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Promoting the Modernization of China's Governance System and Capacity in Line with the Rule of Law

LI Honglei

Abstract Since the 18th National Congress of the Communist Party of China (CPC) held in 2012, XI Jinping, General Secretary of the CPC Central Committee, has made a series of vital expositions on the promotion of modernization of the national governance system and capacity in line with the rule of law. The law is the most important tool for governing a country, and the rule of law supports the national governance process and capacity. Promoting the rule of law on all fronts is an essential requirement for developing socialism with Chinese characteristics and promoting the modernization of the national governance system and capacity. Comprehensive law-based governance in all areas should be promoted to advance the modernization of national governance. Furthermore, law-based thinking and methods should be used to address difficulties and challenges faced in this modernization process.

Keywords XI Jinping Thought on the Rule of Law, exercising law-based governance on all fronts and advancing the rule of law in China, governance modernization, deepening reform, fairness and justice

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LI Honglei 李洪雷 (✉)
Institute of Law, University of Chinese Academy of Social Sciences, Beijing 102488, China
E-mail: lihonglei1976@hotmail.com

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Since the 18th National Congress of the Communist Party of China (CPC), the CPC Central Committee with XI Jinping as the core has vigorously promoted the modernization of the national governance system and capacity, and has highlighted the position of the rule of law in governing the country. In the Resolution of the Third Plenary Session of the 18th CPC Central Committee in 2013 (Resolution), "Developing socialism with Chinese characteristics and promoting the modernization of China's governance system and capacity" was set as the general goal of comprehensively deepening reform, and was to comprehensively promote the rule of law in China. In the explanation of the Resolution, XI Jinping called for "promoting the modernization of the national

governance system and capacity in line with the rule of law." [1] In 2020, at the Central Conference on Law-Based Governance, XI Jinping called for "sticking to the path of promoting the modernization of China's governance system and capacity in line with the rule of law," and such adherence is a major strategic task of exercising comprehensive law-based governance. This call is one of the cores of XI Jinping Thought on the Rule of Law.[2]

In terms of the rule of law, XI Jinping has faithfully analyzed its logical relationship with China's governance, and noted the "line" role of the rule of law in modernizing China's governance system and capacity.[3] This "line," an important part of XI Jinping Thought on the Rule of Law, plays a significant guiding role in promoting the overall rule of law and the modernization of China's governance. Throughout this modernization, we must uphold the rule of law on all fronts, and let it play a leading, regulating and guaranteeing role. In the New Era, We should consider, plan, and promote the overall rule of law in all areas for advancing modernization, and should address difficulties and challenges faced in this process using the rule of law thinking and methods.

I. The Comprehensive Advancement of Law-Based Governance Is an Essential Requirement for the Modernization of China's Governance System and Capacity

Law-based governance is an essential requirement and a vital guarantee for developing socialism with Chinese characteristics. It is also an inevitable requirement for realizing the modernization of China's governance system and capacity.[4] Law-based national governance on all fronts presents a broad and profound revolution in the field of national governance.[5] To promote the modernization of the national governance system and capacity, we must respect the rule of law.[6]

A. The Law Is the Yardstick in National Governance

"The rule of law is the beginning of national governance" (Chapter 12, "Gentlemanship and National Governance" in *XUN Zi*). "If you do not respect the rules, you cannot be

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[1] XI Jinping, 论坚持全面依法治国 (*On Exercising Law-Based Governance on All Fronts and Advancing the Rule of Law in China*), Central Party Literature Press (Beijing), at 94 (2020).

[2] 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 (Unswervingly Follow the Socialist Road of Rule of Law with Chinese Characteristics, and Provide a Strong Guarantee of Rule of Law for Building a Modern Socialist Country on All Fronts), 5 求是 (*Qiushi*), 1 (2021).

[3] WANG Chen, 习近平法治思想是马克思主义法治理论中国化的新发展新飞跃 (XI Jinping's Thought of Rule of Law Is a New Development and Leap of Marxist Theory of Rule of Law in China), 2 中国法学 (*China Legal Science*), 15 (2021).

[4] The CPC Central Committee Literature Research Office, ed., 习近平关于全面依法治国论述摘编 (*Excerpts from XI Jinping's Speech on Law-based National Governance*), Central Party Literature Press (Beijing), at 4 (2015).

[5] XI, fn. 2 at 118.

[6] The CPC Central Committee Literature Research Office, ed., fn. 4 at 3.

successful" ("Liloushang" in *Mencius*). The rule of law is the rule of rules and the rule of reasons.[7] The rule by individuals, as opposed to the rule of law, puts individual will above the rules, and will not be free from assertiveness, arbitrariness and head-strongness. XI Jinping noted that the key to governing a country and a society is to establish rules, speak rules and observe rules. Law is the biggest and most vital rule in governing a country. Figuratively, the law is the yardstick, and the rule of law is to measure, standardize and guide social life with that yardstick. China is a big country with a population over one billion, with a vast territory, many ethnic groups and complicated national conditions. To govern such a big country, the CPC must uphold the yardstick of law, harness the rule of law to ensure national unity, to present a unified legal system with unified government decrees and unified market, and to realize economic growth, political propriety, cultural prosperity, social justice and sound ecology.[8]

B. The Rule of Law System Is the Backbone of the National Governance System

The national governance system is an institutional system that governs China under the CPC leadership, including institutional mechanisms, laws and regulations in various fields such as economy, politics, culture, society, ecological civilization and CPC self-improvement, thereby creating a set of closely linked and coordinated national systems.[9] Law-based national governance on all fronts is a systematic project, aiming at building a socialist legal system with Chinese characteristics and a law-based socialist country. The socialist rule of law system with Chinese characteristics is an important component of the socialist system with Chinese characteristics, and is essentially the legal manifestation of the socialist system with Chinese characteristics.[10] XI Jinping has repeatedly stressed that law is the most critical tool for governing China, while the rule of law is an essential support for the governance system and capacity,[11] and is indeed the backbone of the governance system.[12] Practice has proved that a systematic, normative, coordinated and stable national governance system is ensured by the Constitution and laws, and ensured by state coercive force.[13] In a modern society where interests are divided and values are diversified, the law plays a key role in national governance because of its universality, standardization, certainty, procedure and authority. The rule of law is an

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[7] Martin Locklin, 剑与天平 —— 法律与政治关系的省察 (*Sword and Balance*: *An Examination of the Relationship Between Law and Politics*), translated by GAO Qinwei, Peking University Publishing House (Beijing), at 76 & 85 (2011).

