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The Path Evolution for Chinese Modernization of the Rule of Law*

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Abstract The Communist Party of China (CPC) has created a new path for Chinese modernization and a new form of human civilization while leading the people in advancing a great social transformation. Chinese modernization of the rule of law is an integral part of this new path. With a high degree of historical initiative and consciousness, the CPC has solidly grasped the basic regularity of China's legal development based on actual national conditions, and has successfully pioneered, upheld, and expanded Chinese modernization of the rule of law. Legal construction during the New-Democratic Revolution has reflected the early exploration of Chinese modernization of the rule of law. The development of the rule of law during the period of socialist revolution and construction has laid a preliminary foundation for the formation of Chinese modernization of the rule of law. The new great social transformation of reform and opening up has further promoted such modernization. The construction of a law-based China in the new era of socialism with Chinese characteristics marks a further expansion and deepening of modernization. Therefore, Chinese modernization of the rule of law is rooted in the Chinese land, conforms to the characteristics of China, and draws on the excellent achievements of the world's legal civilization. It encapsulates profound historical, theoretical, and practical logic, and has created a new model of modernization of the rule of law in a civilized society.

Keywords XI Jinping Thought on the Rule of Law, Chinese modernization of the rule of law, path evolution, autonomous character, Chinese logic

The new path for Chinese modernization of the rule of law has gone through an extraordinary historical process. Looking back at the process of legal development in China since the 20th century, we can clearly see that the Communist Party of China (CPC), with the mission of realizing national rejuvenation, has united and led the people in steadfastly upholding the rule of law. The Party has successfully embarked on a new path for Chinese modernization of the rule of law, promoting historic achievements and transformations in China's legal field. In-depth research on the formation and development of the new path is significant both theoretically and practically in revealing the regularity of this modernization process, understanding the inherent characteristics of the new

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path, and strengthening confidence and consciousness in this process.

I Introduction

Karl Marx pointed out, "Society is not based on law. That is the illusion of jurists. On the contrary, law should be based on society."[1] The rule of law revolution is a historical product of social transformation and also the legal expression of social transformation. The process of exploring the new path for Chinese modernization of the rule of law reflects the profound revolution in the country's social life, embodies the direction of the country's modernization process, and historically confirms the great leap of the Chinese nation from standing up, getting rich, to becoming strong after enduring hardships during modern times.

At the ceremony marking the centenary of the CPC held on July 1, 2021, Chinese President XI Jinping delivered an important speech, comprehensively reviewed the glorious journey of the CPC's century-long struggle, and accurately divided the 100 years into four historical periods: To realize national rejuvenation, the Party united and led the Chinese people, achieving great success in the New-Democratic Revolution (1919–1949), in socialist revolution and economic development, in reform, opening up, and socialist modernization, and in socialism with Chinese characteristics in the new era.[2] The Resolution of the CPC Central Committee on the Major Achievements and Historical Experience of the Party over the Past Century, which was deliberated upon and adopted at the Sixth Plenary Session of the 19th CPC National Congress, reviews and summarizes the Party's extraordinary century-long struggle. It divides the 100-year journey of leading the people in revolution, economic development, and reform into four interconnected yet distinct historical periods: New-Democratic Revolution, socialist revolution and economic development, reform with opening up and socialist modernization, and a new era of socialism with Chinese characteristics.[3] Over the past century since its establishment, the CPC has steadfastly steered a great social transformation, "having created miracle upon miracle,"[4] and having developed a new path for Chinese modernization of the rule of law. Associated with the aforementioned four historical periods, the process of exploring this new path can be divided into the following four stages. The first stage is the construction of the legal system during the New-Democratic Revolution, reflecting the early exploration of the new path to modernizing China's legal system. The second stage is the legal system

1 Karl Marx & Friedrich Engels, 马克思恩格斯全集 (*The Complete Works of Marx and Engels*), 1st edition, Vol. 6, 人民出版社 (People's Publishing House), at 291–292 (1961).

2 XI Jinping, 在庆祝中国共产党成立 100 周 年大会上的讲话 (*Speech at Ceremony Marking the Centenary of the CPC*) (Jul. 1, 2021), 人民出版社 (People's Publishing House), at 4–7 (2021).

3 中共中央关于党的百年奋斗重大成就和历史经验的决议 (*Resolution of the Central Committee of the CPC on the Major Achievements and Historical Experience of the Party over the Past Century*), 人民出版社 (People's Publishing House), at 3, 9, 14, 23 (2021).

4 中国共产党第十九次全国代表大会文件汇编 (*Collection of Documents of the 19th National Congress of the CPC*), 人民出版社 (People's Publishing House), at 12 (2017).

evolution during the socialist revolution and economic development, laying a preliminary foundation for the formation of the new path for modernizing China's legal system. The third stage is the new great social transformation brought about by the reform and opening-up policy since 1978, which strongly promoted the formation of the new path to modernizing China's legal system. Finally, the construction of a law-based China in the new era of socialism with Chinese characteristics signifies the further expansion of the new path for modernizing China's legal system. This article aims to conduct a preliminary investigation into the formation and development process of Chinese modernization of the rule of law, in order to observe the trajectory of this new path.

II Early Exploration of the New Path for Chinese Modernization of the Rule of Law

Following the salvoes of Russia's October Revolution in 1917, Marxism-Leninism was brought to China, leading to fundamental changes in Chinese society and the founding of the CPC. "The founding of the CPC was an epoch-making event which profoundly changed the course of China's history, delivered a new future for the Chinese people and nation, and had an enormous impact on the rest of the world."[5] Since the CPC entered the historical arena of China, over the past century, it has consistently emphasized the construction of the rule of law and has painstakingly explored a path for legal development suitable for China's revolution, economic development, and reform. In the period of the New-Democratic Revolution, "The main tasks of the Party were to oppose imperialism, feudalism, and bureaucrat-capitalism, to seek national independence and the people's liberation, and to create the fundamental social conditions necessary for realizing national rejuvenation."[6] Throughout the arduous and extraordinary struggle led by the CPC to fight against imperialism, feudalism, and bureaucratic capitalism, the CPC always regarded the establishment of a new democratic revolutionary legal system as an important task and embarked on a difficult exploration of a new path for Chinese modernization of the rule of law. The establishment and development of the legal system during the New-Democratic Revolution were closely related to the armed struggle and the construction of people's power under the leadership by the CPC. They were part of the same historical process and served as important means to achieve the great task of the new democratic revolution. They provided valuable historical experience for the formation of a new path for Chinese modernization of the rule of law. As President XI has pointed out, "During the period of the New-Democratic Revolution, our Party formulated the 'Outline of the Constitution of the Chinese Soviet Republic' and a large number of laws and regulations, creating the 'MA Xiwu

5 See XI, fn. 2 at 3.
6 See fn. 3 at 3.

Trial Mode.'"[7]

Firstly, it is important to accumulate practical experience in establishing a new political system. The history of political development has shown that the process of replacing old political systems with new ones is often accompanied by intense class struggle and social transformation. The new political system that the proletarian revolution aims to establish has fundamental characteristics different from previous forms of political rule. It has the precondition of smashing the old state machinery and establishing a new state power. In the great struggle of the New-Democratic Revolution, The CPC, with MAO Zedong as the lead representative, integrated the Marxist theory of the state and law with the specific realities of the Chinese revolution. The Party opened up the correct revolutionary path by encircling the cities from the countryside and seizing political power through armed struggle. It established revolutionary base areas in vast rural areas and established New-Democratic Revolutionary governments in partial regions, forming a system of people's political power that fundamentally opposed but coexisted with the Nanjing Kuomintang Government of the Republic of China. While leading the people in the armed revolution, the CPC emphasized the construction of people's political power and issued a series of constitutional documents, establishing a system of people's democratic power that was then adapted in different historical periods. During the period of the Land Revolution War, the Outline of the Constitution of the Chinese Soviet Republic, passed by the First National Congress of the Chinese Soviet Republic on November 7, 1931, clearly stated that "the Chinese Soviet is a state of democratic dictatorship of the workers and peasants" and "the highest authority of the Chinese Soviet Republic is the National Congress of Workers', Peasants', and Soldiers' Representatives (Soviet), and during the recess of the Congress, the Central Executive Committee of the All-China Soviet is the highest body of power, which sets up People's Committees under it to deal with daily affairs and issue all laws and resolutions."[8] In addition, the democratic power of workers and peasants also formulated constitutional documents such as the Organizational Law of the Central Soviet of the Chinese Soviet Republic and the Provisional Organizational Law of Local Soviets of the Chinese Soviet Republic. During the period of the War of Resistance Against Japanese Aggression, the CPC, based on the need to establish and develop a nationwide united front against the aggression, summarized the experience and lessons of the construction of the democratic power of workers and peasants during the Agrarian Revolutionary War and continued to advance the construction of the revolutionary power of the New-Democratic Revolution in various anti-Japanese democratic bases. The Second

7 XI Jinping, 坚定不移走中国特色社会主义法治道路，为全面建设社会主义现代化国家提供有力法治保障 (*Provide Sound Legal Guarantees for Socialist Modernization*) (Nov. 16, 2020), 5 求是 (*Qiushi*), (2020).

