] YING Songnian & MA Huaide eds. 行政行为法——中国行政法制建设的理论与实践 (*Laws on Administrative Acts: Theory and Practice of Chinese Administrative Law*), People's Publishing House (Beijing), (1993).

[22] LUO Haocai, YUAN Shuhong & LI Wendong, 现代行政法的理论基础——论行政机关与相对一方的权利义务平衡 (*The Theoretical Basis for the Modern Administrative Law: On the Balance between Rights and Duties of Administrative Agencies and Their Counterparts*), 中国法学 (Chinese Legal Science), 52–59 (1993).

[23] Bernard Schwartz, translated by XU Bing 行政法 (*Administrative Law*), Qunzhong Press (Beijing), (1986).

[24] Hiromasa Minami, YANG Jianshu & ZHOU Zuocai trs. 日本行政法 (*Japanese Administrative Law*), Renmin University of China Publishing House (Beijing), (1988).

[25] WANG Mingyang, 英国行政法 (*Administrative Law of the United Kingdom*), China University of Political Science and Law Press (Beijing), (1987).

[26] WANG Mingyang, 法国行政法 (*Administrative Law of France*), China University of Political Science and Law Press (Beijing), (1989).

[27] WANG Mingyang, 美国行政法 (*Administrative Law of the United States*), China Legal Publishing House (Beijing), (1995).

[28] ZHANG Shangzhuo ed. 走出低谷的中国行政法学：中国行政法学综述与评价 (*Chinese Administrative Law Resuscitates: Summary and Comment*), China University of Political Science and Law (Beijing), (1991).

and PI Chunxie, with HE Jinxiang as the associate editor.[29] Since the 1990s, academic research on administrative law has flourished by integrating theory with practice;[30] researchers have sought to localize administrative law theories and build administrative law as a well-structured discipline.[31]

C. Phase III (1997–2012): Implementing the Basic Policy of Law-Based Governance of the Country and Focusing on Law-Based Administration of Government

The 15th National Congress of the CPC set forth the requirements "to develop democracy, to improve the legal system, and to build a socialist rule of law China," and the "rule of law" became a national strategy. The Constitution was amended in 1999 to add a paragraph that reads, "the PRC is governed in a law-based fashion and builds a socialist rule of law country." The Decision on Comprehensively Promoting the Law-Based Administration of the Government (关于全面推进依法行政的决定), issued by the State Council in 1999, unequivocally stated that "the law-based administration of government is an important component of the law-based governance of the country, and largely a decisive factor to the implementation of the fundamental strategy of the law-based governance of the country." In 2004, the Outline for Promoting Law-Based Administration in an All-Round Way (全面推进依法行政实施纲要) officially set the goal of strengthening the rule of law in government. The themes of the rule of administrative law in Phase III became that the law-based administration of government should be promoted, and the rule of law in government should be strengthened. The legislature enacted a couple of statutes to regulate the administrative power, the administrative agencies implemented several internal self-regulative mechanisms, and the judiciary enriched the substance of administrative law on a case-by-case manner; new institutions came into existence to regulate administrative power, and different forces merged with each other to push the rule of administrative law forward.

At the state level, the Administrative Reconsideration Law of the PRC (中华人民共和国行政复议法) was passed after deliberation by the NPC Standing Committee in 1999; the law updated and expanded the previous Regulations on Administrative Reconsideration (行政复议条例) in terms of the principles, scope, procedures, and legal responsibilities of

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[29] XU Chongde, PI Chunxie & HE Jinxiang eds. 新中国行政法学研究综述 (1949–1990) (*Review of Research on Administrative Law in the PRC (1949–1990)*), Law Press (Beijing), (1991).

[30] YING Songnian & MA Huaide, 向新的高峰迈进——九十年代我国行政法学展望 (*Moving towards New Heights: An Outlook of Chinese Administrative Law in 1990s*), 3 中国法学 (Chinese Legal Science), 9–16 (1992).

[31] LUO Haocai, JIANG Ming'an & ZHAN Zhongle et al., 行政法学研究现状与发展趋势 (*The Current Status and Development Trend of Administrative Law Study*), 1 中国法学 (Chinese Legal Science), 41–45 (1996); HU Jianmiao, 中国行政法学理论体系的模式及评判 (*The Models of Chinese Administrative Law Theories and an Evaluation Thereof*), 1 中国法学 (Chinese Legal Science), 37–43 (1997).

administrative reconsideration.[32] The Legislation Law of the PRC (中华人民共和国立法法) was enacted by the NPC in 2000. The Legislation Law concentrated on addressing problems with making *ultra vires* laws, conflict of laws, making low-quality laws, and the improper procedure of legislation in China, and it has played a crucial role in legitimizing legislative activities.[33] The Administrative Licensing Law of the PRC (中华人民共和国行政许可法) took effect in 2004; it profoundly regulated the relationship between government and the market and drew a boundary of governmental functions that stimulated the development of the socialist market economy. The Administrative Compulsion Law of the PRC (中华人民共和国行政强制法), which became effective in 2012, regulated the creation and implementation of administrative compulsion, somewhat alleviating the concern of "abusive compulsion." A preliminary legal system of administrative acts with Chinese characteristics emerged, with the Administrative Penalty Law, the Administrative Licensing Law, and the Administrative Compulsion Law serving as three pillars thereof. This type of lawmaking can be characterized by its generalization of common traits from important administrative acts and the enactment of "light codes" to regulate them. It not only satisfies practical needs, but also embodies Chinese characteristics. It is closely linked to the illustration of administrative act theories put forth by scholars. In addition, the Standing Committee of the NPC approved the Civil Servant Law of the PRC (中华人民共和国公务员法) after deliberation; it provides legal guidance for civil servants.

The top-down guidance and regulation inside the administrative branch have always been important forces propelling the rule of administrative law. In November 1999, the State Council released the Decision on Comprehensively Promoting the Law-Based Administration of the Government, which made it clear that the law-based administration of government is a crucial component of the law-based governance of the country; that it was designed to promote the law-based administration of government; and that called for specific steps to be taken in legislation, enforcement, and supervision. In 2004, the State Council issued the Outline for Promoting Law-Based Administration in an All-Round Way. It illustrated the basic requirements, principal goals, and safeguard measures of the law-based administration of government in a more comprehensive, scientific, and systematic way. It provided guidance for promoting law-based administration of government both from theory and methodology. In 2008, the State Council announced the Decision on Strengthening the Law-Based Administration in the Municipal and County Governments (关于加强市县政府依法行政的决定). Given the importance of municipal and county governments in China's political system, the Decision specified the detailed

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[32] MA Huaide, 行政监督与救济制度的新突破——《行政复议法》评介 (*New Breakthrough in Administrative Supervision and Remedy: An Introduction and Comment on the Administrative Reconsideration Law*), 4 政法论坛 (Tribune of Political Science and Law), 66–72 (1999).

[33] GU Angran, 关于《中华人民共和国立法法 (草案) 的说明 (*An Explanation of the Legislation Law of the PRC (Draft)*), in the Third Session of the 9th NPC (Mar. 9, 2000).

tasks in building a law-based government and institutional requirements thereof. In 2010, the State Council revealed the Opinions on Strengthening the Building of a Law-Based Government (关于加强法治政府建设的意见). Centering on improving the implementation of the Outline for Promoting Law-Based Administration in an All-Round Way of 2004, the Opinions defined the key tasks in promoting law-based administration and strengthening the rule of law in government and updated the timetable and roadmap of the rule of administrative law.[34] The aforementioned norms were endeavors by the State Council, the highest administrative agency in China, to promote the implementation of the fundamental strategy of the law-based governance of the country, and their effects deserve careful treatment.[35]

The Regulation of the PRC on the Disclosure of Government Information (中华人民共和国政府信息公开条例), which took effect in 2008, was a milestone in the realization of the rule of administrative law. It improved the transparency of government actions and offered a concrete and easy way for citizens to exercise the right to know and supervise the performance of administrative power. In the same year, the Hunan Provincial Administrative Procedure Provisions (湖南省行政程序规定) were released; it was another milestone in the path toward the rule of administrative law and the first legislation in China to systematically provide administrative procedures. The rule aimed to promote the law-based administration of government and strengthen the rule of law in government. It provided systematical procedures for making major administrative decisions, procedures for making normative documents, etc. It was the prologue to legislation on administrative procedure at the local level and a positive attempt to promulgate an integrated law on administrative procedure at the state level.[36]

Individual cases played an important role in Phase III when new institutions mushroomed. The emergence of typical cases, the fermentation of public opinion, and the response of relevant departments jointly promoted the reform and improvement of the system. The theory of administrative law was also applied and tested in the cases, realizing the mutuality of academics and practice. During this period, there were a number of important cases. For instance, the *Xiancheng Building* case (贤成大厦案) was tried by the Supreme People's Court in 1998. It was heard by the highest court for such a long period and the amount in controversy involved was so large that the case still exerts a tremendous impact on society and has become an important case in the history of

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[34] See 国务院法制办负责人就《国务院关于加强法治政府建设的意见》答记者问 (*The Principal of the Legislative Affairs Office of the State Council Remarks on the Opinion of the State Council on Strengthening the Building of a Law-Based Government*), available at http://www.gov.cn/zwhd/2010-11/08/content_1740775.htm (last visited Apr. 20, 2018).

[35] SHEN Kui, 行政自我规制与行政法治：一个初步观察 (*Administrative Self-Regulation and Rule of Administrative Law: A Preliminary Investigation*), 3 行政法学研究 (Administrative Law Review), 12–17 (2011).