[8] The CPC Central Committee Literature Research Office, ed., fn. 4 at 9.

[9] XI Jinping, 论坚持人民当家作主 (*On Insisting that the People Be Masters of the Country*), Central Party Literature Press (Beijing), at 46 (2021).

[10] The CPC Central Committee Literature Research Office, ed., fn. 4 at 35.

[11] XI, fn. 2.

[12] XI, fn.1 at 112.

[13] Id at 272.

important guarantee for maintaining order and highlighting social fairness and justice. Only comprehensive law-based governance can maximize social consensus.[14] We need to make the best of the guiding, standardizing, and guaranteeing roles of the rule of law, to reinforce the foundation, to build on our strengths, and to strengthen our weaknesses. We need to make institutions in all areas more mature and established, and gradually make national governance institutionalized, procedure-based, standardized, and law-based.[15]

C. The Competence of the Rule of Law Is an Important Aspect of China's Governance Ability

The national governance competence epitomizes a country's system implementation ability; it is the ability to use the national system to manage all aspects of social affairs, including reform, development and stability, internal affairs, foreign affairs and national defense, and managing the CPC, the country and the army.[16] To promote the modernization of the national governance system and capacity in the New Era, we must improve our CPC's ability to enact law-based governance. Thus, more attention should be paid to the building of governance capacity to enhance the law-based awareness in handling every business, to command the system and law to govern the country, to transform the advantages of various systems in maximizing the efficiency of managing the country, and to improve the CPC's well-defined, democratic and legal governance.[17] XI Jinping pointed out that the vitality of law lies in its implementation, and the authority of law also lies in its implementation.[18] Officials' specific exercise of the CPC's ruling power and the national legislative, administrative, supervisory and judicial power is the key to law-based national governance on all fronts.[19] Government departments and officials at all levels should strive to build reform consensus, standardize development behavior, promote conflict resolution and ensure social harmony by the rule of law.[20] Officials at all levels should improve themselves and apply the rule of law for advancing reform and development, resolving disputes and maintaining stability. They should also create a sound rule of law environment for law-based governance.[21]

D. Legalization Is the Must-Be Pathway to China's Modernization

Modernization is not a word for time or times, but a social feature unlike traditional

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[14] XI, fn. 2.
[15] XI, fn. 2 at 274.
[16] XI, fn. 9 at 46.
[17] The CPC Central Committee Literature Research Office, ed., fn. 4 at 25.
[18] XI, fn. 2 at 96.
[19] XI Jinping, 习近平谈治国理政 (*The Governance of China*), Vol. 3, Foreign Languages Press (Beijing), at 287 (2020).
[20] The CPC Central Committee Literature Research Office, ed., fn. 4 at 110–111.
[21] XI, fn. 2 at 15.

society. It is characterized by science and technology, industrialization, urbanization, rationalization, democratization, and the rule of law. It symbolizes the progress of human civilization and the dedicated pursuit by the CPC and Chinese people in modern times.[22] To modernize China, the rule of law must work effectively, otherwise it is impossible to realize China's modernization.[23]

XI Jinping pointed out that the rule of law or the rule by individuals is a basic issue in the history of political civilization, and it is also a major problem that all countries must face and solve in the process of modernization. Looking at the modern history of the world, all modernized countries have resolved the problem of rule by law or rule by individuals. In addition, some countries once grew rapidly, yet they failed to modernize, and fell into a kind of trap, resulting in stagnation or even retrogression of economic and social development. The latter situation is largely related to the inadequacy of the rule of law.[24]

E. Law-Based National Governance on All Fronts Is a Major Strategic Task of Governing China

The strategic issue is a fundamental issue for a political party and a country. The CPC should develop accurate strategic analysis, well-define strategic planning, and formulate strategic initiatives for ensuring a promising future for the Chinese people.[25] Here, strategic thinking means far-sighted and overall thinking. Thus, we have to think, plan, decide and execute systematically, holistically, foresightedly and deeply, based on the overall situation, focusing on the long-term, grasping the general trend and the fundamentals. Thinking of lofty strategic aims of realizing the great rejuvenation of the Chinese dream and realizing the long-term stability of the CPC and China, XI Jinping elaborated the mission and connotation of law-based national governance on all fronts. He noted that exercising law-based governance on all fronts is not only a realistic consideration for resolving the contradictions and problems in China's reform, development and stability, but also a long-term strategic approach. A Chinese proverb says, "if a man takes no thought about what is distant, he will find sorrow near at hand." How is it possible to comprehensively build a well-off society? How is it possible to avert any traps and maintain a long-term governance? How can long-term stability of the

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[22] See LUO Rongqu, ed., 现代化新论——世界与中国的现代化进程 (A New Theory of Modernization: The Modernization Process of the World and China), The Commercial Press (Beijing), 2009.

[23] ZHANG Wenxian, 法治与国家治理现代化 (*The Rule of Law and the Modernization of National Governance*), 4 中国法学 (*China Legal Science*), 5 (2014).

[24] The CPC Central Committee Literature Research Office, ed., fn. 4 at 12.