8 HAN Yanlong & CHANG Zhaoru, 中国新民主主义革命时期根据地法制文献选编 (*Selected Legal Documents in Chin's Base Areas during China's New-Democratic Revolution*), Vol. 1, 中国社会科学出版社 (China Social Sciences Press), at 8–9 (1981).

Council of the Shaanxi-Gansu-Ningxia Border Region of the CPC formulated the Program of Governance of the Shaanxi-Gansu-Ningxia Border Region (November 1941), establishing the "national united front" nature of democratic power in the anti-Japanese base areas, namely, the power of "all those who support both resistance against Japan and democracy."[9] Thus, the principle of "three-thirds system" (democratic coalition government), which constituted the democratic power, was further stipulated during this period. It stated that one-third of the members should be CPC members, one-third should be progressive individuals outside the CPC, and one-third should be moderate individuals. This laid a solid institutional foundation for the establishment, development, and consolidation of the united front against Japanese aggression. During the period of the Liberation War (1945–1949), in order to achieve the final victory of the people's democratic revolution, various people's democratic powers in the liberated areas led by the CPC persistently strengthened the construction of political power. The Constitutional Principles of the Shaanxi-Gansu-Ningxia Border Region formulated by the Third Council of the Shaanxi-Gansu-Ningxia Border Region (April 1946) clearly stipulated that the People's Representative Assemblies (Councils) at the border region, county, and township levels are the bodies of the people's governance. These representative assemblies elected government officials, and for the first time in the history of China, the principles of universal, direct, equal, and secret ballot elections were established. Clearly, during the period of the New-Democratic Revolution led by the CPC, the constitutional activities were successfully carried out in accordance with the requirements of the revolutionary tasks, effectively implementing governance in the revolutionary bases, and representing the correct direction of China's unique path towards the modernization of the rule of law. This provided invaluable historical experience for the establishment of a brand-new people's power and national system at the beginning of the founding of the People's Republic of China (PRC).

Secondly, the construction of the legal system during the New-Democratic Revolution was vigorously promoted. In the great struggle of the New-Democratic Revolution, the CPC thoroughly understood the development stage of the Chinese revolution and its legal requirements. Guided by Marxism-Leninism and MAO Zedong Thought, the Party persistently advanced the construction of the legal system for the New-Democratic Revolution, starting from the specific realities of the Chinese revolution and under difficult circumstances. They established a new legal system that fundamentally opposed the "Six Codes" system of the Kuomintang Government in Nanjing, laying an important rule of law foundation for the great victory of the New-Democratic Revolution. Overall, even though the legal system of the New-Democratic Revolution appeared relatively simple in form and was valid regionally, the important legal

9 MAO Zedong, 毛泽东选集 (*Selected Works of MAO Zedong*), Vol. 2, 人民出版社 (People's Publishing House), at 741 (1991).

principles and systems it established undoubtedly reflected the basic nature of a new legal system. These principles and systems included the system of people's congresses representing workers, peasants, and soldiers, the "three-thirds system" of democratic power, the principle of equality before the law, protection of human rights, combining punishment with leniency, public surveillance, freedom of marriage, gender equality, open trials, review of death penalties, the right to defense, the people's mediation system, and so on. Specifically, in addition to issuing constitutional documents that represented the fundamental interests of the people, the people's revolutionary power in the revolutionary bases carried out a series of legislative activities based on the specific tasks of the New-Democratic Revolution in each historical period. During the period of the Land Revolution War, the democratic power of workers and peasants established legal documents such as the Provisional Regulations on the Division of Administrative Regions, Provisional Regulations on Soviet Local Governments, Land Law of the Chinese Soviet Republic, Marriage Law of the Chinese Soviet Republic, Labor Law of the Chinese Soviet Republic, Provisional Procedures for Dealing with Counter-revolutionary Cases and Establishing Judicial Institutions, and Regulations on Punishing Counter-revolutionaries in the Chinese Soviet Republic. Although some of these legal documents had a tendency towards "leftist" adventurism, they generally played a positive role in consolidating the proletarian dictatorship in revolutionary base areas and promoting the development of the revolutionary situation. During the period of the War of Resistance against Japanese aggression, the anti-Japanese democratic power successively enacted legal documents such as the Regulations on Guaranteeing Human Rights and Property Rights in the Shaanxi-Gansu-Ningxia Border Region, Draft General Principles of Political Discipline in the Shaanxi-Gansu-Ningxia Border Region, Code of Conduct for Government Officials in the Shaanxi-Gansu-Ningxia Border Region, Regulations on Land Ownership in the Shaanxi-Gansu-Ningxia Border Region, Regulations on Marriage in the Shaanxi-Gansu-Ningxia Border Region, Draft Regulations on Labor Protection in the Shaanxi-Gansu-Ningxia Border Region, Regulations on Punishing Collaborationists in the Shaanxi-Gansu-Ningxia Border Region During the Resistance War, Regulations on Punishing Corruption in the Shaanxi-Gansu-Ningxia Border Region, and Draft General Principles and Specific Provisions of Criminal Law in the Shaanxi-Gansu-Ningxia Border Region. These legal documents effectively consolidated anti-Japanese democratic power in the border region and promoted the success of the War of Resistance. During the War of Liberation, the people's democratic government in the liberated areas enacted legal documents such as the Outline of the Land Law of China, Proclamation of the People's Liberation Army (Eight Basic Policies), and the Order for the Punishment of War Criminals. These legal documents provided strong legal guarantees for the final victory of the New-Democratic

Revolution. Therefore, the furthering of construction of the legal system during the New-Democratic Revolution laid an important foundation for the exploration of a new path for Chinese modernization of the rule of law.

Furthermore, efforts were made to construct a new democratic judicial system. The CPC emphasized the construction of the judicial system during the struggle for the New-Democratic Revolution, making it an important means to carry out revolutionary struggles. In terms of the framework of the judicial system, judicial institutions were established based on the principle of integration of the council and the executive, following the Soviet model. According to the Outline of the Constitution of the Chinese Soviet Republic, the All-China Soviet Congress and the Central Executive Committee had the authority to establish the organizational structure of the courts and to promulgate civil, criminal, and procedural laws. A Supreme Court was established under the Central Committee to ensure the effectiveness of revolutionary laws in the Chinese Soviet Republic. Tribunals were also established under the Soviet Executive Committees at the provincial, county, district, and city levels. The judicial system of the democratic government in the border areas during the War of Resistance Against Japanese Aggression also followed the principle of integration of the council and the executive, with the administrative authorities in the border areas assuming the responsibility of judicial adjudication. During the War of Liberation, this judicial system, guided by the principle of integration of the council and the executive, continued to play a unique judicial role. According to the Organizational Outline of the North China People's Government, the North China People's Court was established under the North China People's Government as the final judicial authority in the North China region. However, major verdicts had to be reviewed by the judicial department under the North China People's Government, the implementation of the death penalty also required the approval of the chairman, and was to be carried out through orders.[10] The judicial system, which combined judicial and administrative functions during the period of the New-Democratic Revolution, indicated that the judicial institutions of that time were not yet fully developed and systematic. This situation was inevitable under the social and historical conditions of that time and had a significant impact on the initial judicial system of the PRC. Nevertheless, the democratic government in revolutionary bases still emphasized the independent exercise of judicial powers in accordance with the law. The Principles of the Constitution of the Shaanxi-Gansu-Ningxia Border Region emphasize that "judicial bodies at all levels shall independently exercise their powers and shall not be subject to any interference except for complying with the law." It further states that "no organization or group shall have the authority to arrest and interrogate individuals, except for judicial bodies and

10 HAN Yanlong & CHANG Zhaoru, 中国新民主主义革命时期根据地法制文献选编 (*Selected Legal Documents in Chin's Base Areas During the China's New-Democratic Revolution*), Vol. 2, 中国社会科学出版社 (China Social Sciences Press), at 455–456 (1981).

public security bodies performing their duties in accordance with the law."[11] This fully demonstrates that "judicial bodies are ensured to exercise their powers independently and impartially according to the law, and this is a clear proposition of our party."[12] The fundamental starting point for safeguarding the independent exercise of powers by judicial bodies is to better protect the people's legitimate democratic freedom and personal rights, and to demonstrate the value orientation of human rights protection in the legal system of the New-Democratic Revolution. The Principles of Governance in the Shaan-Gan-Ning Border Region, the Principles of Governance in the Jin-Ji-Lu-Yu Border Region Government, the Principles of Governance in the North China People's Government, and other legal documents formulated by democratic government in revolutionary bases clearly stipulated the principle of the exclusive exercise of judicial power to safeguard the legitimate rights and interests of the people. In the long-term practice of New-Democratic Revolution, the judicial bodies in the revolutionary base areas under the leadership by the CPC always kept in mind the fundamental purpose of justice for the people, followed the Party's mass line, conducted extensive grassroots work in judicial activities, properly resolved conflicts and disputes, effectively safeguarded the fundamental interests of the broad masses of the people, and created vivid examples of people's justice, such as the "MA Xiwu Trial Mode." This accumulated valuable judicial experience for promoting the Chinese modernization of the rule of law in the PRC.