[36] YING Songnian, 中国行政程序立法的路径 (*The Path of Administrative Procedure Law in China*), 6 湖南社会科学 (Social Sciences in Hunan), 55–57 (2008).

administrative law. *TIAN Yong v. University of Science and Technology Beijing* (田永诉北京科技大学案), decided in 1998, is another example that illustrates the interaction between theory and judicial practice. This case confirmed that institutions of higher education can qualify as defendants in administrative litigation. Accordingly, a university's decisions on one student's expulsion were subject to due process.[37] The emergence of the *MA Dandan* case (麻旦旦案) in 2001 urged scholars to reexamine the standard of state compensation, especially compensation for the infliction of mental distress. After the *SUN Zhigang* case (孙志刚案) in 2003, the State Council, in response to concerns from academia and public opinion, voluntarily abolished the two-decade-old Measures for Custody and Repatriation of Vagrants and Beggars in Cities (城市流浪乞讨人员收容遣送办法). It gave rise to a heated debate among commentators on the social assistance system and judicial review.[38]

In Phase III, academic research on administrative law in China gradually matured, with Chinese administrative law as an established discipline and its study area and style set. From the perspective of regulating administrative power, three subsystems — laws on administrative organization, administrative act, and administrative remedy — derived from the general issues of administrative law, and the research has moved toward typological analysis, which is more specialized. The wealth of academic study has transformed Chinese administrative law: what used to only import knowledge now exports its own wisdom as well. The first cross-Strait conference on administrative law was held in 1997; many jurists and practitioners from Taiwan attended this conference, including WENG Yueh-sheng, WU Geng, FA Jyh-pin, and DUNG Bau-tscheng, among others. After negotiation, a formal communication mechanism was established between the administrative law research institutes on both sides of the Strait, and the two sides agreed to take turns hosting the cross-Strait conference on administrative law.[39] This mechanism is a tradition that continues to this day and has played a critical role in

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[37] This case was included in the Gazette of the Supreme People's Court (最高人民法院公报) (Vol. 4, 1999) and became a reference for other courts in accepting cases where students sue their universities. On Dec. 25, 2014, the Supreme People's Court issued the No. 38 Guiding Case: *TIAN Yong v. University of Science and Technology Beijing*, which conferred to it the status of a guiding case. For more background information, see RAO Yadong & SHI Lei, 《田永诉北京科技大学拒绝颁发毕业证、学位证案》的理解与参照——受教育者因学校拒发毕业证、学位证可提起行政诉讼 (*The Understanding and Inference of Tian Yong v. University of Science and Technology Beijing: Educatees Whose Graduation Certificate or Diploma Is Rejected by the University Are Entitled to Bring Administrative Actions*), 20 人民司法 (案例) (People's Judicature (Case)), 13–21 (2016).

[38] YANG Xiaojun, 从收容遣送到社会救助的法律分析 (*From Custody and Repatriation to Social Assistance: A Legal Analysis*), 7 中国党政干部论坛 (Chinese Cadres Tribune), 10–12 (2003); HU Jianmiao & JIN Chengdong, 论法规违宪审查建议权 (*On the Advisory Power to Review the Constitutionality of Regulations*), 2 法学家 (The Jurist), 133–139 (2005).

[39] On the development of the cross-Strait conference on administrative law, see CHEN Yuru, 第十一届海峡两岸行政法学术研讨会引关注 记者探寻两岸法律文化交流持续 12 年缘由 (*The 11th Cross-Strait Conference on Administrative Law Draws Public Attention, Journalist Explores the Reason behind 12 Years' Communication of Cross-Strait Legal Cultures*), 法制日报 (Legal Daily), Jul. 22, 2009.

enhancing communication across the Taiwan Strait.

D. Phase IV (2013–Present): "Simultaneous Advancement and Integrated Construction" in Building the Rule of Law in China

President XI Jinping contended that "the rule of law is an indispensable measure in governing a country. Big as China is, only by insisting on the law as the base and taking full advantage of the rule of law can we reach the goal of a sound economy, a political integrity, a prosper culture, a just society, and a good environment." Since the 18th National Congress of the CPC, the Party Central Committee — with Comrade XI Jinping at its core — has put forward the idea and strategy of comprehensively promoting the law-based governance of the country, which starts a new chapter in pursuing the rule of law. Building a rule of law in China has become an important component of promoting the modernization of China's system and capacity for governance in the Third and Fourth Plenary Sessions of the 18th Central Committee of the CPC; 190 notable reforms were announced and measures for comprehensively promoting the law-based governance of the country were deployed. The 19th National Congress of the CPC asserted that the strategic target of building a country, government, and society under the rule of law will be reached by 2035 and decided to set up a central leading group for advancing law-based governance in all areas (中央全面依法治国领导小组); this provided guidance and safeguards for building the rule of law in China. Back in the 15th National Congress of the CPC, it was established that law-based governance was the basic way for the Party to lead the people in governing the country. The 19th National Congress of the CPC took this a step further: Law-based governance in all respects became the basic way for persisting and developing socialism with Chinese characteristics in a new era. This indicated that law-based governance of the country had been upgraded from a partial strategy to an overall one, highlighting the significance of the rule of law in coordinating efforts to pursue the five-pronged integrated plan and the four-pronged comprehensive strategy and raising the fundamental, supportive, guiding function of the rule of law in advancing the modernization of state governance and building a great modern socialist country.[40]

The overall objective of advancing law-based governance of the country has been to build a socialist rule of law with Chinese characteristics and a socialist rule-of-law country. Doing so requires a comprehensive arrangement of each single stage and aspect in legislation, law enforcement, and litigation, as well as obedience of law; an advancement of law-based governance of the country, law-based exercise of state power, and law-based administration of government; and an integrated approach to building a country, government, and society under the rule of law. Under this circumstance, the

[40] ZHANG Wenxian, 新时代全面依法治国的思想、方略和实践 (*Ideas, Strategies and Practices of Governing China by Law in a New Era*), 6 中国法学 (China Legal Science), 5–28 (2017).

priority of the rule of administrative law is boosted, its substance enriched, and its mission enlarged. It should be coordinated with the development of the rule of law in other areas; together, they will accelerate the modernization of China's system and capacity for governance. In addition, development of the rule of administrative law, being the focal point and crucial part of the law-based governance of the country in an all-around way, should go deeper, and we should abolish obsolete institutions that stand in the way of the rule of administrative law and further employ the rule of administrative law as a guide and norm for society. Generally speaking, after the 18th National Congress, the rule of administrative law has entered a stage of coordinated advancement and vertical expansion in comprehensively promoting law-based governance of the country.

"When the law of the land is good, there will be order in the land; when the laws of the state are good, there will be order in the state (立善法于天下, 则天下治; 立善法于一国, 则一国治)." It is an essential and indispensable requirement for comprehensively promoting law-based governance of the country that shifting conditions and social needs should be paid attention to, and the socialist legal system with Chinese characteristics, with the Constitution as its core, should be improved. The Standing Committee of the NPC issued the Decision on Amending the Administrative Litigation Law of the PRC (关于修改《中华人民共和国行政诉讼法》的决定) in November 2014. It was the first revision of the Administrative Litigation Law since it came into effect more than 20 years. The revised law provided for new institutions to protect both parties' rights in litigation and improved the jurisdiction and procedures of administrative litigation, which seeks to overcome difficulties in filing cases, trials, and enforcement — issues that used to be notorious in practice. The desirable results of the new law imply that we have achieved the goals through the revision.[41] In March 2015, the NPC voted on the Decision on Amending the Legislation Law of the PRC (关于修改《中华人民共和国立法法》的决定) and made major changes to the existing Legislation Law. Thirty-five articles of the law were amended, and 11 new articles were added, increasing the total articles from 94 to 106. The new Legislation Law created new institutions to improve the legislative regime, complement the mechanisms and procedures of scientific legislation and democratic legislation, and protect the uniformity of the legal system. Especially, the new law delegated legislative power to cities with subordinate districts, which dramatically expanded the scope of entities that enjoyed the local legislative power and responded to the need for the refinement of governance called for by the social development in recent years.[42] In July 2015, the Standing Committee of the NPC passed the Decision on Authorizing the Supreme People's Procuratorate to Launch the Pilot Program of Public

[41] MA Huaide, 新行政诉讼法实施一年：变化与问题 (*A Year after the Implementation of the New Administrative Litigation Law: Changes and Problems*), 学习时报 (Study Times), May 12, 2016.

[42] WU Zeng, 2015 年《立法法》修改背景和主要内容解读 (*The Background of the 2015 Amendment to the Legislation Law and an Interpretation of Its Major Provisions*), 1 中国法律评论 (China Law Review), 210–216 (2015).

Interest Actions in Certain Areas (关于授权最高人民检察院在部分地区开展公益诉讼试点工作的决定), enabling the Supreme People's Procuratorate to launch pilot programs of public interest actions in Beijing, Inner Mongolia, Jilin, and other areas for a period of two years. The CPC Central Leading Group for Deepening Overall Reform (中央全面深化改革领导小组) deliberated and adopted the Report on the Pilot Program of Procuratorial Organs Filing Public Interest Litigation and Next-Step Work Proposals (关于检察机关提起公益诉讼试点情况和下一步工作建议的报告) in May 2017. On June 27 of the same year, the Standing Committee of the NPC decided to amend the Administrative Litigation Law, and administrative public interest actions were formally adopted all over the country. Brought on by the procuratorate, administrative public interest actions played an important role in improving the structure of administrative litigation, protecting public interest, supervising the implementation of the law-based administration of government and enhancing procuratorial supervision over the administration.[43]

Against the historical background of advancing law-based governance, building a government based on the rule of law as a critical stage has drawn considerable attention.[44] The Central Committee of the CPC and the State Council jointly announced the Implementation Outline for Building a Government Ruled by Law (2015–2020) (法治政府建设实施纲要 (2015–2020)) in December 2015. Ten years have passed since the reveal of the Outline for Promoting Law-Based Administration in an All-Round Way, and the Implementation Outline is another overall arrangement and plan of the rule of administrative law made by the Central Committee of the CPC and the State Council. Considering the conditions of the times, the new Outline assigns missions in detail to governments at all levels in seven different fields, including the performance of government functions based on law and the improvement of institutions of the law-based administration of government, as well as 40 specific measures. It serves as a timetable, a roadmap, and a liability statement for building a government based on the rule of law.[45] From the history of building a government based on the rule of law in the last couple of years, we observe that several institutions and measures have been established in a short period of time and orderly implemented to regulate administrative power. First, the reforms of "simplifying procedures, decentralizing powers, enhancing supervision, and optimizing public services (放管服)" have been deepened; the system of the power list system has been implemented in an orderly manner; and the benefits of transforming

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[43] KONG Xiangwen, WANG Ding & YU Jiming, 检察机关提起行政公益诉讼试点工作调研报告 (*Research Report on Pilot Program of Procuratorial Organ Initiating Administrative Public Interest Litigation*), 5 行政法学研究 (Administrative Law Review), 87–98 (2017).

[44] See YANG, fn. 11.