[25] XI Jinping, 在纪念邓小平同志诞辰一百一十周年座谈会上的讲话 (Speech at the Symposium to Commemorate the 110th Anniversary of Comrade DENG Xiaoping), edited by CPC Central Literature Research Office, 十八大以来重要文献选编 (*Selected Documents since the 18th National Congress of the CPC*), Vol. 2, Central Party Literature Press (Beijing), at 45–46 (2016).

CPC and China be maintained? These critical issues need deep thought.[26] To promote the modernization of the national governance system and capacity, we must uphold the rule of law and provide fundamental, overall and long-term institutional guarantee for the development of the CPC and the state.[27] Exercising law-based governance on all fronts is a major strategic issue concerning the CPC's ruling and China's rejuvenation, and concerning the people's well-being and the long-term stability of the CPC and China. It is also an important aspect of perfecting and developing the system of socialism with Chinese characteristics and of promoting the modernization of the national governance system and capacity.[28] Exercising law-based governance on all fronts is an important strategic task put forward by the CPC for developing socialism with Chinese characteristics and better managing China. It is also an overall issue related to the CPC's governing and China's rejuvenation. Implementing this important strategic task is highly significant for promoting sustained and healthy economic and social development, maintaining social harmony and stability, realizing social fairness and justice, building a well-off society on all fronts and realizing the great rejuvenation of the Chinese nation.[29]

F. Law-Based National Governance on All Fronts Provides Institutionalized Solutions for Solving Problems in the Development of the CPC and China

With the reform forging ahead into more challenging areas, the CPC faces unprecedented challenges of reform, development and stability, and unprecedented controversies and risks. Exercising law-based national governance plays a more vital role than ever in the comprehensive work of the CPC and the country. XI Jinping noted that exercising law-based national governance fundamentally requires liberating and enhancing social vitality, promoting social fairness and justice, maintaining social harmony and stability, and ensuring the long-term stability of the CPC and China. It also requires institutionalizing solutions for various major problems relating to the development of the CPC and China.[30] Thus, the CPC must exercise law-based national governance and must observe the rule of law to coordinate and balance social forces and interests, regulating and standardizing social relations and behaviors. Furthermore, the CPC must rely on the rule of law to resolve various social contradictions and problems, and to ensure that our society is full of order and vitality during the profound changes.[31] China's socialist rule of law epitomizes the theoretical achievements and practical

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[26] The CPC Central Committee Literature Research Office, ed., fn. 4 at 11.
[27] Id. at 12.
[28] XI, fn. 1 at 86–87.
[29] The CPC Central Committee China Literature Research Office, ed., fn. 4 at 7.
[30] XI, fn. 1 at 85–86.
[31] The CPC Central Committee Literature Research Office, ed., fn. 4 at 11.

experience of the CPC's governance of China, and is the most basic, stable and reliable guarantee for socialist governance. Also, it is necessary to give full play to the leading, standardizing and guaranteeing role of the rule of law.[32]

G. Law-Based National Governance on All Fronts Has Fully Absorbed the Experience and Lessons of the CPC in Governing China

Chinese civilization has a long tradition of valuing history and taking history as a mirror. History is the best teacher, the best textbook, and the best nutrition and sobering agent. Through the study of history, it is possible to "understand reasons for success and failure, learn reasons for gains and losses, thus know reasons for rise and fall." XI Jinping has attached value to the efficacy of history for guidance, and has noted that comprehensively promoting the rule of law is a major choice made by summarizing experience and lessons of the development of China's socialist legal system. These experience and lessons have taught the CPC that the rule of law is an indispensable and vital method of governing China. When the rule of law prospers, China prospers; otherwise, there are many complaints across Chinese society. Since the reform and opening up policy was adopted in 1978, China has created "two miracles" of rapid economic development and long-term social stability, which are closely related to our continuous promotion of socialist rule of law. Experience tells us that the deeper the reform and opening up, the more attention should be placed on the rule of law, and the more complicated the development environment, the more attention should be given to the rule of law.[33] In response to the COVID-19 pandemic, the CPC promoted pandemic prevention and control and economic and social development in line with the rule of law as a whole, maintaining overall social stability, and promoting the resumption of work and production in an orderly manner. China's pandemic prevention and control achieved significant strategic results.[34]

H. The Rule of Law Is an Important Part of Core Competitiveness of China

International competition is a race of comprehensive national strength between countries. Joseph Nye, a professor at Harvard University, believes that a country's comprehensive national strength includes not only the "hard power" manifested by its economic and military strength, but also the "soft power" embodied by its culture, values and internal and external policies.[35] The rule of law is such a soft power. XI Jinping pointed out that the rule of law is an important part of a country's core competitiveness.

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[32] XI, fn. 1 at 272–273.

[33] XI, fn. 1 at 253.

[34] XI, fn. 2.

[35] For soft power, see Joseph Nye, 软实力 (*Soft Power*), translated by MA Juanjuan, CITIC Press Group (Beijing), (2013).