III Preliminary Foundation of the New Path for Chinese Modernization of the Rule of Law

The victory of the Chinese people's revolution in 1949 and the founding of the PRC marked a historic milestone in the modern era toward the great rejuvenation of the Chinese nation. It also indicated "the country's great transformation from a millennia-old feudal autocracy to a people's democracy. This also reshaped the world political landscape."[13] After the founding of the PRC, the CPC united and led the people in carrying out socialist revolution and economic development, promoting a historic transition from new democracy to socialism. This established the basic socialist system and "brought about the most extensive and profound social changes in the history of the Chinese nation. This great transformation of a poor, backward, and populous country in the East into a socialist China created the fundamental political conditions and laid down the institutional foundations necessary for realizing national rejuvenation."[14]

Facing the complicated international and domestic situation, the CPC was clear that under China's historical conditions, socialist rule of law could not be built based on the old legal system, and that revolutionary violence had to be resorted to for dismantling the old state apparatus and

11 See HAN & CHANG, fn. 8 at 60.
12 XI Jinping, 论坚持全面依法治国 (*Advance Law-Based Governance on All Fronts*), 中央文献出版社 (Central Party Literature Press), at 43 (2020).
13 See fn. 3 at 8.
14 See XI, fn. 2 at 3.

abolishing the "Six Codes" system of the Kuomintang Government in Nanjing. In February 1949, on the eve of the founding of the PRC, the CPC Central Committee issued the Directive on Abolishing the Kuomintang's Six Codes and Determining the Judicial Principles of the Liberated Areas (referred to as the "February Directive" for short). This Directive revealed the class nature of the "Six Codes" and confirmed the historical inevitability of their abolition. It explicitly stated that after the abolition of the "Six Codes," "The people's judicial work should be based on the new laws of the people. Before the new laws were systematically promulgated, they should follow the policies of the Communist Party and various principles, laws, regulations, and resolutions already issued by the Communist Party and the people's government and liberation army. At that time, when the laws of the people were not yet complete, the guiding principles to be followed by judicial bodies were: When there were provisions in the principles, laws, commands, regulations, or resolutions, follow those provisions. When there were no provisions in the principles, laws, commands, regulations, or resolutions, follow the policies of the New Democratic Revolution.[15] Shortly thereafter, the Instruction of the North China People's Government on Abolishing the Six Codes of the Kuomintang and All Reactionary Laws (April 1, 1949) was also issued, emphasizing that "The people's laws have been in effect in the liberated areas for a considerable period of time. Some have been well studied and written in various principles, laws, regulations, orders, and resolutions issued by the people's government and liberation army, while others are still being created. Judicial bodies at all levels should handle cases according to the provisions of principles, regulations, orders, and resolutions, and in the absence of such provisions, they should follow the policies of the New-Democratic state. It should be affirmed that the content of the people's laws is more civilized and richer than the laws of any rulers of the old era. With proper organization, they can become complete."[16] Therefore, the abolition of the "Six Codes" of the Kuomintang government in Nanjing and the establishment of a new basis for the people's judicial work, as well as the establishment of institutions and systems for the people's judiciary, became the fundamental requirements for the new type of state machinery, legal and judicial systems, and for the creation of a new path for Chinese modernization of the rule of law in the founding of the PRC. Thus, as a "the basic law of constitutional nature "[17] at the beginning of the founding of the PRC, the Common Program of the Chinese People's Political Consultative Conference (September 29, 1949, hereinafter referred to as the "Common Program") clearly stipulated in Article 17 that there was a need to "Abolish all oppressive laws, regulations, and judicial systems of the reactionary Kuomintang government, formulate laws and regulations to protect the people, and establish a people's judicial

15 See HAN & CHANG, fn. 8 at 87.
16 See HAN & CHANG, fn. 8 at 88–89.
17 DONG Biwu, 董必武法学文集 (*Collected Legal Works of DONG Biwu*), 法律出版社 (Law Press · China), at 28–30 (2001).

system."[18] On this basis, the CPC, based on the conditions of China's legal system, insisted on establishing and consolidating a brand-new state power, promoting the construction of a socialist legal system, and created political and legal conditions for China's rapid development after the founding of the PRC. As President XI pointed out, "At the beginning of founding the PRC, the Party actively applied its successful experience in base areas during the New-Democratic Revolution into construct socialist legal system, and laid the foundations of socialist rule of law."[19] From the birth of the PRC in 1949 to the decisive victory in the socialist transformation of private ownership of the means of production in 1956, it was the most profound and greatest period of social transformation in China's thousands of years of history, and was also the foundation period of Chinese modernization of the rule of law.

Firstly, it was a groundbreaking construction of a socialist state system with Chinese characteristics. With the victory of the Chinese people's revolution nationwide, it had become a grave and significant historical task for the CPC to create a new political system, bring about fundamental changes in the state system and governance, and open up a new path for Chinese modernization of the rule of law. The CPC upheld the policy of starting from China's basic national conditions, deeply revealed the historical movement rules of China's revolution, and established the guiding principles for the development of the state system from the New-Democratic type to the socialist type. In the *On New Democracy* (January 1940), MAO Zedong pointed out, "The historical process of the Chinese revolution must be divided into two steps. The first step is the democratic revolution, and the second step is the socialist revolution. These are two different revolutionary processes." The first step of the revolution is no longer aimed at establishing a state system of bourgeois dictatorship, but a new revolution aimed at establishing a state system of united dictatorship of various revolutionary classes, with the goal of clearing a broader path for the development of socialism.[20] In "*On the People's Democratic Dictatorship*" (June 30, 1949), MAO Zedong expounded the inevitability of establishing a people's democratic state power after the victory of the Chinese New-Democratic Revolution. He pointed out, "To sum up our experience and concentrate it into one point, it is the people's democratic dictatorship under the leadership of the working class (through the CPC) and based upon the alliance of workers and peasants."[21] Therefore, the state system of New Democracy is not only different from the old democratic state system, but also different from the Soviet-style state system of proletarian

18 中央人民政府法令汇编 (*Collection of Decrees of the Central People's Government*) (1949–1950), 法律出版社 (Law Press · China), at 21 (1982).

19 XI Jingping, 习近平关于全面依法治国论述摘编 (*Excerpts from XI Jinping Speeches on Comprehensively Advancing the Law-Based Governance of China*), 中央文献出版社 (Central Party Literature Press), at 8 (2015).

20 MAO Zedong, 毛泽东著作选读 (*Selected Readings of MAO Zedong's Works*), Vol. 1, 人民出版社 (People's Publishing House), at 351, 355 (1986).

21 MAO Zedong, 毛泽东著作选读 (*Selected Readings of MAO Zedong's Works*), Vol. 2, 人民出版社 (People's Publishing House), at 687 (1986).

dictatorship. It is a state system based on the alliance of workers and peasants under the leadership of the working class. "We call this state system the New-Democratic state system."[22] In accordance with the basic nature of the New-Democratic state system, the basic format of the New-Democratic political power was the system of people's congresses. In *On the Coalition Government* (April 24, 1945), MAO Zedong noted when discussing the general program proposed by the CPC to solve the Chinese problems: "The political organization of new democracy should adopt a system of democratic centralism, with the major policies decided by the people's congresses at all levels and the government elected by them. It is both democratic and centralized, which means centralism based on democracy and democracy on guidance under centralization. Only this system can demonstrate extensive democracy, empowering the people's congresses at all levels with significant authority, and can also centralize the handling of state affairs, enabling governments at all levels to centrally handle all matters entrusted by the people's congresses while guaranteeing all necessary democratic activities of the people."[23] Under the guidance of the aforementioned theoretical principles, the Common Program and the Organic Law of the Central People's Government were passed at the first plenary session of the Chinese People's Political Consultative Conference in September 1949, and these provided clear provisions for the founding of the New-Democratic state system and its political organization at the beginning of the founding of the PRC. A brand-new state system was established. As China transitioned from New Democracy to socialism, the first session of the National People's Congress held in September 1954 passed the Constitution of the PRC (hereinafter referred to as the "Constitution 1954"), which further innovated and developed the state system of the PRC based on the Common Program. The fundamental principles of people's democracy and socialism were codified in the form of a fundamental law, laying the legal foundation for the comprehensive establishment of the socialist system in China. Going further than the Common Program, the Constitution 1954 endowed the state with new attributes and content. It stipulated that "the PRC is a people's democratic state led by the working class and based on the alliance of workers and peasants" (Article 1). It summarized the practical experience of democratic political construction and the work of state organs since the founding of the PRC and provided more comprehensive provisions for the fundamental political system of the state. It emphasized that "all power in the PRC belongs to the people. The organizations through which the people exercise power are the National People's Congress and the local people's congresses at various levels" (Article 2). Thereby, the system of people's congresses was formally created. "The establishment of a new political system in which the people are the masters in a country with a history of over 5,000 years of civilization and a population of hundreds

22 MAO Zedong, 毛泽东选集 (*Selected Works of MAO Zedong*), Vol. 3, 人民出版社 (People's Publishing House), at 1056 (1991).
23 See MAO, fn. 22 at 1057.

of millions is of epoch-making significance in the history of China's political development and even in the history of world political development."[24] In addition, the Constitution 1954 also established a more complete national institutional system centered around state power organs to adapt to the increasingly complex and specialized needs of state governance and social governance. It further enriched the system of ethnic regional autonomy and improved the structure form of the state. It formed a citizen rights system that was in line with the nature and form of the state system, providing a constitutional foundation for the establishment of the contemporary Chinese citizen rights system. Consequently, it constructed a socialist state system and governance system with Chinese characteristics, achieving a historical transcendence of various state system proposals in modern China and laying a constitutional foundation for opening up a new path of a Chinese modernization of the rule of law.