[45] HAN Chunhui, 新时期法治政府建设的纲领性文件——《法治政府建设实施纲要 (2015—2020 年)》解读 (*An Interpretation of the Implementation Outline for Building a Government Ruled by Law (2015–2020)*), 光明日报 (Guangming Daily), Jan. 6, 2016.

government functions have emerged. Second, administrative decision making has been made more scientific and democratic at an accelerated pace, while the abuse of administrative normative documents has been contained. Third, progress has been made in the reform of the system of administrative law enforcement; three reforms of law enforcement — the publicity of law enforcement, videotaping of law enforcement activities, and review mechanism for important law-enforcement decisions — have been carried out step by step. Finally, the system of legal counsel has generally been adopted by the government.

It is a broad and profound revolution of state governance to comprehensively promote law-based governance of the country, which results in a series of adjustments to the existing system and structure of state governance. Academic studies echo the dynamics in this phase, showing the responsiveness of the theory. In terms of the general questions of administrative law, scholars have paid much attention to such issues as the transformation of modern administrative law and "new administrative law" on the one hand, and dug into questions favored by traditional administrative law, such as the fundamental principles of administrative law or legal concepts of uncertainty, on the other. With respect to the specific issues of administrative law, taking the opportunities of institutional reform — for instance, the reforms of administrative approval system or administrative law enforcement — scholars have conducted in-depth studies on issues ranging from the power list system and transformation of law enforcement methods to the boundary between administrative penalties and criminal penalties and the legalization of administrative decision making. With regard to the respect of administrative litigation, scholars have paid more attention to the revision of the Administrative Litigation Law, case guidance system, judicial review of administrative contracts, administrative public interest actions, etc. In summary, the academic research on administrative law in this phase shows a clear awareness of local problems and changing conditions and evolves to respond to the problems confronting the rule of administrative law in accelerating the modernization of the China's system and capacity for governance.[46]

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[46] For an overview of administrative law studies in recent years, see MA Huaide & ZHU Zhiyi, 2014 年行政法学理论新进展 (*Recent Developments of Administrative Law Theories in 2014*), 行政论坛 (Administrative Tribune), 11–15 (2015); MA Huaide, 行政法学：关注法治实践回应现实问题 (*Administrative Law: Focus on Rule of Law in Practice and Respond to Real Problems*), 检察日报 (Procuratorial Daily), Jan. 9, 2016; MA Huaide & WANG Ding, 行政法学的新使命——2016 年行政法学研究述评 (*New Mission of Administrative Law: Review of Administrative Law Study in 2016*), 3 北京行政学院学报 (Journal of Beijing Administrative Institute), 101–107 (2017); and MA Huaide & WANG Ding, 行政法学：推进理论创新与法治政府建设 (*Administrative Law: Promoting Theoretical Innovation and Construction of a Rule-of-Law Government*), 检察日报 (Procuratorial Daily), Jan. 5, 2018.

II. ACHIEVEMENTS IN THE FOUR-DECADE IMPLEMENTATION OF THE RULE OF ADMINISTRATIVE LAW

A. Theoretical Level: Emergence of Administrative Law Theories with Chinese Characteristics

With respect to background of knowledge, Chinese scholars have not only broadly learned administrative law theories from civil law countries and districts but have also absorbed some of that from common law jurisdictions. In the early years of the founding of the PRC and the reform and opening up policy, administrative law theories from the Soviet Union were an important source of knowledge for Chinese administrative law. Nonetheless, the theories of the Soviet Union were born in a highly centralized political and economic system and featured the administrative theory (管理论), which was inconsistent with the policies following reform and opening up in China. Accordingly, the impact of Soviet administrative law declined as administrative law scholars in China became increasingly self-aware. Around the late 1980s and early 1990s, few treatises on Soviet administrative law were introduced.[47] One of the many civil law countries is Japan, whose administrative law theories have helped shape the theoretical system of administrative law in China. In the late Qing dynasty, a group of students was sent to Japan to learn political science and law. Some of them focused on administrative law; they were systematically trained in Japanese administrative law and devoted to administrative law teaching and research after returning to China. They were pioneers whose education and knowledge structures determined the impact exerted by Japanese administrative law theories on those of China.[48] Although the connection of the administrative law tradition between China and civil law countries was once interrupted by the abolishment of the old legal regime and for other reasons, after reform and opening up, the connection was reestablished thanks to the scholars who overlapped two eras of China and its academic publications. For instance, the *Selected Sources of Administrative Law*, which accompanied the textbook *A Synopsis of Administrative Law*, included the tables of contents of treatises written or edited by FAN Yang, GUAN Ou, ZHAO Chen, ZHANG Zaiyu, LIN Jidong, and Tatsukichi Minobe.[49]

Meanwhile, the interaction with administrative law scholars in Taiwan, to some extent, had an influence on the studies on administrative law in the Chinese mainland. At the early stage of development of administrative law discipline and theoretical system,

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[47] YU An, 外国行政法学在我国的引入和利用 (*Introduction and Usage of Foreign Science of Administrative Law in China*), 1 政法论坛 (Tribune of Political Science and Law), 170–175 (2006).

[48] YING Songnian, 中国行政法学 60 年 (*60 Years of Administrative Law in China*), 4 行政法学研究 (Administrative Law Review), 62–76 (2009).

[49] YING Songnian & ZHU Weijiu eds. 行政法资料选编 (*Selected Sources of Administrative Law*), Law Press (Beijing), (1984). Furthermore, WANG Mingyang recalled that in composing the chapter "Administrative Act" in *A Synopsis of Administrative Law*, he also referred to lecture notes and other materials he had used when teaching at Wuhan University. See HE, YAN & YAN, fn. 18 at 27.

scholars in the Chinese mainland mostly drew on literature on administrative law in Taiwan as reference.[50] The introduction of German and Japanese administrative law theories by scholars in the Taiwan region further provided substantial research materials for comparative administrative law study in the Chinese mainland. Chinese scholars, once equipped with language and other skills, began to translate and introduce masterpieces of German and Japanese administrative law or to conduct comparative law research on German and Japanese administrative law, and this promoted first-hand research on German and Japanese administrative law.[51] In addition, administrative law theories from the United Kingdom and the United States have been influential since the late 1980s and early 1990s. A large number of treatises on administrative law theories from the United Kingdom and the United States were translated and introduced to China, and their impact has been significant.[52] It is common for Chinese scholars to learn from English or American administrative law when studying administrative procedures, administrative contracts, public disclosure of government information, etc.[53]

Learning widely from the advantages of other countries and districts and based on its local characteristics, the discipline of Chinese administrative law has preliminarily formed a theoretical system of administrative law with some autonomy. Relying on such concepts as administrative action, three subsystems — laws on administrative organization, administrative acts, and administrative remedies/supervision — have developed under the general issues of administrative law. In terms of the organization law of administrative agencies, scholars have delved into such issues as the theory of subjects of administration and laws on civil servants. In terms of laws on administrative acts, the research topics have ranged from general theories of administrative acts to specific

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[50] HE Haibo surveyed early papers published in the Administrative Law Review between 1993 and 2005 and found that out of 6,301 total citations, 547 citations, or 8.6% of the total, were for literature from the Taiwan region. The citations have increased dramatically since 1998 (64 in 1998, compared to 18 in 1997). This development correlates to the establishment of a normalized communication mechanism between the administrative law community on the Mainland and that in Taiwan. See HE Haibo, 中国行政法学的外国法渊源 (*The Foreign Law Sources of Chinese Administrative Law*), 6 比较法研究 (Journal of Comparative Law), 42–59 (2007).

[51] For example, see YANG Jianshun, 日本行政法通论 (*General Theory of Japanese Administrative Law*), China Legal Publishing House (Beijing), (1998); Hartmut Maurer, translated by GAO Jiawei, 行政法学总论 (*Pandect of Administrative Law*), Law Press (Beijing), (2000).

[52] Early translations include Bernard Schwartz, fn. 23. Treatises include GONG Xiangrui, 比较宪法与行政法 (*Comparative Constitutional Law and Administrative Law*), Law Press (Beijing), (1985); and WANG, fn. 25.

[53] For example, see WANG Xixin, 行政程序立法思路探析 (*Exploration on Legislative Thinking of Administrative Procedure Law*), 2 行政法学研究 (Administrative Law Review), 22–28 (1995); YU Lingyun, 论行政契约的含义——一种比较法上的认识 (*On the Meaning of Administrative Contracts: From the Perspective of Comparative Law*), 3 比较法研究 (Journal of Comparative Law), 325–330 (1997); and MA Huaide, 澳大利亚行政法中的程序公平原则——兼论对中国行政程序立法的启示 (*Procedural Fairness in Australian Administrative Law and Its Implications on Administrative Procedure Law in China*), 2 比较法研究 (Journal of Comparative Law), 142–150 (1998).

categories of administrative acts, including administrative legislation, licensing, penalties, compulsions, charges, guidance, etc. In terms of laws on administrative remedies, there has been research on administrative reconsideration, administrative litigation, and state compensation. In promoting law-based administration of government and strengthening the rule of law in government, commentators have applied the system of theories to China's administration in practice, which contributes to the formation of Chinese discourse on administrative law. Meanwhile, the rise of sectoral administrative laws in the fields of police, education, food and drugs, etc., has enhanced the capacity of Chinese administrative law to respond to practical problems. With respect to methodology, in addition to the traditional technique of interpretation, scholars have gradually adopted tools of law and economics or law and society, signaling that they are aware of the necessity of improving research methods.

B. Institutional Level: Establishment of a Legal System and Institutional Regime of Administrative Laws with Chinese Characteristics

Thanks to the lessons of the past several decades, the importance of the rule of law has been widely accepted since reform and opening up; the development of the market economy and joining the WTO, among other factors, have imposed practical needs for the rule of administrative law. Pushed by a joint force, the intensive legislation and construction of institutions have in a short time become the theme of the rule of administrative law. In this process, the regulation and supervision of administrative power have always been the main focus of administrative legislation. With respect to the aspect of administrative organization laws, a system of administrative organization law has been preliminarily set up based on the Organization Law of the State Council of the PRC (中华人民共和国国务院组织法), the Organization Law of the PRC for Local People's Congresses at All Levels and Local People's Governments at All Levels (中华人民共和国地方各级人民代表大会和地方各级人民政府组织法), and the Civil Servant Law of the PRC (中华人民共和国公务员法). With respect to laws on administrative acts, a system of laws on administrative acts with clear Chinese characteristics has been built upon "the three pillars of administrative law" — the Administrative Licensing Law, the Administrative Penalty Law, and the Administrative Compulsion Law. With respect to administrative supervision and remedy, relying on the Administrative Reconsideration Law, the Administrative Litigation Law, and the State Compensation Law, a coherent system of laws on administrative supervision/remedies has been built. After 40 years of hard work, a system of administrative laws and institutions with Chinese characteristics has been established, and the goal of effectively regulating administrative power has been achieved.