Nowadays, the world is experiencing a huge change unseen over a hundred years, and the global governance system has undergone profound adjustment. Institutional competition is an important aspect of comprehensive national strength competition, and it is also the most fundamental competition between countries. Institutional advantage is an important advantage for a country to win strategic initiative, and it is the biggest advantage of a country.[36] Upholding the rule of law on all fronts is a significant advantage of China's national system and national governance system.[37] We must maintain and continuously strengthen it, so as to ensure that we can win in the fierce international competition, take the initiative to improve our power in international discourse and improve the influence of China's the rule of law, China's system and China's road. After sustained efforts, China's economic strength, scientific and technological strength and comprehensive national strength have made great strides, and have increasingly approached the global center-stage. Thus, China has played a vital role in international negotiations on major political, economic and trade issues, and in global governance systems such as the United Nations and the G20.[38] We should persist in promoting the domestic rule of law and the foreign-related rule of law as a whole, should speed up the strategic layout of work on the foreign-related rule of law, should coordinate and promote domestic governance and international governance, and should better safeguard national sovereignty, security and development interests. It is necessary to improve foreign-related laws and regulations and their implementation, supervision and guarantee system, to improve the institutionalization and the rule of law in opening up to the outside world, and to help to build a new open economic system to achieve a high level of opening up to the outside world. It is necessary to strengthen the thinking and application of the rule of law, to effectively address challenges and prevent risks, and to comprehensively use legislation, enforcement and justice to safeguard national sovereignty, dignity and core interests. We should promote the reform of global governance and the construction of a community with a shared future for mankind.[39] We should actively participate in the formulation of international rules, enhance the right to speak in international affairs, and make China's due contribution to the formation of fair and reasonable international rules.

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[36] XI, fn. 1 at 226–227; XI, fn. 9 at 290 & 333.

[37] XI Jinping, 推进全面依法治国，发挥法治在国家治理体系和治理能力现代化中的积极作用 (Promoting the Rule of Law on All Fronts and Giving Full Play to the Positive Role of the Rule of Law In the Modernization of National Governance System and Capacity), 22 求是 (*Qiushi*), (2020).

[38] WANG Yang, 加强涉外法治工作 (Strengthening Foreign-Related Legal Work), in《中共中央关于全面推进依法治国若干重大问题的决定》辅导读本 (*Tutorial Reader of the CPC Central Committee's Resolution on Comprehensively Advancing Some Major Issues of Governing the Country by Law*), People's Publishing House (Beijing), at 51 (2014).

[39] XI, fn. 2.

II. Promoting Comprehensive Law-Based Governance in All Areas for Advancing the Modernization of National Governance

In reviewing and summarizing the experience of China's rule of law, XI Jinping pointed out that since the Third Plenary Session of the Eleventh CPC Central Committee, the CPC has determined the rule of law as the basic strategy by which the CPC should lead the people in governing China, and the rule of law as the basic way by which the CPC can govern China. We have always considered, planned and promoted the rule of law in all areas of the CPC and the state, and made great achievements in ruling China by law.[40] In the New Era, it is necessary to deploy and promote the rule of law in all areas of promoting the modernization of national governance, and to comprehensively promote the work of ruling China by law within the overall framework of comprehensively deepening reform.[41]

A. The Overarching Goal of Modernization of National Governance Is to Promote Comprehensive Law-Based Governance

In order to implement the two-step approach from 2020 to the middle of this century, as outlined in the Report to the 19th National Congress of the CPC, the Resolution of the Fourth Plenary Session of the 19th CPC Central Committee put forward the overarching goal of upholding and developing socialism with Chinese characteristics and promoting the modernization of the national governance system and capacity. This provides the general direction and general compliance for upholding and improving socialism with Chinese characteristics, for promoting the modernization of the national governance system and capacity, and also for providing an important coordination system for promotion of the overarching rule of law. The mediumand long-term goals of building the rule of law are coordination of the international and domestic situations, building the rule of law and satisfying the people's demand for the rule of law, and coordinating the requirements of promoting the modernization of the national governance system and capacity.[42] To promote law-based governance on all fronts, we should benchmark the goals and steps of modernization of national governance, meet the requirements and tasks of modernization of national governance, and make overall plans, arrangements and joint efforts. In January, 2021, the CPC Central Committee issued The Plan to Build the Rule of Law in China (2020–2025), which set the rule of law goals during the years 2025 to 2035, and put forward the vision of integrated development of the rule of law for the country, government and society. These goals correspond to the arrangements of China's "14th Five-Year Plan" and the Resolution of the Fourth Plenary Session of the 19th

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[40] The CPC Central Committee Literature Research Office, ed., fn. 4 at 8.

[41] Id. at 52.

[42] XI, fn. 1 at 275.

Central Committee on the process of governing the country, and they reflect the organic connection between the rule of law and the modernization of national governance.

B. Working Around the Overall Layout of the "Five-Sphere Integrated Plan" to Promote the Comprehensive Rule of Law

Since the 18th National Congress of the CPC in 2012, the CPC Central Committee with XI Jinping as the core has formed and coordinated the overall layout of "the five-sphere integrated plan" in economic construction, political construction, cultural construction, social construction and ecological civilization construction. In the explanation of the Resolution of the Fourth Plenary Session of the 18th CPC Central Committee, XI Jinping emphasized that, in excising the law-based national governance on all fronts, we should focus on the overall layout of the socialist cause with Chinese characteristics and meet the requirements of promoting reform and development in various fields to advance the rule of law, instead of producing mere rhetoric on the rule of law. Therefore, in terms of economic construction, we should follow the basic guidance of protecting property rights, honoring contracts, and unifying the market, while at the same time exchanging equally, competing fairly and supervising effectively. Furthermore, we should improve the legal system of the socialist market economy and build an economy based on law. With regard to political construction, we should focus on ensuring that the people are the masters of the country, uphold and improve the people's congress system, the multi-party cooperation and political consultation system led by the CPC, the regional ethnic autonomy system and the grass-roots mass autonomy system, and build an institutionalized, standardized and procedural socialist democratic politics. With regard to cultural construction, it is necessary to establish and improve a cultural and legal system that upholds the direction of advanced socialist culture that follows the law of cultural development, that is conducive to stimulating cultural creativity and safeguarding people's basic cultural rights and interests, and that builds a culture of the rule of law. Focusing on social construction, we should speed up the protection and improvement of people's livelihood, promote the innovation of the social governance system and legal system, and build a society by law. Focusing on the construction of ecological civilization, we should protect the ecological environment with a strict legal system, and should speed up the establishment of an ecological civilization legal system that effectively restricts development behavior so as to promote green development, circular development and low-carbon development.