Secondly, it constructed a new socialist legal order. To achieve the predetermined goals of any intense social revolutionary movement, it is necessary not only to fundamentally change the essence and structure of the old state system and legal system but also to establish a new social and legal order by which the new state system and legal system can exist and develop. In the early years of the founding of the PRC, the focus of national life was on rebuilding the social and legal order on the basis of the gradually realizing the fundamental reform of the state system. During this period, a series of significant social transformation movements were carried out in a mass movement manner played an important role. These movements included land reform, suppression of counter-revolutionary activity, implementation of the marriage law, addressing the "Three-Evils" of corruption, waste and bureaucracy within Party and government institutions and the "Five Evils" of bribery, tax evasion, theft of state property, cheating on government contracts, and stealing of economic information, judicial reform, and "industrialization and three transformations." Therefore, a prominent characteristic of the process of Chinese modernization of the rule of law in the period after the founding of the PRC was the intertwining and organic interaction between the development of the rule of law and mass movements. These large-scale mass movements strongly promoted the development of the rule of law in the early days of the PRC, and some laws were formulated only after the mass movements began. For example, the Regulations on the Punishment of Counter-revolutionaries was not formulated before the existence of the suppression of counter-revolutionary movement, but was formulated during the course of that movement. The Regulations on the Punishment of Corruption were also not formulated before the "Three-Evils" movement, but were formulated in the later stage of that movement, and so on. "This indicates that the laws of our country are not written in advance, but first we practice, and then formulat laws

24 See XI, fn. 12 at 67.

based on the basis of summarizing experience."[25] Furthermore, the launching of large-scale mass movements at the beginning of The PRC also required legal protection for these movements. In the social and historical conditions of the newly established PRC, mobilizing the masses and carrying out social reforms were the basic ways by which the CPC could organize social mobilization, reconstruct social and legal order, and consolidate the newly formed revolutionary government. However, "Revolutionary mass movements do not rely solely on laws, which may bring out a kind of byproducts-foster a disregard for all legal system, thereby increased the difficulties for the Party and the state in overcoming this mentality."[26] Therefore, under the new historical conditions where the focus of the state and social life shifted to economic construction, the approach of relying on mass movements to organize social mobilization, reconstructing social and legal order, and advance state and social governance through mass movements became outdated. It was necessary to systematically formulate comprehensive laws, promote the development of the rule of law in the country, and consolidate the legal foundation of social order. The 8th CPC National Congress held in September 1956, made a significant political judgment based on a well-conceived analysis of the domestic and international situation since the founding of the PRC. It stated, "The main contradiction in our country is the contradiction between the people's demand for the establishment of an advanced industrial country and the reality of a backward agricultural country. It is also the contradiction between the people's need for rapid economic and cultural development and the current situation where the economy and culture cannot meet the needs of the people." Therefore, the 8th CPC National Congress emphasized, "We must further strengthen the legal system of people's democracy and consolidate the order of socialist construction. The state must gradually and systematically formulate comprehensive laws according to needs. All state organs and state personnel must strictly abide by the laws of the country, ensuring that the people's democratic rights are fully protected by the state."[27] This basis orientation of attaching importance to and strengthening of the construction of the rule of law is also centrally reflected in the field of judiciary. Under the unique social conditions at the beginning of the PRC, it was historically reasonable to incorporate the judicial bodies into the government system, stipulating that each level of court and procuratorate should be under the leadership of the corresponding people's government committee, and implementing a judicial system that combined judiciary with administration. As the newly established people's political power became consolidated and the national institutional system gradually improved, the principle and system of judicial bodies exercising their powers independently according to

25 See DONG, fn. 17 at 311.
26 See DONG, fn. 17 at 350.
27 建国以来重要文献选编 (*Selected Important Documents Since the Founding of the PRC*), Vol. 9, 中央文献出版社 (Central Party Literature Press), at 301 (2011).

the law were gradually established. Article 78 of the Constitution 1954 stipulates: "The people's courts conduct trials independently conduct trials and shall only obey the law." Article 83 further stipulates: "The people's procuratorates at all levels in each locality shall independently exercise their powers independently and shall not be interfered with by local state organizations." The Organic Law of the People's Courts and the Organic Law of the People's Procuratorates in 1954 also made consistent provisions with the Constitution 1954 mentioned above. In addition, in the practice of justice, the strengthening and improvement of the party's leadership over judicial work had undergone an exploratory process. The movement to suppress counter-revolutionaries was an important political movement at the beginning of the establishment of the PRC. How should the authority to approve arrests and executions be applied? MAO Zedong emphasized that the entire work of suppressing counter-revolutionaries must be under the unified leadership of party committees at all levels, and "the most important thing is that the power to approve the list of arrests and executions must be controlled at the level of prefectural and municipal committees."[28] With the consolidation of national power and the progress of the rule of law construction, party committees gradually detached themselves from specific judicial affairs, and specialized judicial institutions were responsible for handling cases. The Regulations on Arrest and Detention issued in December 1954 stipulated that no citizen shall be arrested without a decision by a people's court or approval by a people's procuratorate. The Eighth National Congress, in its resolution on the political report, specifically mentioned the issue of authority for imposing the death penalty on counter-revolutionary criminals, emphasizing that "cases requiring the death penalty should be referred to the Supreme People's Court for judgment or approval."[29] In July 1957, the Fourth Session of the 1st National People's Congress passed a specific resolution stating that "all future death penalty cases shall be judged or approved by the Supreme People's Courts." In September of the same year, the Standing Committee of the National People's Congress replied to the relevant special report of the Supreme People's Court, emphasizing that "Death penalty cases to be judged or reviewed for final decision by Higher People's Courts, according to the Organic Law of the People's Courts, shall still be judged or reviewed by the Higher People's Courts. Cases deemed by the High People's Court to warrant the death penalty shall be submitted to the Supreme People's Court for approval before execution. Cases deemed by the Higher People's Court not to warrant the death penalty shall be sent back to lower-level people's courts for retrial or brought up for trial according to the provisions of the law."[30] As a result, the

28 Literature Research Office of the CPC Central Committee, 共和国走过的路——建国以来重要文献专题选集 (*The Road Taken by the PRC: Selected Documents from 1949* to *1952*), 中央文献出版社 (Central Party Literature Press), at 243 (1991).

29 中华人民共和国法规汇编 (*Collection of Laws and Regulations of the PRC*) (July–December 1956), 法律出版社 (Law Press · China), at 14 (1957).

30 中华人民共和国法规汇编 (*Collection of Laws and Regulations of the PRC*) (July–December 1957), 法律出版社 (Law Press · China), at 296–297 (1958).

exploration of the new path for Chinese modernization of the rule of law has increasingly demonstrated a new historical trend.

Thirdly, large-scale lawmaking activity had been launched. Under the complex social and historical conditions at the early stage of the founding of the PRC, in order to liberate the social productive forces from the constraints of the old production relations, to consolidate the newly born revolutionary government, and to rebuild social and legal order, it was largely necessary to formulate some temporary and guiding laws based on the policies of the Party and the people's government. A notable feature of the exploration of the new path for Chinese modernization of the rule of law at the beginning of the founding of the PRC was the promotion of state governance and social governance, relying not only on laws but also on policies. Policy adjustments played a dominant and leading role in state and social governance. Despite this, the CPC still emphasized strengthening the construction of a people's democratic rule of law, and paid attention to the use of a combination of law and policy to govern the country and society, in order to adapt to the objective requirements of the continuous development of the new social, economic, and political conditions. During the seven years from 1949 to 1956, the early years of the founding of the PRC, the lawmaking work in the PRC went through two successive stages of development. The first stage was legal creation based on the Common Program with temporary constitutional nature. Its characteristics were the use of legislative means to consolidate the achievements of the people's revolution, to establish the political, economic, social, and legal order of New Democracy, and to ensure the smooth progress of various social and democratic reform movements. During this stage, laws and regulations such as the Organization Law of the Central People's Government, the organizational principles for local people's governments and judicial organs, the Trade Union Law, the Marriage Law, the Land Reform Law, the Regulations on Punishing Counter-Revolutionaries, and the Regulations on Punishing Corruption, were enacted. Additionally, laws and regulations pertaining to ethnic regional autonomy, financial and trade management, finance and taxation, public and private enterprise management, commercial contracts, trademark registration, and invention and patent protection, were also issued. The second stage was based on the Constitution 1954, which accelerated the national legislative process, promoted the transition from New Democracy to socialism, comprehensively structured the legal foundation of the socialist system, and facilitated the industrialization process of the country. During this period, guided by the Constitution 1954, various important laws and regulations concerning state organs and state systems were enacted. These included the Organization Law of the National People's Congress, the Organization Law of local People's Congresses and local People's Committees, the Organization Law of People's Courts, the Organization Law of People's Procuratorates, and so on. To meet the needs of the socialist transformation of agriculture, handicrafts industry, and capitalist industry and commerce, laws