Despite variations between the control theory (控权论) and the balance theory, how to keep the exercise of administrative power in line with the rule of law has always been the question that draws the attention of contemporary administrative law researchers. Unlike

in the exercise of legislative or judicial power, chief executives usually assume the responsibility of the exercise of administrative power, and the realization of administrative objectives depends on the effectiveness of a bureaucratic hierarchy, which gives personal authority to chief executives. In addition, the complexity and urgency of administrative affairs requires that administrative organs pay more attention to administrative efficiency and emphasize resolving practical problems.[54] From the perspective of Chinese culture and tradition, the separation of powers between the administration, legislature, and judiciary did not exist in ancient China; instead, administrative officials were often in charge of judicial and other functions besides administrative ones, which resulted in the dominant position of administrative power and the relatively comprehensive control of social life by the government. Moreover, citizens lacked enough channels and sufficient skills to participate in social governance and public affairs, and they did not have mechanisms to equally communicate and negotiate with the government. Even after reform and opening up, to maintain social stability and create a better circumstance, relatively coercive administration power has been objectively needed to realize the administrative goal in a rapidly changing world. The aforementioned factors have resulted in difficulties in regulating administrative power in reality. The development of China's rule of administrative law fully reflects scholars' thoughts on how to regulate administrative power. The administrative laws and institutions that have emerged since reform and opening up have, from different perspectives, defined the relationships between government and the market, entrepreneurs, and society; specified the responsibility and authority, as well as the management of, government; and supervised and guaranteed the proper exercise of governmental power through regulating and controlling administrative power.[55] These laws and institutions not only meet the practical need for law and order in social development but also ensure that administrative power will always serve the overall goal of state building by advancing the modernization of China's system and methods for governance.

C. Cognitive Level: Acceptance of the Law-Based Administration of Government by Civil Servants and the Popularity of the Rule of Law among the Public

The impact of culture and traditions from feudal China and the bureaucrat-oriented mindset are profound, and both, to some degree, cause the poor awareness of the rule of administrative law and the absence of a cultural basis for the rule of administrative law. The rule of law has become a fundamental mode of governing a state since reform and opening up. The legal education led by authorities, the call made by academia, and the

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[54] YING Songnian, 依法治国的关键是依法行政 (*The Key to the Law-Based Governance of the Country Is the Law-Based Administration of Government*), 11 法学 (Law Science), 13–14 (1996).

[55] XIN Chunying, 中国特色社会主义法律体系及其重大意义 (*The Socialist Legal System with Chinese Characteristics and Its Significance*), 6 法学研究 (Chinese Journal of Law), 19–26 (2014).

publicity through media contribute to the improved public awareness and popularity of the rule of law in society. The achievements of the rule of administrative law have affected society in different ways and garnered popular support for the ideas of law-based administration of government and strengthening the rule of law in government. At present, the concepts of law-based administration of government or the rule of law in government are commonly accepted by civil servants in China who voluntarily follow the requirements of laws and regulations in their routine jobs. The public is aware of the necessity of monitoring the activities of administrative agencies and will seek legal remedies when its legal rights or interests are injured.

As early as 1999, the State Council required, in the Decision on Comprehensively Promoting the Law-Based Administration of Government, that governments at all levels should, by holding law lectures or other training forms, learn the Constitution, laws, and regulations seriously; especially, the leaders of governments at all levels should set an example before others to learn legal requirements. This requirement has been succeeded and specified by later documents. According to a 2017 study conducted by the School of Law-Based Government of CUPL on the progress of building a rule-of-law government in 100 cities, the average scoring rate in the training of rule-of-law thinking of leaders is 86.2%, indicating that the mechanism as a whole functions properly.[56] In the meantime, a system of government performance evaluation is being established in which the rule of law is a critical index. The Implementation Outline for Building a Government Ruled by Law (2015–2020) expressly contends that Party committees at all levels of the CPC should make the effectiveness of the rule of law an important factor in evaluating the performance of leading groups and individual leaders and a part of the performance-evaluation index system, fully exploiting the impact of evaluation in strengthening the rule of law in government. For individual leaders in local governments, whether they keep the rule of law in mind and whether they are skilled at applying the idea and methods of the rule of law to deepen the reform, promote development, resolve conflicts, and maintain stability, will influence their possibility of promotion.[57]

Not only have civil servants become conscious of the rule of law but the general public has also become more informed about it. The public has a growing demand for a series of civil rights, including the right to know, speak, participate, and oversee, and a strong willingness to oversee whether administrative agencies follow the requirements of the law-based administration of government. According to statistics released by *Law*

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[56] School of Law-Based Government of CUPL ed. 法治政府蓝皮书：中国法治政府评估报告 (2017) (*The Rule-of-Law Government Blue Book: Assessment Report of the Rule-of-Law Government in China (2017)*), Social Sciences Academic Press (Beijing), at 53 (2017).

[57] MA Huaide, 行政法治的新挑战与新任务 (*New Challenges and Mission of the Rule of Administrative Law*), 法制日报 (Legal Daily), Apr. 10, 2013.

Yearbooks of China, 9,934 administrative actions were heard by trial courts in 1989, the year before the Administrative Litigation Law took effect;[58] by contrast, 225,485 administrative actions — 20 times more than in 1989 — were heard by trial courts in 2016.[59] Statistics also indicate that where access to legal remedies is unhindered, the public is capable of settling disputes and protecting its legal rights and interests through judicial proceedings such as administrative litigation.

III. LESSONS FROM THE FOUR-DECADE IMPLEMENTATION OF THE RULE OF ADMINISTRATIVE LAW

A. Top Down and Guidance Driven

The development of the rule of administrative law in China since reform and opening up comes with a salient characteristic of constructiveness. The Central Committee of the CPC makes overall plans and coordinates all aspects of resources and forces and continuously promotes the institutional development and practical innovation through top-level design and political guidance. This is an important reason why we have made great progress in the rule of administrative law in such a short time. Historically speaking, all previous National Congresses of the CPC have made statements regarding the rule of law: For instance, the 15th National Congress of the CPC made law-based governance of the country and building a socialist rule of law country a fundamental policy; the 16th National Congress stated that it was fundamental to the development of a socialist democracy that we should uphold the unity of Party leadership, the running of the country by the people, and law-based governance; the 17th National Congress emphasized that law-based governance of the country was a fundamental requirement of the socialist democracy, and that we should comprehensively implement the basic policy of the rule of law and accelerate the pace of building a socialist rule-of-law country; the 18th National Congress claimed that the rule of law was the basic way to govern a country; and the 19th National Congress required us to further deepen the practice of law-based governance of the country. These statements and discussions about shaping the socialist rule of law provide clear guidance for the construction of the rule of administrative law in China. In the 19th National Congress, the CPC decided to establish the central leading group for advancing law-based governance in all areas; this was the result of summarizing past experiences. The establishment of the group confirmed the role of the CPC as a leader and core in commanding the overall situation and coordinating different aspects, facilitating the application of the fundamental policy that the CPC leads the people to govern the country under the Constitution and laws in all processes, fields, and systems of

[58] See the Press of Law Yearbook of China ed. 中国法律年鉴 (1990) (*Law Yearbook of China (1990)*), The Press of Law Yearbook of China (Beijing), at 994 (1990).

[59] See the Press of Law Yearbook of China ed. 中国法律年鉴 (2017) (*Law Yearbook of China (2017)*), The Press of Law Yearbook of China (Beijing), at 1161 (2017).

the law-based governance of the country.[60]

The endeavors and achievements of the State Council, the highest organ of state administration, in regulating and controlling administrative power, which are the themes of shaping the rule of administrative law, should be highly spoken of.[61] In the path of building a rule-of-law government led by the Party and government, the Party Central Committee provides overall leadership and coordinates the efforts of all involved, providing guidance on ideas, directions, policies, and safeguards in politics and organizations; the State Council establishes relevant systems inside the administrative organs through the bureaucratic system, to carry out the plan of top-level design. The State Council has made several arrangements to advance the law-based administration of government and build a rule-of-law government and has provided guidance on theory and methodology for government at all levels since 1999, when it issued the Decision on Comprehensively Promoting the Law-Based Administration of Government. A series of regulations, including the Outline for Promoting Law-Based Administration in an All-Round Way, the Decision on Strengthening the Law-Based Administration in the Municipal and County Governments, and the Opinion on Strengthening the Building of a Law-Based Government, clearly provides the objectives, missions, timetable, and responsibilities of building a rule-of-law government, offering a strong impetus to the development of the rule of administrative law in China. Since the 18th National Congress of the CPC, the reforms of "simplifying procedures, decentralizing powers, enhancing supervision, and optimizing public services," the power list system, the reform of administrative approval, and the reform of administrative law enforcement, etc., have been quickly adopted; these efforts break the barriers created by vested interests and show the sense of duty and responsibility of governments at all levels, especially that of the State Council, to turn the crossbow against itself and start a self-initiated revolution.

B. Basing Changes on China's Conditions and Being Open and Inclusive

Every modern country has its own characteristics. Only when the legal system of a country fits with its social and economic conditions, as well as its history, tradition, culture, etc., can the legal system function well. Academic research should also be able to respond to reality to maintain its enduring vitality. We have persisted in fully recognizing the reality of China to shape the rule of administrative law, addressing China's problems and then widely embracing the strengths of other countries, and explored a path to rule of administrative law with Chinese characteristics, which offers Chinese wisdom and a Chinese approach to the global rule of law. Take administrative licensing as an example. Most Western countries used to be a liberal *Rechtsstaat* (or state of law) according to

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[60] YING Songnian, 中央全面依法治国领导小组成立的战略意义 (*The Strategical Importance of the Central Leading Group for Comprehensively Governing the Country by Law*), 5 人民论坛 (People's Tribune), 80–81 (2018).