C. Making Best Use of the Role of Law-Based Governance in the "Four-Pronged Comprehensive Strategy" Layout

Since the 18th National Congress of the CPC, the CPC Central Committee with XI Jinping as the core, has put forward a "four-pronged" strategic layout of socialism with

Chinese characteristics around the theme of upholding and developing socialism with Chinese characteristics and realizing the great rejuvenation of the Chinese nation, and has constructed the general strategy of our CPC's governance of the country under the new situation and the general strategy related to the long-term development of the CPC and the country. The four prongs of the strategy, each of which is of great strategic significance, are interlocking, complementarity, and mutually reinforcing. XI Jinping emphasized that, within the "four-pronged strategy," exercising law-based governance on all fronts plays a fundamental and supportive role, which can provide a long-term and stable legal guarantee for the other three prongs of components. Without exercising law-based national governance on all fronts, we cannot manage the country or the government well, and our strategic layout will end in failure.[43] With the realization of the goal of comprehensively building a well-off society, the Fifth Plenary Session of the 19th CPC Central Committee updated the "four-pronged strategy" for building a well-off society on all fronts and for further building a modern socialist country, for promoting the rule of law in China and the rule of China for achieving new development, and for taking new steps and opening up a new ground. On the new journey of comprehensively building a socialist modernized country, we must put the rule of law in an overall, strategic, basic and supportable position, and make continuous progress towards building a law-based China on all fronts.

D. Upholding the Organic Unity of the CPC Leadership, Ensuring that the People Are the Masters of the Country, and Ensuring the Rule of Law

To promote the law-based governance on all fronts, we must properly handle the relationship between the rule of law and politics, and develop socialist democratic politics. The most fundamental thing is to organically unify upholding the CPC's leadership, ensuring the people being the masters of the country and ensuring the rule of law. The Resolution of the Fourth Plenary Session of the 19th CPC Central Committee included adherence to the organic unity of the CPC leadership, the people being the masters of the country, and the rule of law, complying with following and perfecting the system of socialism with Chinese characteristics and promoting the modernization of the national governance system and capacity. Such adherence has great guiding significance in penetrating and covering the overall situation. XI Jinping pointed out that adhering to the organic unity of the CPC's leadership, the people being the masters of the country and of the rule of law is a basic experience of China's socialist rule in law construction.[44] To promote the comprehensive rule of law in the New Era, we need to focus on upholding and strengthening the overall leadership of the CPC, on upholding and improving the system

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[43] The CPC Central Committee Literature Research Office, ed., fn. 4 at 15.

[44] Id. at 51.

of people being masters of the country, on developing people's democracy in the whole process, improving the CPC's law-based governance, on managing the CPC according to regulations and governing the country according to law, and on realizing a breakthrough and a complementarity between the overall leadership of the CPC, people's democracy in the whole process, and the comprehensive rule of law.

E. Sticking to the Combination of Law-Based National Governance and Morality-Based National Governance

"Law protects the world, and morality nourishes the People's heart." Law is written morality, and morality is inner law. Both law and morality have the functions of regulating social behavior, regulating social relations and maintaining social order, and have their status and functions in national governance.[45] China's traditional Confucianism offers profound thoughts on rule by morality, and "governing by morality," "guiding by morality," "benevolent governance." "Morality as the principal and punishment as the auxiliary" still have important enlightening significance for contemporary governance. XI Jinping noted that law is the criterion and morality is the cornerstone. A distinctive feature of Socialism with Chinese characteristics' road of the rule of law is that it adheres to the combination of the rule of law and the rule of morality, and emphasizes both the rule of law and the rule of morality. This is not only a summary of historical experience, but also involves a profound understanding of the law governing the country. Under the new historical conditions, we must continue to adhere to the combination of the rule of law and the rule of morality, so that the rule of law and rule of morality promote each other and complement each other in national governance, and jointly promote the modernization of national governance system and capacity.[46] Adhering to the combination of law-based national governance and ruling the country by morality solves the problem of spiritual support for comprehensively promoting the rule of law. The foundation of the rule of law lies in the people. We must persist in taking all-round popularization of the law, and law-abiding by the whole people, as the foundational project of governing the country according to law, so that all the people can become loyal advocates of the socialist rule of law, consciously abide by it and firmly defend it. This approach pays attention to moral education, improves the civilization of the whole society, and creates a good humanistic environment for comprehensively governing the country according to law. It is necessary to highlight the connotation of the rule of law in moral education, to pay attention to cultivating people's legal belief, concept of the rule of law and awareness of rules, to guide people to consciously fulfill their legal obligations, social responsibilities and family responsibilities, and to create a cultural environment in which the whole society stresses

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[45] XI, fn. 1 at 109.

[46] Id. at 165.

and observes the rule of law. We must persist in building a high-quality central legal team with both professional ability and political integrity, and especially make the best use of leaders in law-based and morality-based national governance. Leading cadres should not only be important organizers and promoters of comprehensively governing the country according to law, but also be active advocates and demonstrators of moral construction.[47]