and regulations during the transformation process were enacted. These included the Model Charter for Agricultural Production Cooperation, the Model Charter for Advanced Agricultural Production Cooperation, the Interim Regulations on the Joint Public and Private Industrial Enterprises, the Interim Measures for the Payment of Industry and Commerce Taxes by Handicraft Cooperatives, and the Interim Provisions on the Payment of Industry and Commerce Taxes by Private Industrial and Commercial Enterprises. In particular, during this period, the drafting work of the Civil Code and the Criminal Code of the PRC began to be discussed. Starting from the end of 1954, a specialized team organized by the Standing Committee of the First National People's Congress began compiling the Civil Code. By December 1956, the first draft of the Civil Code of the PRC was completed. This draft included sections on general principles, ownership, debt law, and inheritance law, totaling more than 500 articles. It took into account the economic and social conditions of the PRC in its early years and drew on the beneficial experiences of civil legislation in the Soviet Union. It constructed a civil legislative framework with Chinese characteristics. Although it was not deliberated upon and promulgated, the process of its compilation provides valuable historical lessons for the compilation of the contemporary Civil Code in contemporary China. From the initial draft of the Outline of the Criminal Law prepared by the Legislative Affairs Commission of the Central People's Government in July 1950 to the accelerated pace of compiling the Criminal Law after the Eighth CPC National Congress, by June 1957, the national legislative organs had produced as many as 22 drafts of the Criminal Law. This provided beneficial legislative experience for the promulgation of the Criminal Law in 1979. Meanwhile, legislation on litigation procedures also began to be initiated. Although the draft General Principles of Litigation Procedures prepared by the Legislative Affairs Commission of the Central People's Government at the beginning of the PRC was postponed due to differences of opinion, after the first National People's Congress, the Supreme People's Court, in accordance with the requirements of the Organic Law of Courts, organized several working groups to conduct investigations and research in courts across the country. They carefully summarized the experience and practices of civil litigation and criminal trials since the founding of the PRC, and respectively formed two important judicial documents: Preliminary Summary of Civil Case Trial Procedures and Preliminary Summary of Criminal Case Trial Procedures. These documents were approved by the Trial Committee of the Supreme People's Court in July 1955 and circulated for reference and implementation in courts of major and medium-sized cities. Subsequently, based on these two judicial documents, Summary of Civil Case Trial Procedures of People's Courts at All Levels (October 17, 1956) and Summary of Criminal Case Trial Procedures of People's Courts at All Levels (October 17, 1956) were formulated, which provided strong guidance for the early judicial trial work of the PRC and also provided important judicial materials for

the compilation of the Criminal Procedure Law and the Civil Procedure Law that followed. It is evident that significant progress was made in the legislative work during the early years of the PRC. Gradually, a legal framework centered around the Constitution 1954 was established, making important progress in exploring a new path for Chinese modernization of the rule of law. As President XI pointed out, "After the establishment of the PRC, during the periods of socialist revolution and socialist construction, our Party led the people in formulating a series of important laws and regulations, such as the Constitution 1954, laws on state institutional organization, elections, and marriage. This established a socialist legal framework and established the socialist judicial system."[31] In the process of exploring a new path for Chinese modernization of the rule of law, although experiencing severe setbacks, the CPC achieved innovative theoretical accomplishments and made significant progress in the construction of the rule of law during the socialist revolution and construction. This has provided valuable experience, theoretical preparation, and practical foundations for opening up a new path for Chinese modernization of the rule of law in the historical era of reform and opening up.

IV Formation of the New Path for Chinese Modernization of the Rule of Law

The Third Plenary Session of the 11th CPC National Congress, held in December 1978, was a landmark event in contemporary Chinese political life. It marked the beginning of a new era of great social transformation through reform and opening up. Consequently, the formation of a new path for Chinese modernization of the rule of law entered a period of new historical and revolutionary transformation. "In the new period of reform, opening up, and socialist modernization, the main tasks facing the Party were to continue exploring a right path for building socialism in China, unleash and develop the productive forces, lift the people out of poverty and help them become prosperous in the shortest time possible, and fuel the push toward national rejuvenation by providing new, dynamic institutional guarantees as well as the material conditions for rapid development."[32] This new great social transformation in the field of the rule of law is epitomized by the historical transformation from a policy-oriented legal order under the traditional planned economic system to a modern rule of law order based on the socialist market economy system, promoting the formation of a new path for Chinese modernization of the rule of law. Since the Third Plenary Session of the 11th CPC National Congress, the Party has always taken overall control of this new great social transformation and led the direction of the movement towards the new path for Chinese modernization of the rule of law. It has thoroughly summarized the successful experiences and profound lessons in the construction of socialist rule of law in China, put forward the major

31 See XI, fn. 7.
32 See fn. 3 at 14–15.

rule of law principles of institutionalizing and legalizing socialist democracy, and determined governance of the country according to law as the basic strategic approach for the Party's leadership. China has made historic progress in Chinese modernization of the rule of law. As President XI emphasized, "Entering a new historical period of reform and opening up, our Party has put forward the guideline of 'there are laws to abide by, law must be followed, law enforcement must be strict, and violations must be prosecuted,' stressing that the rule of law is the basic strategy by which the Party leads the people in governing the country, and law-based governance is the basic way for the Party to run the country, continuously promoting the construction of socialist rule of law."[33] Under the strong impetus of this new great social transformation, through extensive and profound social and legal changes since the reform and opening up, China has opened up a path for socialist rule of law with Chinese characteristics, creating a new path for Chinese modernization of the rule of law, and has continuously promoted the historical process of contemporary Chinese modernization of the rule of law.

Firstly, it has been established that governance of the country according to law as the basic strategic approach for the CPC in leading the people. The Third Plenary Session of the 11th National Congress conducted a serious discussion on democracy and the legal system, and placed the historic task of strengthening socialist rule of law and achieving the transformation from the rule of the individual to the rule of law before the entire Party and the people of the whole country. It emphasized that "To ensure people's democracy, we must strengthen socialist legal system. Democracy has to be institutionalized and legalization, making the system and law stable, continuous, and highly authoritative." It also put forward the guideline of "there are laws to abide by, the laws are observed and strictly enforced, and law-breakers are prosecuted" for the construction of the rule of law in the new historical period [34] The guiding principles for the construction of the rule of law in China established at the Third Plenary Session of the 11th CPC National Congress have effectively promoted the formation of a new path for Chinese modernization of the rule of law. In July 1979, during the Second Session of the 5th National People's Congress, seven laws, including the Criminal Law and the Criminal Procedure Law, were deliberated upon and passed. In order to ensure the effective implementation of the Criminal Law and the Criminal Procedure Law, in September 1979, the CPC Central Committee issued the Directive on Resolutely Ensuring the Effective Implementation of the Criminal Law and the Criminal Procedure Law (referred to as the "September Directive"), in which for the first time explicitly proposed the implementation of socialist rule of law. It clearly expounded the basic requirements for the work of criminal justice and emphasized the significance and importance

33 See XI, fn. 7.

34 See 三中全会以来重要文献选编（上）(*Collection of Selected Important Documents Since the Third Plenary Session of the 11th CPC National Congress*), Vol. 1, 人民出版社 (People's Publishing House), at 9 (1982).

of strict enforcement of Criminal Law and Criminal Procedure Law, stating that it directly relates to the credibility of the Party and the country. This had great and far-reaching significance.[35] On December 4, 1982, the Constitution (also known as the "Constitution 1982"), passed by the Fifth Session of the 5th National People's Congress, elevated the successful experience of promoting the construction of the rule of law by the Party since the Third Plenary Session of the 11th CPC National Congress to the level of constitutional norms. It established the principle of the national unified national legal system and stipulated that "the state upholds the unity and dignity of the socialist legal system," thus laying a fundamental legal foundation for Chinese modernization of the rule of law. Under the guidance of the Constitution 1982, Chinese modernization of the rule of law has been advancing steadily. In September 1997, at the 15th CPC National Congress, the basic strategic approach of governing the country according to law and building a socialist rule of law country was solemnly put forward for the first time in the history of our Party. This was undoubtedly a historic and significant strategic decision. The introduction and implementation of the basic strategic approach of governing the country according to law injected new connotation into Chinese modernization of the rule of law and effectively promoted the development of the rule of law in contemporary China.