[61] See SHEN, fn. 35.

classical liberalism and believed "that government is best which governs least." Even for establishing an administrative license involving public interest, a specific delegation of power by the parliament is required. However, what China confronted at the early stage of its reform and opening up was a transformation from an omnipotent government under the planned economy to a limited government required by the socialist market economy; there were interlaced policies and regulations issued by different administrative organs, and numerous administrative approvals were established. With legal regulations absent, more sub-approvals stemmed from the approvals, which hindered the dynamics of society and the economy. How to regulate the power of approval of the administrative organs was an urgent problem to be resolved. Considering the factors of maintaining the unity of the legal system and ensuring efficiency, the enactment of Administrative Licensing Law became an institutional choice of the administrative rule of law. Furthermore, other institutions, such as the burden of proof in administrative litigation provided by the Administrative Litigation Law, the principle of imputation articulated in the State Compensation Law, and the legislative mode of the Administrative Penalty Law and the Administrative Compulsion Law, also reflected the characteristics of Chinese administrative law. It is safe to conclude that most administrative legislations and institutions since reform and opening up have not only fit the rapid development of the socialist market economy but have also responded to the characteristics of Chinese society, thus creating an innovative path to the rule of law in China.[62]

Meanwhile, we should observe that the rule of law is a common choice for all countries in political and cultural development and is a wisdom shared by mankind. Therefore, countries could learn from each other in promoting the rule of law. Over the past 40 years, China has persistently exchanged knowledge with other countries for shaping the rule of administrative law; as open-minded and inclusive as China is, it has broadly absorbed and borrowed experience from others to benefit itself. For instance, among the contributions of the Administrative Penalty Law are the introduction of hearings to the statutory laws and the requirement of a hearing before a penalty decision. Although the concept of hearings originated in the Western world, the ideas of procedural due process and negotiation are demanded by the rule of administrative law in China. There was some debate on whether the term "hearing" should be adopted by the Administrative Penalty Law before its enactment: Some commentators asserted that the term "hearing" was too alien to China, and thus the law should use the phrase "taking advice (听取意见)" instead; but others, led by LUO Haocai, insisted that a "hearing" as a legal procedure was too unique to be replaced by "taking advice," which could not reflect its essence. The debate ended up with the adoption of "hearing" by the legislature in the Administrative Penalty Law, and the hearing became an important mechanism that has been provided by subsequent legislation. The study of foreign administrative law not only advances the institution building of administrative law but also stimulates the

[62] YING Songnian, 中国行政法发展的创新之路 (*The Innovation of Administrative Law in China*), 3 行政法学研究 (Administrative Law Review), 44–51 (2017).

development of administrative-law theories in China. The principles of proportionality, legitimate expectation, legal reservation, etc., which reside in the theoretical system of Chinese administrative law, have all been influenced by foreign theories. At present, we do not learn foreign experience only from the translation, introduction, or comparison of rules; instead, we pay more attention to the structural factors of foreign institutions and their performance. The breadth and depth of comparative administrative law study are expanded.[63] From the historical development of the rule of administrative law, we can find that so long as we push forward the development of theory and practice of Chinese administrative law by adopting the thought of "basing on China's reality, learning from foreign experience, drawing on our own history, understanding current situations, caring for mankind, and being forward-thinking," our institutions and theories will obtain a long-term vitality.

C. Giving Priority to Practice and Encouraging Innovation

The practical explorations and institutional innovations at the primary level have always fed the rule of administrative law in China with fresh materials and pushed it forward. Since reform and opening up, many beneficial institutions and lessons generated at the primary level have been approved and adopted in state legislation and applied nationwide, having a significant impact on the development of the rule of administrative law in China. For instance, the prototype of the system of disclosure of government information, which plays an important role in guaranteeing citizens' right to know and right to oversee, can be traced back to the practice of disclosing village affairs in the 1980s.[64] The centralized jurisdiction (集中管辖), articulated in the Administrative Litigation Law of 2014, derives from the experience of local people's courts to reduce intervention and ensure that the judicial power is exercised legally, independently, and justly.[65] The off-site jurisdiction (异地管辖), which is closely related to centralized jurisdiction, is called the "Taizhou experience (台州经验)" of administrative trials.[66]

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[63] LI Honglei, 中国比较行政法研究的前瞻 (*Prospect of Comparative Administrative Law in China*), 4 法学研究 (Chinese Journal of Law), 30–33 (2012).

[64] MA Huaide, 政府信息公开制度的发展与完善 (*The Development and Improvement of Government Information Disclosure System*), 5 中国行政管理 (Chinese Public Administration), 11–16 (2018).

[65] On Sep. 17, 2017, the Lishui Intermediate People's Court of Zhejiang issued the Opinion on the Trial Implementation of the Relatively Centralized Jurisdiction of Administrative Cases, which directed three lower courts, Liandu, Longquan, and Songyang, to hear all administrative cases raised from the nine sub-jurisdictions of the city of Lishui. See WEI Huixing & MA Liangji, 探索管辖制度改革杜绝地方行政干预——浙江高院关于行政案件管辖改革试点的调研报告 (*Exploring Jurisdiction Reforms and Eradicating Intervention by Local Government: Report of Higher People's Court of Zhejiang on the Pilot Reform of Jurisdiction over Administrative Cases*), 人民法院报 (People's Court Daily), Jul. 26, 2012.

[66] GUO Xiujiang, 行政诉讼集中管辖问题研究——《关于开展行政案件相对集中管辖试点工作的通知》的理解与实践 (*Study on the Centralized Jurisdiction of Administrative Litigation: Understanding and the Practice of the Notice of the Supreme People's Court on Carrying out the Pilot Work of the Relatively Centralized Jurisdiction of Administrative Cases*), 5 法律适用 (Journal of Law Application), 2–8 (2014).

An invaluable lesson from the development of the rule of administrative law is that we should highlight the role of the experiments and institutional innovations from the primary level, distill rules from the practices that have proved to be effective, and incorporate them into state legislation. China is a large country with considerable regional differences, and thus it is difficult for a top-level design to cover and consider every instance in advance. In contrast, local governments face dual pressure from both the implementation of pertinent policies and governance at the local level and are strongly driven to advance institutional explorations and further improve the systems to satisfy practical requirements. Currently, several important reforms pushed by the Central Committee of the CPC — for instance, the reform of the supervision system and the reform of administrative public interest actions — have begun with pilot projects at the local level. Based on the experience of these pilot projects, systematic legislation will be promulgated all over the country. This practice reduces the unknown risks in institutional innovations, ensuring that the innovations are "under control"; it also helps lower the potential costs associated with the innovations by incrementally improving the institutions and seeking optimum solutions. The practical explorations and institutional innovations at the primary level give precious creativity to and invigorate the development of the rule of administrative law. Such explorations and innovations complement the top-level design, and they together promote the development of the rule of administrative law in China.

D. Respecting Laws and Addressing Easier Issues before Difficult Ones

The course of building a rule-of-law country has been interrupted for many years due to a variety of historical reasons since the founding of the PRC, which resulted in some "historical debts." After reform and opening up, the socialist rule of law has grown rapidly in China. However, it will be a long journey to build a system of rule of administrative law that fits China's reality, requesting us to continuously summarize, improve, and sublimate practical experience and persistently refine, apply, and rethink theories. A legal system can never be water without a source or a tree without roots; rather, it should be based on reality. It requires that, in promoting the rule of law, we should not only give full play to our subjective initiative but also respect the laws in building a rule-of-law country. One of the reasons that we could establish in the short period of 40 years a set of administrative laws and institutions that fit China's reality is that we highly respect the laws of the rule of law. With respect to institution building, we insist on addressing easier issues before difficult ones. We will take a step-by-step approach to gradually consolidate the achievements of institution building while making sure that we are on the right track.

When the Administrative Legislation Research Group was set up, it originally intended to imitate the mode of the General Principles of the Civil Law and draft the General Principles of the Administrative Law or the Outline of the Administrative Law,

which would serve as a general framework for the legal system of administrative laws in China. Unfortunately, early drafts were undesirable because the conditions at the time were not ripe. JIANG Ping, as the group leader, suggested drafting a procedural law prior to the substantive law and using the practice of litigation to improve the substantive law.[67] His suggestion was widely supported by the research group and was approved by the legislature. The Administrative Legislation Research Group then shifted its attention to drafting the Administrative Litigation Law (Proposal). History proved that the change of direction was correct, for it followed the laws of the development of the rule of law. The group submitted its version of the Administrative Litigation Law (Proposal) to the Legislative Affairs Commission of the NPC Standing Committee. The enactment of the Administrative Litigation Law became the priority of the NPC after the 13th National Congress of the CPC. After several rounds of consultation, the law was finally passed on April 4, 1989.[68] The implementation of the Administrative Litigation Law accelerated the coming-out of the State Compensation Law because people realized, after administrative litigation was accessible, that they should be able to seek damages when injured by public authorities.[69] In addition, the legitimacy of administrative acts required by the Administrative Litigation Law influenced the provisions in subsequent legislation, like the Administrative Penalty Law and the Administrative Licensing Law. In fact, the legislature considered the possibility of promulgating a comprehensive Administrative Procedure Law after the enactment of the State Compensation Law; however, given that the conditions for legislation were not ripe, the legislature adopted the approach of itemizing several areas that were closely related to the socialist market economy and that most affected civil rights, and enacted relevant regulations from substantive and procedural aspects. Thereafter, the Administrative Penalty Law, the Administrative Licensing Law, and the Administrative Compulsion Law were promulgated. ZHANG Chunsheng, former deputy director of the Legislative Affairs Commission of the NPC Standing Committee, pointed out that the legislative process of administrative procedure laws "has walked through a path from low-level to high-level, from less systematic to relatively systematic, and from the local to the central."[70] The history of the rule of administrative law indicates that in institution building, we should consider the both historical and current conditions and fully respect the objective laws of the development

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[67] JIANG Ping, compiled by CHEN Xiahong, 沉浮与枯荣：八十自述 (*Wax and Wane: A Self-Narrative at Eightieth*), Law Press (Beijing), at 338–339 (2010).

[68] MA Huaide, 行政诉讼制度的发展历程 (*The Evolution of Administrative Litigation System*), Peking University Press (Beijing), at 57–68 (2009).

[69] MA Huaide, 行政法治30年 (*30 Years of Rule of Administrative Law*), 3 中国政法大学学报 (Journal of CUPL), 138–145 (2009).