F. Upholding Law-Based Rational Legislation, Democratic Legislation and Legislation

In 2011, the central government announced that a socialist legal system with Chinese characteristics had been formed. It is the foundation of practice of the rule of law, and the law should develop with the development of practice. XI Jinping pointed out that with ongoing development and advancement of reform, the modernization of national governance demands a rational and complete legal system increasingly urgently. It is necessary to focus on the gaps and conflicts of the legal system, make overall plans and promote all the work of legislation, reform, abolition and interpretation, and speed up the establishment and improvement of the legal system that is urgently needed by the state to meet the people's growing needs for a better life.[48] Good law is the premise of good governance. Both development and legislation should be of high quality to ensure and promote the sustained and healthy development of the economy.[49] We should adhere to scientific legislation, democratic legislation and legislation according to law. That can provide the key to improving the quality of legislation, to adhering to problem orientation, to improving the pertinence, timeliness, systematic nature, effectiveness and operability of legislation, and to striving to make every legislation conform to the spirit of the Constitution, thereby reflecting the will of the people and winning their support.[50] The basis of scientific legislation lies in respecting and embodying objective laws; the basis of democratic legislation lies in serving and relying on the people.[51] The basis of legislation according to law lies in following legislative procedures and strictly observing legislative authority. It is necessary to improve the legislative work pattern led by the CPC Central Committee, and by the National People's Congress, supported by the government, and with the participation of all parties. Further requirements include improvement of the legislative work mechanism and procedures, expansion of the orderly participation of the public, listening carefully to opinions from all sides, so that the law can accurately reflect the requirements of economic and social development, better coordinate the various interests, and give play to the leading and promoting role of legislation.[52]

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[47] Id. at 165–168.
[48] Id. at 275.
[49] Id. at 253.
[50] Id. at 73–74.
[51] Id. at 94.
[52] Id. at 20.

G. Strengthening Legal Protection Relating to Social Fairness and Justice

The Resolution of the Fourth Plenary Session of the 19th Central Committee summed up the remarkable advantages of China's national system and governance system, placing "effectively safeguarding social fairness and justice and people's rights" alongside "adhering to the rule of law on all fronts and building a socialist country ruled by law," and thereby clearly revealing the value pursuit of China's governance modernization and the rule of law construction. XI Jinping pointed out that justice is the lifeline of the rule of law. Justice is the inherent requirement of Socialism with Chinese characteristics and a very lofty value goal pursued by our CPC. The purpose of serving the people wholeheartedly determines that we must pursue fairness and justice, protect people's rights and interests and uphold justice.[53] The fundamental purpose of promoting the rule of law on all fronts is to protect people's rights and interests according to law.[54] We should ensure that all citizens enjoy a wide range of rights according to law, and guarantee the people's yearning and pursuit for a better life.[55] The construction of a government under the rule of law is the key task and main project of comprehensively governing, and it is an important support for promotion of the modernization of the national governance system and capacity. With the goal of building a government under the rule of law, we should establish an authoritative and efficient administrative system with unified powers and responsibilities, so as to ensure the fair and effective implementation of the law. Administrative law enforcement is the main way to implement the law, an important way to govern the country, and a key part of the administration and even governance of the country according to law. The ability and level of administrative law enforcement largely determine the development of the government's rule of law and national governance. It is necessary to strictly regulate fair and civilized law enforcement, standardize the discretion of law enforcement, and strengthen law enforcement in key areas that have a bearing on the vital interests of the people. It is necessary to innovate enforcement of administrative law, and strive to combine leniency with severity and legal principles, so that law enforcement is both strong and humane. Justice is the last line of defense in maintaining social fairness and justice. The so-called fair justice means that infringed rights will be protected and relieved, and illegal and criminal activities will be sanctioned and punished.[56] Deepening the reform of the judicial system and building a fair, efficient and authoritative socialist judicial system are important measures for promoting the modernization of national governance system and capacity. It is necessary to improve judicial quality, efficiency and credibility, ensure judicial fairness, efficiency

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[53] The CPC Central Committee Literature Research Office, ed., fn. 4 at 38.
[54] XI, fn. 2.
[55] XI, fn. 1 at 14.
[56] Id. at 22.

and authority, improve the judicial guarantee mechanism for human rights, and strive to make the people conscious of fairness and justice in every judicial case.

H. Improving the Power Operation Restriction and Supervision System

"Power leads to corruption, and absolute power leads to absolute corruption." The point that supervision of power is the biggest challenge facing the CPC's overall leadership and long-term governance has been emphasized by XI Jinping.[57] It is necessary to strengthen the restriction and supervision of the operation of power, to let the people supervise the power, let the power run in the sunshine, and put the power abuse into the cage of the system. We will build an authoritative and efficient supervision system under the unified command of the CPC, coordinate and link up the inner-party supervision by state bodies, democratic supervision, judicial supervision, mass supervision and public opinion supervision. We can strengthen the joint forces of supervision, and promote the modernization of the national governance system and capacity.[58] Putting power abuse in the cage of the system means setting power, regulating power, restricting power and supervising power according to law. It is necessary to take the enforcement of the rule of law as the fundamental policy, and set up, speak up and keep up the rules of exercise of power.[59] It is necessary to urge the various departments and organizations that now exercise public power to rationally delegate power, scientifically allocate power, strictly enforce duties and authority, improve the list system of powers and responsibilities, and speed up the legalization of institutions, functions, authority, procedures and responsibilities.[60] It is necessary to regard the supervision of the rule of law as an important part of the supervision system of the CPC and the state, to speed up the construction of a systematic, standardized and efficient judicial supervision system for law enforcement, to strengthen the supervision of legislative power, law enforcement power, supervision power and judicial power, and to improve the system and mechanism in which discipline inspection and supervision organs, public security organs, procuratorial bodies, judicial organs and judicial administrative organs perform their respective duties. The investigation power, procuratorial power, judicial power and executive power should be mutually restricted, so as to ensure that all links and the

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[57] XI Jinping, 深刻把握党的十八大以来全面从严治党的重要经验 (2018 年 1 月 11 日) (Deeply Grasping the Important Experience of Strictly Administering the CPC on all Fronts since the 18th National Congress of the CPC [Jan. 11th, 2018]), in 十九大以来重要文献选编 (*Selected Documents Since the 19th National Congress of the CPC*) (Part I), Central Party Literature Press (Beijing), at 191 (2019).