Secondly, governing the country according to law is established as the fundamental way by which the CPC governs the country. The birth of the PRC marked a new era in the development of the Chinese nation. The CPC, which started as a party striving to lead the people in seizing national political power, has become a party that leads the people in wielding national political power and a long-term ruling party. With this significant and profound transformation, the governing methods of CPC have faced new and major challenges. In accordance with the guidance of "implementing socialist rule of law," the September Directive comprehensively and scientifically established the basic principles and working mechanisms of the CPC's leadership in judicial work for the first time. It emphasized the strengthening of the Party's leadership in judicial work and effectively guaranteeing judicial organs to exercise their functions and power provied by Constitiution and laws. In the future, the most important aspect of strengthening the Party committee's leadership in judicial work will be to effectively ensure the independent exercise of prosecutorial power by the procuratorates and the independent exercise of adjudicatory power by the courts, so as to prevent interference from other administrative organs, organizations, and individuals. The state laws are formulated under the leadership of the Party, and the judicial bodies are established under the leadership of the Party. Anyone who disrespects the law and the authority of the judicial bodies is, first and foremost, undermining the leadership and prestige of the Party. The Party committee and the judicial bodies have their respective responsibilities and should not substitute

35 Id. at 257.

for each other or be confused with each other. Based on the above understanding, the September Directive announced that, "The Central Committee decided to abolish the system of approving cases by Party committees at all levels,"[36] and put forward specific requirements for strengthening and improving the Party's leadership in judicial work under the new situation. The September Directive has great political and legal significance and has played an important role in building a socialist judicial system with Chinese characteristics and promoting the formation of a new path for Chinese modernization of the rule of law. In order to ensure the effective implementation of the September Directive, in early 1980, the CPC Central Committees decided to establish political and legal committees within the Party committees at all levels, clearly stating that the political and legal committees should be working departments of the Party committees and specifying their main responsibilities. This made strengthening and improvement of the Party's leadership in judicial work further institutionalized and standardized. Subsequently, the CPC Central Committee issued documents such as the Notice on that the Whole Party Must Firmly Maintain Socialist Legal System (July 1986) to further reaffirm and emphasize the spirit of the September Directive. Since the 1990s, the CPC Central Committee has repeatedly emphasized the need to strengthen and improve the Party's leadership in the construction of the rule of law. In the new century, the CPC has clearly revealed the laws of governing of the Party and made major strategic deployments to reform and improve the modes of leadership and governance. The 16th CPC National Congress held in 2002 put forward the significant proposition of governing the country according to law, stating that "We must enhance the awareness of legal system and be good at integrating the leadership of the Party, the position of the people as the masters of the Country, and governance the country by law, and improve the abilities of exercising state power according to law."[37] This is the fundamental guarantee for the CPC to lead the people in effectively governing the country and society under the new historical conditions. The Fourth Plenary Session of the 16th CPC National Congress held in September 2004 adopted the Decision of the Central Committee of the CPC on Strengthening the Party's Governance Capacity Building, which systematically elaborated the basic content and requirements of the CPC's governance according to law, emphasizing that "Governing the country according to law is a basic approach for the Party's governance under new historical conditions."[38] The introduction of the new concept of governing the country according to law fully reflects the new requirements for the CPC for strengthening its governance capacity under new social and historical conditions. It is a significant measure to enhance and consolidate the CPC's governing position

36 See fn. 34 at 259.

37 中国共产党第十六次全国代表大会文件汇编 (*Collection of the 16th CPC National Congress Documents*), 人民出版社 (People's Publishing House), at 39 (2002).

38 十六大以来重要文献选编（中）(*Selected Works of Important Documents Since the 16th CPC National Congress*), Vol. 2, 中央文献出版社 (Central Party Literature Press), at 281 (2006).

and promote the process of governing the country according to law. It enriches and develops the basic content of the new path for modernization of rule of law with Chinese characteristics.

Thirdly, a socialist legal system guiding by the Constitution and with Chinese characteristics has been formed and improved. With the historic development of the new path for Chinese modemization of rule of law, the socialist legal system with Chinese characteristics is also in the process of gradual formation. The Third Plenary Session of the 11th CPC National Congress clearly stated that legislative work should be given priority on the agenda of the national legislature. Since then, building on the important achievements and experiences in legislation during the early years of the founding of the PRC, efforts have been made to strengthen legislative work and gradually form a socialist legal system with Chinese characteristics. This has become a significant endeavor in advancing the process of national governance by law and shaping and developing the new path for modernization of rule of law with Chinese characteristics. The establishment of a legal system must be based on China's national conditions and proceed from China's realities, following a path for forming and developing a legal system with Chinese characteristics. Under the leadership of the CPC Central Committee, the National People's Congress and its Standing Committee have launched a large-scale process of national legislation. The socialist market economy is economy with rule-of-law. In the 1990s, with socialist market economy system was established as the goal of reform in China's economic system reform at the 14th CPC National Congress, the strategic task of further strengthening the construction of the rule of law became more prominent before the CPC and the Chinese people. The Third Plenary Session of the 14th CPC National Congress, held in November 1993, made the decision on Some Issues Concerning the Establishment of a Socialist Market Economy System. It proposed the preliminary establishment of a new economic system by the end of the 20th century and emphasized the need to establish a corresponding legal system focusing on the main aspects of the socialist market economy.[39] During this period, in order to adapt to the legal requirements of the socialist market economy, the Standing Committee of the National People's Congress enacted a range of laws. Such as, based on General Principles of Civil Law, the Bankruptcy Law of Enterprises, and the Law on Industrial Enterprises under the Ownership of the Whole People, and other civil and commercial laws which were formulated in the 1980s, it issued the Anti-Unfair Competition Law, the Company Law, the Consumer Rights and Interests Protection Law, the Contract Law, the Commercial Bank Law, the Partnership Enterprise Law, the Negotiable Instruments Law, the Insurance Law, and the Maritime Law. A civil and commercial legal framework was gradually forming, which not only communicated with the rule of law culture and its rules in a civilized society but also with distinct Chinese characteristics. Through

39 十四大以来重要文献选编（上）(*Selected Important Documents Since the 14th CPC National Congress*), Vol. 1, 人民出版社 (People's Publishing House), at 543–544 (1996).

continuous exploration and practice, the 15th CPC National Congress, adhering to the basic strategy of governing the country by law, for the first time clearly put forward the historic task of that, "We will strengthen legislation and improve its quality and will formulate a socialist legal system with Chinese characteristics by the year 2010."[40] Clearly, setting a specific timetable for the formation of a socialist legal system with Chinese characteristics reflected the rational self-awareness of the contemporary CPC in forging a new path for Chinese modernization of the rule of law. Through unremitting efforts since the founding of the PRC, especially during the period of reform and opening up, China's legislative undertakings have achieved tremendous success. The current Constitution was enacted in 1982. Subsequently, in response to the development needs of the objective situation, the National People's Congress deliberated and passed four constitutional amendments on April 12, 1988, March 29, 1993, March 15, 1999, and March 14, 2004. These amendments profoundly reflected the interactive relationship between constitutional system and social transformation. By the end of 2010, China had formulated 236 effective laws, 690 administrative regulations, and over 8,600 local regulations, and had completed the centralized review of existing laws, administrative regulations, and local regulations. At present, the legal departments covering various aspects of social life are complete, and the basic and major laws in each legal department have been formulated, achieving overall scientific and harmonious unity within the legal system. Therefore, the Fourth Session of the 11th National People's Congress, held in March 2011, solemnly announced that the socialist legal system with Chinese characteristics had been formed.[41] "This is a remarkable and significant achievement."[42] It is a milestone in the process of forming and developing Chinese modernization of the rule of law.

V Expansion of the New Path for Chinese Modernization of the Rule of Law

Following the Party's 18th National Congress, socialism with Chinese characteristics entered a new era, which is a new historical orientation for the development of contemporary China. "The main tasks facing the Party in this period are to fulfill the First Centenary Goal, embark on the new journey to accomplish the Second Centenary Goal, and continue striving toward the great goal of national rejuvenation."[43] President XI pointed out, "The 19th CPC National Congress made the important political judgment that socialism with Chinese characteristics has entered a new era. We must recognize that this new era is a new era of socialism with Chinese characteristics, not any other

40 十五大以来重要文献选编（上）(*Selected Important Documents Since the 15th CPC National Congress*), Vol. 1, 人民出版社 (People's Publishing House), at 28 (2000).

41 中华人民共和国全国人民代表大会常务委员会公报 (*Bulletin of the National People's Congress Standing Committee, PRC*), No. 3, at 333 (2011).

42 See XI, fn. 12 at 95.

43 See fn. 3 at 23.

new era." "The socialism with Chinese characteristics in the new era is the result of our Party's leadership in carrying out a great social transformation, and it is also the continuation of our Party's leadership in carrying out a great social transformation. We must consistently carry it forward."[44] Since the 18th CPC National Congress, the position and significance of the rule of law in the process of national modernization have become more prominent and significant. The new path for Chinese modernization of the rule of law has been further improved and expanded. Under the leadership of President XI and the Party Central Committee, adhering to and developing socialism with Chinese characteristics and ensuring the long-term stability of the Party and the country, a comprehensive plan for promoting the rule of law and accelerating the construction of a law-based China has been formulated, based on a strategic overview of the successful experience and profound lessons of construction of socialist rule of law in China. This plan demonstrates a strategic vision and wisdom of improving and developing the new path for Chinese modernization of the rule of law.

The plan proposes the major strategic task of advancing the modernization of national governance and building a law-based China. The rule of law is an important symbol of human civilization progress and the institutional outcome of social, political, economic, and cultural development in modern times. In contemporary China, the rule of law is the fundamental way to govern the country and to implement effective rule-based governance by institutionalizing, standardizing, and proceduralizing the state and social life. The 18th CPC National Congress emphasized "the importance of giving more attention to the role of the rule of law in national governance and social management."[45] The Third Plenary Session of the 18th CPC National Congress identified the comprehensive deepening of reforms as the overall goal, focusing on improving and developing the socialist system with Chinese characteristics and advancing the modernization of the national governance system and governance capacity. That Session was the first occasion on which the historic task of "promoting the construction of a law-based China" was included in the Party's documents. "It emphasized the need to adhere to the coordinated promotion of governing the country, administering the country, and conducting government affairs according to law, and to build a law-based China with the integration of a country governed by law, a government ruled by law, and a society governed by law."[46] The Fourth Plenary Session of the 18th CPC National Congress was the first time in the history of the CPC that it conducted a special study on major issues related to comprehensively advancing the rule of law in China. It carefully planned the strategic blueprint and overall layout for comprehensively advancing the rule

44 XI Jinping, 习近平谈治国理政 (*XI Jinping: Governance of China*), Vol. 3, 外文出版社 (Foreign Languages Press), at 69–70 (2020).

45 中国共产党第十八次全国代表大会文件汇编 (*Collection of the 18th CPC National Congress Documents*), 人民出版社 (People's Publishing House), at 24 (2012).