[70] ZHANG Chunsheng summarized the legislative process of China's administrative procedure law when interviewed by a reporter from Legal Daily. See CHEN Liping, 行政强制法有望近期审议通过：访全国人大常委会法工委原副主任张春生 (*Administrative Compulsion Law Are Expected to Be Passed Soon: Interview with ZHANG Chunsheng*), 法制日报 (Legal Daily), Mar. 5, 2011.

of the rule of law.

IV. PROSPECT OF THE RULE OF ADMINISTRATIVE LAW

A. Responding to the Requirements of the Time and Improving Administrative Law Theories with Chinese Characteristics

1. Responding to the Demands for Theories to Build Rule of Law in China in a New Era. — The 19th National Congress of the CPC made a historical judgment that socialism with Chinese characteristics has entered a new era. Under the four-pronged comprehensive strategy, state building and development need support in theory from all disciplines. Law as a discipline should also take responsibility. We should be confident in our theories, based on China's reality, and study and resolve major theoretical problems that currently challenge us. These problems include, but are not limited to, how law can guarantee the course of comprehensively deepening the reform and the relationship between the rule of law and reform; issues related to the organic unity of Party leadership, the running of the country by the people, and law-based governance and issues related to the relationship between law-based governance of the country and rule-based governance over the Party; issues related to sound lawmaking, strict law enforcement, impartial administration of justice, and the observance of law by everyone; issues related to coordinated progress in law-based governance, the law-based exercise of state power, and law-based government administration and the integrated development of rule of law for the country, the government, and society; and the nature, inherent requests, fundamental principles, and direction of the socialist rule of law. These problems are embedded in the practice of the rule of law in China and denote the unique path and direction of China's rule of law; therefore, they must be resolved by legal theories with Chinese characteristics.

The Decision of the CPC Central Committee on Deepening the Reform of the Party and State Institutions (中共中央关于深化党和国家机构改革的决定) and the Plan for Deepening the Institutional Reform of the Party and State (深化党和国家机构改革方案) were passed in the Third Plenary Session of the 19th Central Committee of the CPC in February 2018. This round of institutional reforms is thus far the largest in scale, broadest in scope, and most profound in relocating interest, surpassing previous reforms of government administration; from the perspective of state governance, it offers an overall plan for reforming the institutions of the Party, the government, and other areas of endeavor and imposes a series of questions to traditional administrative law theories. For example, the cooperative work of the Party and government in the same workplace as a new mode of administrative organizations brings challenge to the existing theories of administrative organizations, administrative acts, and administrative supervision. "The study of administrative law must promptly respond to the new phenomena, problems and

trends emerged in the practice of the rule of law."[71] It is not only the duty of administrative law scholars to focus on reality and respond to practical needs, but it is also the reason Chinese administrative law can maintain its vitality in the long term. A task in the era confronted by the administrative law discipline is determining how to respond to reforms carried out in improving the system and structure of state governance to offer a more effective explanatory and normative framework to reality and make the Chinese administrative law theories more complete and richer.

2. Responding to the Theoretical Revolution Brought on by State Governance and Social Changes. — The governmental function differs from time to time, and the scope of administration varies accordingly.[72] Likewise, the research areas and focal points of administrative law are not constant; rather, they change as the development of the social economy, improvement of democracy, or shift of legal paradigms happen.[73] The change of mission and methods of administration will challenge existing administrative law theories and accelerate the updates of administrative law theories. Around the world, traditional administrative activities are concentrated on the field of *Ordnungsverwaltung* (or order administration), such as police administration, traffic safety administration, and urban governance. At this time, administrative law focuses on the legitimate issues of administrative acts through exploring the boundary between legislative delegation and appropriate judicial review to ensure the legitimacy of administrative acts and regulate administrative power. Yet administrative missions have become complicated and diversified in modern society: Besides the traditional tasks under *Ordnungsverwaltung*, administrative agencies should perform some positive functions, like providing public goods and services, conferring benefits to citizens or other legal entities, and preventing dangers in specific high-risk areas. Changes in the administrative mission demand that administrative law should adjust its treatment to administration. Merely focusing on ensuring the negative exercise of administrative power within the given scope cannot meet the requirements of the rule of administrative law anymore; how to exercise administrative power positively and appropriately should also be emphasized by administrative law research.[74]

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[71] JIANG Guohua, 行政转型与行政法学的回应型变迁 (*The Transformation of Administration and the Responsive Changes of Administrative Law*), 11 中国社会科学 (Social Sciences in China), 129–142 (2016).

[72] JIANG Ming'an, 行政的"疆域"与行政法的功能 (*The "Frontier" of Administration and Functions of Administrative Law*), 2 求是学刊 (Seeking Truth), 66–73 (2002).

[73] LUO Haocai, 中国行政法治建设三十年——在中国法学会行政法学研究会 2008 年年会上的讲话 (*30 Years of Building the Rule of Administrative Law in China: Speech on the Annual Conference of Administrative Law Studies Institute of China Law Society 2008*), 4 行政法学研究 (Administrative Law Review), 67–70 (2008).

[74] Some commentators have concluded that this is the unity between legitimacy and optimum. See ZHU Xinli & TANG Mingliang, 法治政府建设的二维结构——合法性、最佳性及其互动 (*The Two-Dimensional Structure in Building a Rule-of-Law Government: Legitimacy, Optimum, and Their Interaction*), 6 浙江学刊 (Zhejiang Academic Journal), 138–146 (2009).

Methods of administration change as missions change. In a world where the scale of administration expands and the mission thereof becomes complicated, state power cannot extend to every corner of society and execute control comprehensively and effectively. Therefore, we have witnessed a transformation of modern administration from the "state administration" to the "public administration"; that is, the government-centered unitary structure of state administration has been converted into a dualistic structure that integrates state administration and social administration and gives more attention to participation in the administrative process by citizens and other legal entities, as well as the role of intermediary forces in society, including all kinds of social organizations and industry associations. The "command-obedience" model under the traditional framework of *Hoheitsverwaltung* (or sovereignty administration) has been replaced by a more open and inclusive framework of governance; a social governance based on collaboration among multiple stakeholders is increasingly being adopted, and more flexible, more kinds of, and softer methods — such as incentive-based regulation, information-based regulation, administrative contracts, and negotiated regulation — are now included in the regulatory toolbox of administrative agencies.[75]

The study of administrative law in China should pay attention to the aforementioned changes, advance and explore existing theories accordingly, and seek out "New Administrative Law" that embraces the future.[76] With respect to methodology, administrative law study, in confronting the complex legal questions and vivid legal practices, cannot stand still; rather, it should break the barriers between disciplines, cultivate emerging disciplines, and advance cross-disciplines. It should be encouraged to collaborate with related disciplines, such as politics, sociology, and management, to solve major and difficult problems. It should also value new thoughts brought by law and society and law and economics, broadening research horizons and enriching research methods.

3. Responding to the Theoretical Challenges Brought by Emerging Technologies (the Internet, Big Data, Artificial Intelligence, etc.) — The agricultural revolution and industrial revolution have fundamentally changed the trajectory of the world; the ongoing information revolution is likewise exerting a profound impact on society. Along with the productive forces and production relations changed by technologies, the impact is reflected by and exerted on legal relations, and this triggers changes to existing legal relations and legal principles. For administrative law, the emerging technologies — such as big data, the Internet of things, and artificial intelligence — bring both a great opportunity for the development of administrative law and a challenge to the theories. While taking advantage of the above technologies, we should carefully design a legal

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[75] For additional discussion, see, *e.g.* ZHANG Jiansheng, 现代行政法基本理论 (第二版) (*Basic Theory of Modern Administrative Law*) (2nd edition), Law Press (Beijing), at 3–22 (2014).

[76] JIANG Ming'an, 全球化时代的"新行政法" (*New Administrative Law at the Age of Globalization*), 10 法学杂志 (Law Science Magazine), 8–11 (2009).

framework that balances freedom, order, innovation, and other arguably conflicting values. We should not only take full use of the technologies, but also effectively prevent their potential harms and threats.

In the era of big data, governmental data has become a critical resource for pushing public governance forward. The transparency and openness of governmental data and the construction of a unified governmental data platform can effectively improve public services and allow the goal of transforming public governance to be reached. However, during this process, new problems emerge that administrative law has to face: how to regulate the procedure of collecting information, how to deal with information and use information by the government, and how to protect personal information from being abused. Furthermore, Internet platforms, especially those controlled by leading companies in the industry, expand rapidly to cover every aspect of social life. They bring huge convenience into people's lives by quick information matching. However, this new form of economy is so different from the long-established one that traditional regulations, via *ex-ante* licensing and *ex-post* punishments, would miss the point and allocate responsibility inappropriately.[77] Therefore, a scientific and reasonable mode of regulation is required; it can be arrived at through probing new ideas and thoughts about regulation in administrative law. Additionally, observing the development of modern technologies and exploring changes of traditional administrative law — even changes of administrative structure brought by the technologies — would be a new growth point in administrative law research.

In addition to accomplishing the three missions of Chinese administrative law entrusted by the times, we should thoroughly examine the question of how the construction of Chinese administrative law theories could be further strengthened.[78] Drawing widely from others' successes, we use the concept of the "administrative act" to unify the three subsystems of administrative law — laws on administrative organizations, on administrative acts, and on administrative remedies — and create a tentative theoretical framework of administrative law through legal interpretations with local characteristics.[79] Nonetheless, the current concepts and theories of administrative law are far from mature, because its systems are, to some extent, insufficient and incomplete for

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[77] ZHOU Hanhua, 论互联网法 (*On the Internet Law*), 3 中国法学 (China Legal Science), 20–37 (2015).

[78] For early research, see HU, fn. 31; and WANG Wanhua, 略论建构植根于中国实践的自治行政法学理论体系——关于我国行政法学发展路径的一点思考 (*A Tentative Discussion on the Construction of an Autonomous Administrative Law Theory Based on China's Reality: Reflection on the Path of Chinese Administrative Law*), in 中国行政法之回顾与展望——"中国行政法二十年"博鳌论坛暨中国法学会行政法学研究会 2005 年年会论文集 (*Retrospect and Prospect of Chinese Administrative Law: Collected Papers of "20 Years of Chinese Administrative Law," Boao Forum and the Annual Conference of Administrative Law Studies Institute of China Law Society (2005)*).