[58] XI, fn. 19 at 52–53; XI Jinping, 论坚持全面深化改革 (*On Persisting in Comprehensively Deepening Reform*), Central Party Literature Press (Beijing), at 233 (2018).

[59] The CPC Central Committee Literature Research Office, ed., fn. 4 at 127–128.

[60] XI, fn. 1 at 241.

whole process of law enforcement and justice are effectively limited and supervised.[61] By strengthening power restriction and supervision, then administrative power, supervisory power, judicial power and procuratorial power become properly exercised in accordance with the law, and the legitimate rights and interests of citizens, legal persons and other organizations are effectively guaranteed, so that the right to use is subject to responsibility and supervision, infringement is compensated, and violations are prosecuted.

III. Several Relationships that Need to Be Handled Well in Advancing the Modernization of National Governance in Line With the Rule of Law

The proposition of advancement in the modernization of national governance system and capacity in line with the rule of law reveals the direction for giving full play to the role of the rule of law in national governance. Under the guidance of XI Jinping Thought on the Rule of Law, we should properly handle some thorny problems in advancing the modernization of national governance in line with the rule of law.

A. Deepening Reform and Promoting the Rule of Law

China's reform has entered a critical period and deep waters, so it is very important to handle the relationship between reform and the rule of law. XI Jinping has an incisive exposition on this issue. He pointed out that without comprehensively deepening reform, the development will lack motivation and society will have no vitality. Furthermore, without ruling the country according to law in an all-round way, national life and social life cannot run in an orderly way, and it is difficult to achieve social harmony and stability. Promoting reform under the rule of law and improving the rule of law in the process of reform are like two wings of a bird or two wheels of a car, effectively allowing the development of building a well-off society in an all-round way.[62] It is necessary to adhere to the unity and connection between reform decision-making and legislative decision-making, and legislation should actively adapt to the needs of reform, actively play the role of guiding, promoting, standardizing and guaranteeing reform, so that major reforms can be justified by law, reform and the rule of law can be promoted simultaneously, and the penetrating power of reform can be enhanced.[63] When studying the reform plans and measures, we should consider the legislative issues involved in the reform simultaneously, and put forward legislative needs and suggestions in time. Practice has shown that mature reform experience and effective reform measures should be promoted to law as soon as possible. If the practical conditions are not yet mature and it is necessary to test ideas

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[61] XI Jinping, 坚持走中国特色社会主义法治道路,更好推进中国特色社会主义法治体系建设 (Adhere to the Socialist Road of the Rule of Law with Chinese Characteristics and Better Promote the Construction of the Rule of Law System in Socialism with Chinese Characteristics), 4 求是 (*Qiushi*), (2022).

[62] The CPC Central Committee Literature Research Office, ed., fn. 4 at 14-15.

[63] Id. at 52.

first, authorization should be made in accordance with legal procedures. Existing laws and regulations that do not meet the requirements of reform should be amended or abolished in time. It is necessary to strengthen the legal interpretation, and clarify the meaning of the legal provisions and the applicable legal basis in a timely manner.[64] To deal with the relationship between reform and the rule of law, it is necessary to improve China's authorization legal system, including lifting the restrictions on the authorized objects of the NPC's special authorization legislation, clearly stipulating that local legislative bodies can authorize other organs to legislate, and expanding the scope of application of specific authorization.[65]

B. Exercising Law-Based Governance

For decades, the CPC has been ruling in close association with the rule of law. The key has been to standardize the state power, including legislative power, executive power, supervisory power and judicial power. However, still more study is needed on theory and practice on how to standardize the ruling power in line with the rule of law. For example, what law should govern according to law or the rule of law of the CPC's leadership, and whether or to what extent can the state laws regulate the ruling party? What procedures should rules and leadership follow? How should ruling bodies and leaders bear legal responsibilities? Against the background of the integration of CPC and government, the importance of these issues to the construction of the rule of law is further highlighted. The Resolution of the Fourth Plenary Session of the 18th CPC Central Committee brilliantly put forward the requirements of "three unifications and four moralities" in dealing with the relationship between the CPC and the state, and defined the position and role of the CPC in the four dimensions of governing the country according to law, namely: legislation, law enforcement, justice and law-abiding, as well as the direction of reform and improvement. It is necessary to thoroughly study the specific means of implementation.

C. Central Authority and Local Autonomy

China is a country with a vast territory and many people, and the relationship between the central and local governments must be properly handled in national governance. The Resolution of the Third Plenary Session and the Fourth Plenary Session of the 19th CPC Central Committee emphasized that a working system with clear powers and responsibilities, smooth operation, and vitality at all levels from central to local governments, should be built to give full play to the enthusiasm of the central and local governments. Priorities include strengthening of the macro-affairs management of the central government, thereby safeguarding the unification of the national legal system, government decrees and market, and appropriately strengthening the powers of the central

[64] XI, fn. 2.

[65] LI Honglei, 深化改革与依法行政关系再认识 (Deepen the Understanding of the Relationship Between Reform and Administration According to Law), 2 法商研究 (*Studies in Law and Business*), 55 (2014).

government in intellectual property protection, endowment insurance and trans-regional ecological environmental protection. Local governments should be given more autonomy and support for their creative work. According to the principle of consistency of powers and responsibilities, it is important to standardize the vertical management system and local hierarchical management system. At present, the division of administrative power and financial power between the central and local governments is still not clear enough, and the allocation of financial power is still unreasonable. In the future, it will be necessary to further explore the path towards bringing the relationship between the central and local governments into the track of the rule of law, such as by deciding whether to formulate a unified Central and Local Relations Law? Is it necessary to formulate corresponding organic laws for local governments at all levels? How should the division of powers between different levels of government be clarified? All these problems, and more, need to be further studied.