46 中共中央关于全面深化改革若干重大问题的决定 (*Decision of the Central Committee of the CPC on Some Major Issues Concerning Comprehensively Deepening the Reform*), 人民出版社 (People's Publishing House), at 3, 31–32 (2013).

of law and solemnly called on all Party members and people of all ethnic groups in the country to "strive for the construction of a law-based China."[47] The Fifth Plenary Session of the 18th CPC National Congress further emphasized the need to "steadfastly follow the path for socialism with Chinese characteristics in the rule of law" and "accelerate the construction of a rule of law-based economy and society, and incorporate economic and social development into the orbit of the rule of law."[48] The 19th CPC National Congress established "upholding the comprehensive rule of law" as an integral component of the basic strategic principles for upholding and developing socialism with Chinese characteristics in the new era. It emphasized that "comprehensive rule of law is an essential requirement and important guarantee for socialism with Chinese characteristics" and that it represents a profound revolution in national governance. It stressed the need to "firmly uphold the rule of law."[49] The Second Plenary Session of the 19th CPC National Congress reviewed and approved a Proposal from the CPC Central Committee on Revising the Constitution, providing strong constitutional guarantees for upholding and developing socialism with Chinese characteristics in the new era. In light of this, the First Session of the 13th National People's Congress reviewed and approved the Fifth Amendment to the current Constitution, enriching and improving the institutional provisions of the current Constitution, and clearly expressing the constitutional logic of the path to Chinese modernization of the rule of law. The Third Plenary Session of the 19th CPC National Congress made important arrangements for deepening the reform of the Party and state institutions, proposing "to accelerate the modernization of China's governance system and capacity, and to strive to form a more mature and well-defined socialist system with Chinese characteristics. This is currently a major task facing our party."[50] In accordance with the overall arrangements of the 19th CPC National Congress, it was decided to establish the Commission for Law-based Governance under the CPC Central Committee, in order to strengthen the centralized and unified leadership of the Party Central Committee over the construction of a rule of law in China.[51] The Fourth Plenary Session of the 19th CPC National Congress incorporated the adherence to and improvement of the socialist rule of law system with Chinese characteristics, as well as the enhancement of the Party's governance and ruling capacity in accordance with the law, into the overall strategic deployment of advancing the construction of the national system and governance system. It put forward specific

47 中共中央关于全面推进依法治国若干重大问题的决定 (*Resolution of the Central Committee of the CPC on Certain Major Issues Concerning Comprehensively Advancing the Law-Based Governance of China*), 人民出版社 (People's Publishing House), at 40 (2014).

48 中共中央关于制定国民经济和社会发展第十三个五年规划的建议 (*The CPC Central Committee Recommendations for the 13th Five-Year Plan for Economic and Social Development*), 人民出版社 (People's Publishing House), at 6 (2015).

49 See fn. 4 at 18, 31.

50 中共中央关于深化党和国家机构改革的决定 (*Decision of the CPC Central Committee on Deepening the Reform of the Party and State Institutions*), 人民出版社 (People's Publishing House), at 14 (2018).

51 See 深化党和国家机构改革方案 (*Deepening the Reform Plan of the Party and State Institutions*), 人民出版社 (People's Publishing House), at 4 (2018).

tasks for strengthening the construction of the legal system in the new era.[52] Based on the reality of China entering a new stage of comprehensive construction of a socialist modernized country, the Fifth Plenary Session of the 19th CPC National Congress outlined the vision of basically establishing a rule of law country, government, and society, and achieving the modernization of the rule of law by 2035. It defined the key tasks for the construction of the rule of law during the "14th Five-Year Plan" period. The Sixth Plenary Session of the 19th CPC National Congress comprehensively summarized the great achievements and valuable experience of the Party's century-long struggle, and systematically reviewed the significant progress made in comprehensively governing the country in accordance with the law since the 18th National Congress. It pointed out that "Since the 18th National Congress, the system of socialist rule of law with Chinese characteristics has constantly been improved, solid progress has been made in advancing the rule of law in China, the rule of law has played a greater role in consolidating foundations, ensuring stable expectations, and delivering long-term benefits, and the Party's ability to lead and govern the country through law-based methods has been notably enhanced."[53] Therefore, President XI has emphasized that "the law is a powerful tool for governing the country, and the rule of law is an important foundation for the national governance system and governance capacity."[54] The new path for Chinese modernization of the rule of law is proceeding with great momentum, profoundly changing the fundamental face of national and social life.

Furthermore, the Sixth Plenary Session of the 19th CPC National Congress clarifies the overall goal, strategic arrangements, and key tasks of comprehensively advancing the rule of law in the new era. In contemporary China, as the institutional foundation and important support for modernization of national governance, comprehensively advancing the rule of law has its specific internal objectives. The Fourth Plenary Session of the 18th CPC National Congress stated that "establishing a Chinese system of socialist rule of law; building a socialist country based on the rule of law" as the overall objective for comprehensively advancing the rule of law. It emphasized the need that "We must step up our efforts to establish a complete system of laws, a highly effective system for realizing the rule of law, a stringent system to oversee the practice of the rule of law, a robust system to guarantee the rule of law, and a well-defined system of rules and regulations within the CPC."[55] President XI referred to the building of a system of socialist rule of law with Chinese characteristics as the "overall driver" for comprehensively advancing the rule of law and explicitly required that "all work related to the rule of law should be planned

52 See 中共中央关于坚持和完善中国特色社会主义制度 推进国家治理体系和治理能力现代化若干重大问题的决定 (*Decision of the CPC Central Committee on Several Major Issues Concerning Upholding and Improving the Socialism with Chinese Characteristics System and Promoting the Modernization of the National Governance System and Capacity*), 人民出版社 (People's Publishing House), at 13–15 (2019).

53 See fn. 3 at 43.

54 See XI, fn. 12 at 85.

55 See fn. 47 at 4.

and promoted around this key driver."[56] From the establishment of a legal system to the construction of a rule of law system, this reflects the profound understanding of the development of the rule of law in contemporary China by the CPC. It also records the historical trajectory of creating a new path for Chinese modernization of the rule of law. Since the 18th CPC National Congress, the building of a system of socialist rule of law with Chinese characteristics as the overall driver for comprehensively advancing the rule of law, has achieved significant progress. The compilation and implementation of the Civil Code of the PRC has milestone significance in the process of China's rule of law modernization in the new era. In the legislative history of the PRC, the Civil Code is the first law named as a "Code" and it systematically integrates the civil legal norms that have been formed in the long-term practice of over 70 years since the founding of the PRC. It constructs a comprehensive civil legal system that is harmonious, coordinated, and organically unified. It has distinct Chinese characteristics, practical characteristics, and characteristics of the times. It holds a fundamental and important position in the socialist legal system with Chinese characteristics. It is of great significance and far-reaching implications for building a rule of law in China, developing a socialist market economy, safeguarding the legitimate rights and interests of the broad masses of the people, and advancing the new path for Chinese modernization of the rule of law. Based on the new changes in the principal contradiction facing Chinese society in the new era, the 19th CPC National Congress made strategic arrangements for embarking on a new journey of comprehensively advancing the construction of a rule of law in China and realizing Chinese modernization of rule of law. It determined the road-map and timetable for building a rule of law in China and achieving the modernization of national governance in two steps. In other words, from 2020 to 2035, on the basis of building a moderately prosperous society in all respects, another 15 years of hard work will be undertaken to basically achieve national modernization. During this process, "The rule of law for the country, the government, and society is basically in place. Institutions in all fields are further improved; the modernization of China's system and capacity for governance is basically achieved." From 2035 to the middle of this century, on the basis of basically achieving national modernization, a further 15 years of hard work will be carried out to build China into a great modern nation. During this process, the political civilization, such as the rule of law civilization, will be comprehensively enhanced, and "the modernization of China's system and capacity for governance will be achieved."[57] The strategic arrangements of the 19th CPC National Congress regarding the Chinese modernization of the rule of law in the new era clearly express the unwavering determination of the contemporary CPC to adhere to and expand the new path for Chinese modernization of the rule of law. To achieve the strategic arrangements for

56 See XI, fn. 12 at 93.
57 See fn. 4 at 23.

promoting the Chinese modernization of the rule of law in the new era, careful planning, focus, and solid promotion are necessary. In the speech at the first meeting of the CPC Central Committee for Comprehensively Advancing the Rule of Law, President XI deployed seven key tasks for promoting the comprehensive rule of law in the new era: Firstly, to research and formulate a plan for building a rule of law China. Secondly, to fully implement the Constitution. Thirdly, to advance well-defined legislation. Fourthly, to strengthen the construction of a rule of law government. Fifthly, to continue the reform of the judicial system. Sixthly, to promote the construction of a rule of law society. Seventhly, to strengthen the construction of the rule of law work team and the training of legal talents.[58] In his speech at the second meeting of the CPC Central Committee for Comprehensively Advancing the Rule of Law, President XI further emphasized the need to "step up the strategic layout of legal work in foreign-related field" and to "enhance China's voice and influence in the global governance system reform."[59] It is evident that these strategic key tasks effectively respond to the new requirements posed by the new changes in the primary social contradictions of our country in the new era for the construction of rule of law China. They establish the main direction for promoting the Chinese modernization of the rule of law in the new era and will undoubtedly have a profound impact on adhering to and expanding the new path for Chinese modernization of the rule of law.