[79] CHEN Yuefeng, 中国行政法 (释义) 学的本土生成——以"行政行为"概念为中心的考察 (*Local Genesis of Administrative Law (Commentary) in China: A Survey Centered on the Concept of "Administrative Act"*), 1 清华法学 (Tsinghua University Law Journal), 19–36 (2015).

facing multiples challenges.[80] In regulating major administrative decision making, for instance, the issue of incorporating administrative decision making into traditional administrative law theories gives rise to debate among commentators.[81] Moreover, when confronted with regulatory approaches that focus more on administrative procedure and its effectiveness, such as "regulatory administrative law," the question of whether we should integrate relevant studies via sectoral administrative laws or other approaches remains unanswered.[82] Behind these questions is the absence of inclusiveness and the explanatory capacity of current administrative law theories; this absence requires a further systematic construction of theories for the overall development of Chinese administrative law.[83]

B. Further Promoting the Law-Based Administration of Government, Stepping up Efforts to Build a Rule-of-Law Government, and Achieving the Modernization of China's System and Capacity for Governance

1. Improving Legislation on Administrative Organizations, Promoting Legislation on Administrative Procedure, and Designing General Principles of Administrative Law. — The primary task of promoting the rule of administrative law is to improve legislation on administrative organizations. From a practical point of view, organization law in China is, to some degree, deficient, which prohibits the development of public administration.[84] With respect to the organization law of the central government, the Organization Law of the State Council was enacted in 1982, the content of which is too simple to meet practical needs of the entire country; in addition, there is no separate organization law to regulate agencies affiliated with the State Council. With respect to the organization law of local governments, the Organization Law for Local People's Congresses at All Levels and Local People's Governments at All Levels articulates the structure of local governments ranging from the provincial to the township, but the law is so general that its provisions on local governments' structure, function, and authority are very simple.[85] Neither does

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[80] ZHU Mang, 中国行政法学的体系化困境及其突破方向 (*Dilemma in Systematization of Chinese Administrative Law and Its Potential Breakthroughs*), 1 清华法学 (Tsinghua University Law Journal), 6–18 (2015).

[81] XIONG Zhanglin, 重大行政决策概念证伪及其补正 (*On the Conception of Important Administrative Decision-Making and Its Additions and Corrections*), 3 中国法学 (China Legal Science), 284–303 (2015).

[82] YU Lishen, 概念法学和政府管制背景下的新行政法 (*On the New Administrative Law between Conceptual Jurisprudence and Government Regulation*), 3 法学家 (The Jurist), 55–66 (2009).

[83] ZHAO Hong, 行政法学的体系化建构与均衡 (*Basic Principles, Abstract Concepts and Legal Dogmatic: The System Construction and the System Balance of the Administrative Law*), 5 法学家 (The Jurist), 34–54 (2013).

[84] XUE Gangling, 行政组织法发展缺位之检讨 (*Reflection on the Absence of Administrative Organization Law*), 5 江苏社会科学 (Jiangsu Social Sciences), 111–113 (2008).

[85] YING Songnian, 论全面推进依法治国的若干重点问题 (*Some Key Issues on Promoting the Rule of Law in All Respects*), 22 人民论坛 • 学术前沿 (People's Tribune Academic Frontier), 15–24 (2014).

the law cover the administrative committee of economic and technological development zones or the bureau of administrative approval — two new institutions that have emerged in recent years. The existing organization laws do not address the boundary between the powers of the central government and those of local government.[86] The "Three-Determination" provisions (三定规定) — to decide functions, structure, and staff — provide the basis for governments at all levels to organize and allocate their resources. Although the "Three-Determination" provisions have played an important role in advancing the reform of the government administration system and the legalization of administrative organizations, they do not have legal force. After the Fourth Plenary Session of the 18th Central Committee of the CPC, we should manage all types of organizations and institutions according to the law and accelerate the process to legalize the structure, functions, powers, procedure, and responsibility. To promote the rule of administrative law, we should follow these requirements, borrow from the experience of the "Three-Determinations" provisions, promulgate laws and regulations on administrative organizations, and fill the gap in organization law on the law-based governance of the country.

Pursuing the rule of administrative law also requires a unified law on administrative procedure. Administrative procedure embodies justice, efficiency, order, and other values, and it is critical to the development of democracy, protection of fundamental rights, containment and elimination of corruption, and improved administrative efficiency. It is a requisite for comprehensively advancing the law-based governance of the country and building a rule-of-law government. Enacting a unified administrative procedure law would create a procedure-oriented mindset among administrative officials and the social public, solve the problem of absent administrative procedure rules, and ensure the uniformity of the legal system.[87] In fact, there was a debate among academia on whether we should enact a unified administrative procedure law after the Administrative Litigation Law took effect. Given the limited conditions at the time, it was the safest option to issue sectoral laws in the field of administrative litigation law. After years of work, the timing and conditions are now ripe for enacting a unified administrative procedure law. Specific laws like the Administrative Penalty Law, the Administrative Licensing Law, and the Administrative Compulsion Law contain massive administrative procedure rules that have laid a foundation for the legislation of administrative procedure law. In addition, inspired by the Hunan Provincial Administrative Procedure Provisions, more than ten administrative procedure provisions have been promulgated at the local level. The pilot projects adopted by some local governments, acting as "first movers," have gained

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[86] YING Songnian, 完善行政组织法制探索 (*Exploring the Way to Improve Administrative Organic Laws*), 2 中国法学 (China Legal Science), 18–23 (2013).

[87] WANG Wanhua, 论我国尽早制定行政程序法典的必要性与可行性 (*On the Necessity and Feasibility of Drafting Administrative Procedure Code in China*), 3 中国法学 (China Legal Science), 56–64 (2005).

enough experience to enable enactment of a unified law at the state level.[88] Because the conditions for enacting a unified administrative procedure code are mature, we should carry out, as soon as possible, the requirement of the Fourth Plenary Session of the 18th National Congress of the CPC to "improve the legal system of administrative organizations and administrative procedures" and place the enactment of a unified administrative procedure law on the agenda.

We should enact the general principles of administrative law in due course for promoting the rule of administrative law. Generally speaking, administrative legislation is broad in scope, diverse in content, large in quantity, and shifting in shape, which makes it difficult to enact a unified code. Surveying the existing local legislation on administration, we notice that the provinces and municipalities have incorporated substantive issues related to general principles of administrative law into their administrative-procedure provisions because it is hard to enact specific laws, yet there is an urgent need in practice to address these issues. When conditions are mature, we should seek, by extracting common traits, to identify fundamental norms in administrative laws that are universally applicable and provide a guiding role and design for the "General Principles of Administrative Law." Doing so will help to remove the inconsistency, incoherence, and conflicts in administrative legislation and establish a decent administrative law order.[89]

2. Insisting on a Problem-Oriented Approach and Solving Problems in Government's Governance under the Law. — We have insisted on a problem-oriented approach to building the rule of administrative law since reform and opening up, exerted ourselves to solve practical problems, and achieved fruitful results in institutional building. By implementing the system of accountability, for instance, we have established a mechanism to urge Party and government officials to correctly perform their duties and ensured that laws and rules are strictly and impartially enforced. By reforming the administrative approval system, we have drastically reduced approval items or delegated the power to lower governments, which guarantees the orderly development of the socialist market economy. We know from experience that, to promote the rule of administrative law, it is effective to identify critical problems and concentrate the resources to solve them. China has entered a decisive stage in finishing the construction of a moderately prosperous society in all respects, and its reform has entered a critical stage and a deepwater zone that give rise to an intricate situation with intertwined interests and conflicts, especially in government administration and building the rule of administrative law, where multiple weaknesses and critical issues exist. Some are

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[88] WANG Wanhua, 法治政府建设的地方程序立法推进——制定《北京市行政程序条例》的几个问题 (*Moving Forward the Construction of Government under the Rule of Law through Local Procedural Legislation: Some Issues on Drafting Regulation on Administrative Procedure of Beijing*), 8 法学杂志 (Law Science Magazine), 14–25 (2015).

[89] YING Songnian, 制定行政法总则的时机已经成熟 (*Conditions for Drafting the General Principles of Administrative Law Are Mature*), (2017), available at http://opinion.caixin.com/2017-12-29/101191468.html (last visited May 1, 2018).

unsolved historical problems, others are caused by a divergence of interests in the transitional period, and the rest are brought about modern technologies. To solve these problems, we should always recognize the problems in reality, adhere to the problem-oriented approach, and search for theoretical and institutional solutions.

In light of current progress, the focal points for overcoming the difficulties in strengthening the rule of law are still to regulate administrative decision making and law enforcement and to improve administrative dispute-resolution mechanisms. It is urgent to keep decision-making power on the track of the rule of law, which is most widely and frequently used, most complicated, and most difficult to regulate. We should introduce the Regulations on Important Administrative Decision-Making Procedure (重大行政决策程序条例) at a faster pace and strictly regulate major acts of administrative decision making by defining procedures that should be followed, as well as liabilities for illegal decision making and the way to hold relevant persons accountable. Although there is ongoing reform, law enforcement is still haunted by unsuitable arrangements, low efficiency, improper methods, and omitted or arbitrary actions and other problems. Accordingly, we should first continue to deepen the reform of administrative law enforcement by enhancing law enforcement at the primary level and decentralizing law enforcement authorities. Second, we should establish mechanisms for reporting incidents in which cadres interfere with law enforcement activities and for subjecting them to liability, for the purpose of assuring authority in law enforcement. Third, we should design a performance-evaluation system of law enforcement linked to the overall performance-evaluation system to promote the standardization of law enforcement and increase law enforcement's efficiency. Fourth, we should implement a system of accountability to prevent omitted and arbitrary actions. Fifth, we should implement a system of law-enforcement-qualification tests and a certificate requirement for law enforcement officers to improve their quality and capacity. Although it would reduce social conflicts from the source to regulate administrative decision making and law enforcement, to realize good governance we should also pay much attention to the system of preventing and resolving social conflicts. The report of the 19th National Congress of the CPC emphasized that we should improve the law-based social governance featured by the leadership of the Party committees, the responsibility of the government, the cooperation by society, the participation of the public, and the safeguards of the law. This requires us to — in addition to the socialization, legalization, smartening up, and specialization of social governance — guide people to resolve disputes within the legal framework. We should resolve social conflicts by improving people's mediations, administrative mediations, administrative adjudication, administrative reconsiderations, and other mechanisms. We should also examine the outcomes of administrative reconsideration reforms and assess the effectiveness of administrative reconsideration committees. In amending the Administrative Reconsideration Law, we need to create a specialized administrative reconsideration agency to exercise reconsideration power; this

would make administrative reconsideration the main channel for resolving administrative disputes. We also need to assure a smooth connection between administrative reconsideration and administrative litigation and build a coherent system of administrative dispute resolution.

3. Highlighting the Implementation of Institutions and Assuring the Effective Implementation of the Law. — After 40 years' pursuit of the rule of administrative law, we have preliminarily established a system of administrative laws and institutions. Although there are still gaps in some areas, its major institutions are already in place. What remains an important mission in promoting the rule of law is that in addition to filling the gaps in existing institutions, we should concentrate on the implementation of the law and the realization of institutions. In the historical development, some laws were not properly implemented in China; rather, they were evaded by relevant authorities using a variety of resources. One example is the Administrative Licensing Law, which has been implemented in an evasive and selective manner; thus, the law does not fully realize its legislative objective.[90] The strengthening of the rule of law in government relies on the dominance of the Party and the government, supplemented by supervision and evaluation via indexes, which ensures the creation and realization of massive institutions within a short time. This practice significantly improves the efficiency in strengthening the rule of law in government on the one hand, yet it creates a danger of formalism in some areas on the other. Some local governments promote the law-based administration of government in a stereotyped mode, making verbal promises while taking no substantial actions. In terms of institutions that facilitate strengthening the rule of law in government, some are too simple, containing general provisions at the macro level rather than implementing specific feasible measures and thus lack rigid constraints on administrative power; others contain provisions that are rarely implemented, and thus the impact is limited. The tendency toward formalism limits the role of the laws and institutions in regulating administrative activities, and it is difficult for the general public to feel a sense of fulfillment from the construction of the rule of law.[91]

The Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law (中共中央关于全面推进依法治国若干重大问题的决定), released in the Fourth Plenary Session of the 18th CPC Central Committee, maintains that "not only does the vitality of law, but also the authority of law, lie in the implementation." This implies that the most important way to enhance the authority of the law and invigorate the law is to facilitate and guarantee the implementation of the law. Therefore, we should highlight the implementation of the law in the future construction of

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[90] GENG Yuji, 法律"被虚置化": 以行政许可法为分析对象 (*Law "Being Paralyzed": An Analysis of the Administrative Licensing Law*), 4 法制与社会发展 (Law and Social Development), 129–148 (2016).

[91] ZHAO Peng, 从评估数据析法治政府建设中形式主义表现及其根源 (*Analysis on Formalism and Its Roots in the Construction of the Rule-of-Law Government with the Evaluation Data*), 4 中国政法大学学报 (Journal of CUPL), 56–62 (2014).

the rule of administrative law, ensuring that institutions, once they "set foot on the earth," "take root," play a more important role in social life. To this end, we should refine the institutional design and change the status quo that there are more macro-level general provisions than viable institutional arrangements, ensuring that the plans are feasible; we need to design accurate measures that are effectively implemented.[92] Meanwhile, implementation of the law and institutions is a systematic project affected by multiple factors; therefore, a merely insider-dominated approach would result in inadequate motivation, lack of durability, unqualified results for a long time, and other problems.[93] Accordingly, we should introduce, to some extent, various kinds of mechanisms to break the "inner circulations" in strengthening the rule of law in government and promote transparency of administrative affairs. By strengthening supervision by the judiciary, the People's Congress, and the media, we should use the market and society to create an external pressure promoting the law-based administration of government.[94]

C. Focusing on the "Pivotal Minority," Raising Awareness of the Rule of Law, and Creating an Atmosphere of the Rule of Law

1. Focusing on the "Pivotal Minority" of Leading Officials and Strengthening the Consciousness of the Rule of Law. — The advancement of the rule of administrative law depends on the fact that leading officials and civil servants increasingly recognize the importance of law-based administration. The 18th National Congress of the CPC required that we enhance the capacity of leading officials to deepen reforms, promote development, resolve conflicts, and safeguard stability by applying the thoughts and methods of the rule of law. The 19th National Congress of the CPC further emphasized that Party organizations at all levels and every Party member must take the lead in respecting, learning about, obeying, and applying the law, and that no organization or individual has the power to overstep the Constitution or the law. Given that leading officials at all levels exercise state power, the risk that they will abuse the power or use it for their personal interests is relatively high. The tradition of "treating government officers as teachers" also decides that leading officials at all levels play the most exemplary role to the public. Only when leading officials, as the pivotal minority, take the lead in respecting and obeying the law can we create a favorable atmosphere of the rule of law in which everyone will "act according to the law, seek legal remedies when in trouble, apply the law to deal with problems, and rely on the law to resolve conflicts."

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[92] MA Huaide, 法治政府建设要警惕形式主义 (*Watching Out for Formalism in Building a Rule-of-Law Government*), 人民日报 (People's Daily), Apr. 28, 2014.

[93] LI Xia, 从经济增长驱动到法治指标驱动——中国地方法治动力机制研究 (*The Study of the Motivation Mechanism of Local Government's Governance by Law: From Economic Growth Driving to Figures of Governance by Law Driving*), 6 行政法学研究 (Administrative Law Review), 86–94 (2017).

[94] ZHOU Hanhua, 构筑多元动力机制，加快建设法治政府 (*Building a Multi-Motivation Mechanism and Accelerating the Construction of a Rule-of-Law Government*), 6 法学研究 (Chinese Journal of Law), 27–31 (2014).

When focusing on the "pivotal minority," we should focus our efforts on four aspects. First comes education. Today's youth are the future leading officials of the Party and the government. Young students should study both virtues and laws, master the law, and practice it earnestly. They should lay a solid foundation of legal knowledge, improve their moral qualities, and cultivate their spirits of the rule of law. Second, we should use due diligence to select people. We need to establish an evaluation system for cadres in which the index of the rule of law is a major component in assessing performance. This demands that we add "legitimacy" to the traditional evaluable standards — morality, capacity, performance, achievement, and integrity — and that we make it an important component in assessing people's performance in whether they can observe the law and act under the law. We should, under the same conditions, prioritize appointments and promotions of officials with high standards for the rule of law and a strong capacity for acting under the law. In the meantime, we should prevent taking the loss rate and appeal rate of cases as important and even exclusive indexes for evaluation. Third, we should strengthen supervision over leading officials. Through strict supervision and an increase in the discovery and investigation rate of unlawful acts, we can reduce the chances that someone will not be punished because "the law cannot be enforced when there are numerous offenders" and create an atmosphere in which everyone follows the requirements of the rule of law and everything is subject to the law. Fourth, we should make efforts to refine institutions. This requires us to test people's awareness of the rule of law in specific issues and examine their understanding of the rule of law in detail. We should beware of the phenomena of discrepancies engendered by "the rule of law on the book, while the rule of man in practice," or "the rule of law on the table, while the rule of man under the table." In a word, how leading officials at all levels recognize the rule of law cannot stay on the surface, nor can it stop at the sign of "do what the law provides"; rather, officials should further recognize the value of the rule of law as the basic method in governing a country, and, deep in their hearts, agree with, believe in, and advocate for the rule of law, making sure that every official is equipped with a mindset of the rule of law.

2. Creating a Powerful Synergy of All Involved and Fostering a Favorable Atmosphere of the Rule of Law. — The rule of law requires that good laws be universally obeyed. It is required that the public should have a consciousness of the rule of law and that there is a favorable atmosphere of the rule of law in which the law is respected. The public has been informed of the rule of law since reform and opening up and has a preliminary understanding of rights and obligations, such as who is capable of seeking legal remedies when their rights or interests have been injured. Nonetheless, there is still room for improvement of the general public's awareness of the rule of law. Take administrative dispute resolution as an example. The caseload of "letters and visits"

exceeds that of administrative reconsiderations and litigations, making letters and visits the preferred option in resolving administrative disputes. This is because on the one hand the channel for legal remedies is not smooth enough, and on the other hand the social public to some extent still prefers the dispute-resolution mechanism of letters and visits. Additionally, some people only claim their rights yet ignore their duties when considering protection of their rights and interests, which results in extreme and violent expressions or even triggers mass incidents in resolving social conflicts. This is another reason we need to further raise awareness of the rule of law in society. Resolving the issues above requires that society actively participate in popular legal education. Specifically, the media should correctly promote the concept of the rule of law based on reasonableness and self-discipline; schools should bear the responsibilities of education by offering high-quality legal education to adolescents. *The Report on Juvenile Legal Education Development in China (2018)*, released by the School of Law-Based Government of CUPL, indicates that we have recently made great progress in improving the legal knowledge of adolescents and legal education in primary and secondary schools, and that the value of the rule of law has generally been acknowledged by adolescents, but the average level of their legal knowledge is still relatively low, and supporting resources for legal education are not in place. Some strategies that we should consider include testing legal knowledge in college entrance examination to identify the gap in high-school legal education and increasing investment in underdeveloped areas to promote a balanced development of juvenile legal education.[95] We should also ensure that students develop good knowledge of politics and ideology, strengthen rule of law awareness and enhance their moral integrity, and ensure that they learn both ethics and the law, master the law, and practice it earnestly.

CONCLUSION

Over the past 40 years, the rule of administrative law has evolved as the times have changed. One law comes into force after another, and new institutions come into being, which turns the blueprint of the rule of administrative law into reality. Looking back on the progress of the rule of administrative law over the past 40 years, we may conclude with confidence that we are now closer to the goal of strengthening the rule of law in government than we were at any time in history. In this new era, the historical transformation of the Party and nation's cause calls for an update of the traditional structure and modes of governance, and in front of us are increasingly complex tasks and challenges in pursuing the rule of administrative law as well as furthering research in

[95] China National Radio, 我国青少年法治教育发展报告 (2018) 发布 (*Report on Juvenile Legal Education Development in China (2018) Released*), (2018), available at http://china.cnr.cn/gdgg/20180417/t20180417_ 524201496.shtml (last visited May 2, 2018).

administrative law. Not only should we take a long-term perspective, lay a good foundation, and improve institutions, but we should also be grounded in the present conditions, highlight critical issues, and take solid steps. We should constantly advance the discipline system, academic system, and the discourse system of administrative law; resolve problems that emerge in state governance; and further push forward the rule of law in government.