In addition, efforts should be made to promote reform under the rule of law and improve the rule of law in the process of reform. In contemporary China, the process of Chinese modernization of the rule of law is inherently linked to the process of legal system reform. The historic task of advancing Chinese modernization of the rule of law in the new era has placed new and higher requirements for deepening reforms in the legal field. It is necessary to steadfastly promote reform in the legal field, effectively solve legal difficulties encountered in practice, and strive to overcome systemic, mechanistic, and guarantee-related issues that affect the development of the rule of law. These actions will further promote the self-improvement and development of the socialist legal system with Chinese characteristics. Under the guidance of the great social transformation in the new era, they are major and urgent tasks for adhering to and expanding the new path for Chinese modernization of the rule of law. Since the 18th CPC National Congress, the Party Central Committee, with XI Jinping at its core, has carefully interpreted the basic characteristics of China's legal system and conditions. While drawing on beneficial achievements of the rule of law civilization from around the world, it follows the inherent laws of Chinese modernization of the rule of law, meets the fundamental requirement of "promoting promote reform under the rule of law, and improve the rule of law in the process of reform,"[60] and embarks on an independent path of China's rule of law. The

58 See XI, fn. 12 at 232–235.
59 See XI, fn. 12 at 256–258.
60 See XI, fn. 19 at 52.

Third and Fourth Plenary Sessions of the 18th CPC National Congress respectively made decisions on furthering reform and advancing the law-based governance of China. This exhibits a close internal logic and represents a sequential deployment on the timeline, embodying the dialectical unity of "breaking" and "making."[61] Reform and the rule of law are like the two wings of a bird or the two wheels of a car, and they powerfully promote the development of the new path of Chinese modernization of the rule of law. In the new era, the reform of the rule of law in China emphasizes strengthening top-level design and overall planning, highlighting the systematic, holistic, and coordinated nature of reforms in the field of rule of law. It strengthens the comprehensive consideration, coordination, and cooperation of reform measures in order to form a concerted effort. This makes the reform plans in the field of rule of law more targeted, effective, and implementable. The reform of the rule of law in China in the new era focuses on problem-centered approaches, addressing prominent and crucial issues in the rule of law that are strongly reflected by the people and have a bearing on the overall development of the rule of law. Based on in-depth investigations and studies, strong reform measures are launched, overcoming difficulties and forging ahead, creating a new situation in the reform of the rule of law. In the new era, reform of the rule of law in China emphasizes enhancing the people's sense of gains. It adheres to the people-centered development principle of the rule of law, taking the promotion and realization of social fairness and justice as the intent and goal of rule of law reform. The success or failure of rule of law reform is measured by whether the people are satisfied and have "a sense of gains." Efforts are made to ensure that the reform of the rule of law is in line with the people's will and meets their expectations. In the new era, the reform of the rule of law in China emphasizes adhering to the principle of reform in accordance with the law, pushing forward reforms in the field of rule of law in a rule of law manner. Major reforms are supported by legal justifications, and efforts are made to achieve organic connections and mutual promotion between reform decision-making and legislative work. The rule of law approach is adhered to in promoting reforms in the field of rule of law, effectively addressing the contradictions between the growing new demands for the rule of law from the people and the unbalanced and insufficient development of the rule of law. This lays a solid foundation for a rule of law system, rule of law institutions, and rule of law mechanisms that better guarantee the role of the rule of law in consolidating foundations, ensuring stable expectations, and delivering long-term benefits, and opens up new horizons for Chinese modernization of the rule of law.

VI Conclusion

The unique national conditions and cultural traditions determine that China must follow a path of modernization of the rule of law

61 See XI, fn. 19 at 13–14.

that suits its own characteristics. "We must follow our own path, this is a historical conclusion our Party has drawn from its endeavors over the past century."[62] Over the past century, the CPC has united and led the people in a great social revolution that has been arduous, magnificent, and awe-inspiring. It has integrated the basic principles of Marxist legal theory with the specific realities of China and combined them with the excellent traditional legal culture of China. It has always adhered to the evolutionary process of a new path of Chinese modernization of the rule of law, starting from its own national conditions and independently exploring and forming a path that is in line with its own reality. This has significant symbolic significance in the process of global modernization of the rule of law.

The early exploration of the CPC in the new path of Chinese modernization of the rule of law is closely associated with the establishment and development of the legal system during the New-Democratic Revolution. The Party clearly grasped the principal contradictions in Chinese society in modern times and started from the main tasks of the New-Democratic Revolution and the needs of revolutionary struggles in different historical stages. It strengthened the construction of the legal system in the revolutionary base areas during the New-Democratic Revolution, established a political system of New Democracy, and formed a New-Democratic legal system and principles that were fundamentally opposed to the "Six Codes" system of the Nanjing Kuomintang government. It also constructed a people's judicial system in the New-Democratic era, thus accumulating valuable experience for opening up a new path of Chinese modernization of the rule of law.

After the founding of the PRC, the CPC consolidated and strengthened the state power of people's democratic dictatorship led by the working class and based on the alliance of workers and peasants. It actively applied the successful experience of constructing the legal system in the revolutionary base areas during the New-Democratic Revolution and focused on building socialist rule of law. The Party created a socialist state system with Chinese characteristics, formulated the Common Program and the Constitution 1954, and achieved a historic breakthrough in various national system proposals in modern China. By promoting major social changes through a series of mass movements, a new socialist legal order was rebuilt. The combination of policy and law was used to govern the country and society, and large-scale legal creation activities were carried out. This solidified the state and legal system guarantee for the Chinese people, enabling them to stand up and laid a preliminary foundation for opening up a new path of Chinese modernization of the rule of law.

The Third Plenary Session of the 11th CPC National Congress was a landmark event in the development of the rule of law in China since the founding of the PRC. It established the guiding principles for the construction of the rule of law during the new historical period of reform and opening up, and opened a new era of

62 See fn. 3 at 67.

great social revolution in contemporary China. The reform and opening up in contemporary China greatly promoted the historic transformation of the Chinese state and legal system. It explored and formed a new path of Chinese-style modernization of the rule of law that is in line with China's national conditions, providing strong legal guarantees for the Chinese people's prosperity. The Constitution 1982 and its four constitutional amendments established, for the first time in the process of social change in the reform and opening up, the constitutional foundation for developing a socialist market economy and building a socialist rule of law state. The 15th CPC National Congress for the first time solemnly put forward the basic strategy of law-based governance and building a socialist rule of law state, which is undoubtedly a historic and significant strategic decision. The 16th CPC National Congress clearly proposed the major proposition of governing the country according to law, and the Fourth Plenary Session of the 16th CPC National Congress systematically expounded the basic content and requirements for the CPC to govern the country according to law. This is a major measure to strengthen and consolidate the CPC's ruling position and promote the rule of law. In the process of forming the socialist legal system with Chinese characteristics as scheduled, China has gone through an extraordinary path of legislative development, marking the increasingly mature socialist legal system with Chinese characteristics, which is undoubtedly a remarkable achievement in the rule of law.

Since the 18th CPC National Congress, with the advent of a new era of socialism with Chinese characteristics, the Chinese people have resolutely embarked on an irreversible historical process of "becoming stronger" and "China's rejuvenation is an unstoppable historical force."[63] Under the leadership of the CPC Central Committee with Comrade XI Jinping at its core, a range of major strategic decisions have been made from the strategic perspective of upholding and developing socialism with Chinese characteristics and ensuring the long-term stability of the Party and the country. These decisions have focused on strengthening the comprehensive rule of law and building a law-based China. Starting from the Third Plenary Session of the 18th CPC National Congress, which made the major strategic decision to "promote the construction of a law-based China," to the Fourth Plenary Session of the 18th CPC National Congress, which proposed the overall blueprint, road-map, and construction plan for comprehensively advancing the rule of law, and to the 19th CPC National Congress, which put forward the basic strategy of advancing law-based governance of China and made significant strategic arrangements of "new two steps" for advancing the Chinese modernization of the rule of law in the new era. These include the proposal to amend certain contents of the Constitution at the Second Plenary Session of the 19th CPC National Congress and the adoption of the Fifth Amendment to the current Constitution at the first session of the 13th National People's Congress. The Fourth Plenary Session of the 19th CPC

63 See XI, fn. 2 at 7.

National Congress made a major decision to strengthen the construction of state systems and legal systems, while the Fifth Plenary Session of the 19th CPC National Congress outlined the legal blueprint for the first five years of the new journey towards building a modern socialist country. The Sixth Plenary Session of the 19th CPC National Congress, in summarizing the great achievements and historical experience of the Party's century-long struggle, elaborated on the significant issues of adhering to Chinese modernization and its path of rule of law. These decisions embody the remarkable achievements of the Party's leadership in governing the country according to law, and signify a further deepening and expansion of the new path of Chinese modernization of the rule of law modernization.

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