D. The Quality of Legislation and Law Enforcement

Aristotle, an ancient Greek philosopher, put forward that "the rule of law should have two meanings: The established laws should be universally obeyed, and the law that everyone obeys should itself be a well-formulated law.[66] The Resolution of the Fourth Plenary Session of the 18th CPC Central Committee clearly pointed out: "The law is a heavy weapon of governing the country, and good law is the premise of good governance." XI Jinping pointed out that not all laws can govern the country, and not all laws can cure the country. [67] In the explanation of the Resolution of the Fourth Plenary Session of the 18th CPC Central Committee, he pointed out some outstanding problems that we are facing in the legislative field. While the quality of some legislation needs to be improved, a serious practical and theoretical question is: What should we do if the law is not a good law, and should it be strictly enforced? According to the basic concept of legal positivism, even if it is not a good law, it is generally necessary to abide by it, but this requirement is not absolute. As far as possible, we should limit the scope of application of bad laws and reduce their harm, instead of indiscriminately implementing or applying them to the same degree, otherwise it may bring very serious damage to economic and social development, social fairness and justice, and fundamentally deviate from the purpose of implementing the rule of law. However, if a specific law is not enforced under special circumstances, it may damage the authority of the law in general, as required by the rule of law, the equality and consistency of law application, and the predictability of legal consequences. How to make a choice is not easy. On the one hand, it is necessary to make a reasonable balance between the principle of legal stability and the principle of

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[66] Aristotle, 政治学 (*Political Science*), translated by WU Shoupeng, The Commercial Press (Beijing), at 199 (1965).

[67] The CPC Central Committee Literature Research Office, ed., fn. 4 at 44.

justice according to individual cases,[68] and skillfully use legal interpretation techniques such as loophole supplement. On the other hand, it is necessary to strengthen the record review system and capacity building, and smooth the channels for revoking and correcting unconstitutional and illegal normative documents.

E. Strict Law Enforcement and the Principle of Cheapness

A basic contradiction faced by law enforcement is the conflict between limited law enforcement resources and many illegal acts. In order to allocate law enforcement resources effectively, law enforcement agencies should be allowed to make choices and apply more law enforcement resources to those cases with serious nature and consequences and with subjective malevolence of perpetrators. In the theory of the foreign rule of law, we attach great importance to respecting the autonomy of administrative organs in allocating law enforcement resources and the financial efficiency of starting law enforcement procedures. For example, Article 47 of Germany's Law on Punishment of Violation of Order stipulates: "The investigation of a violation of order belongs to the discretion of the investigating organ according to its obligations." In recent years, the practice of administration of law enforcement in China, such as treating the first violation without punishment, inclusive and prudent supervision, and reconciliation of law enforcement, has been based on the principle of financial efficiency in law enforcement. Furthermore, one-sided emphasis on such efficiency is also dangerous, and may have negative effects on the authority of the rule of law and the formation of the law-abiding consensus of the whole people.[69] In particular, China lacks the cultural tradition of the rule of law. In practice, there are still many phenomena of inaction, slow action and laziness in law enforcement by law enforcement agencies, some of which have caused severe damage to public interests, public order and the safety of people's lives and property. Therefore, proper handling of the relationship between the principle of financial efficiency and strict law enforcement and proper definition of the applicable fields and conditions of the principle of financial efficiency need to be carefully considered and designed.[70]

F. The Procedural Rule of Law and the Substantive Rule of Law

The procedural rule of law is an important step in the construction of the rule of law.

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[68] See LI Honglei, 行政法释义学：行政法学理的更新 (*Interpretation of Administrative Law: Renewal of Administrative Law Theory*), China Renmin University Press (Beijing), at 67–68 (2014).

[69] For the discussion related to this, see LI Na, 守法社会的建设：内涵、机理与路径探讨 (The Construction of a Law-abiding Society: Discussion on Connotation, Mechanism and Path), 5 法学家 (*Jurist*), 15 (2018).

[70] For example, some scholars have suggested that whether administrative punishment should adopt the principle of cheapness or statutory principle should be determined by the "duty density," that is, the importance of duty execution to the protection of public interests or civil rights should be considered. LI Huizong, 行政法要义 (*Essentials of Administrative Law*), Wunan Book Publishing Company (Taipei), at 499 (2002).

Regulation and restriction of public power and protection of civil rights are of great significance, and they need to be further strengthened. However, at present, there are two tendencies in the construction of the procedural rule of law. On the one hand, the construction is too cumbersome; for example, many provisions in the Administrative Enforcement Law seriously affect administrative efficiency. On the other hand, the construction is a mere formality, and the program is idling. In recent years, in the construction of the rule of law in China, especially in the administrative rule of law, the construction of the procedural rule of law has been highly emphasized, which is of great significance for promoting the standardization and institutionalization of administrative management. However, in practice, a large number of problematic phenomena have appeared, seriously affecting the actual effect and authority of the rule of law. Take major administrative decisions as an example. At present, in some places, although the statutory procedures such as public participation, expert argumentation, risk assessment, legality review, collective discussion and decision making are all put in place in principle, these components cannot play a practical role in restricting the final decision-making, and their effectiveness is insufficient. It is still common to go through the motions seriously, and make decisions assertively and arbitrarily. In his speech at the Central Committee's conference on comprehensively administering the country according to law, XI Jinping specifically mentioned that the legality review of administrative decision-making is a mere rhetoric.[71] The nature of idling procedure is formalism and bureaucracy, which should receive much attention and effective solutions should be sought.

G. Based on China and Looking to the World

XI Jinping has stressed that promoting the law-based governance on all fronts, and we must proceed from China's reality and adapt to the modernization of the national governance system and capacity. We must not ignore national conditions, go beyond the times, or follow the old ways and stick to the old rules, and we must highlight the characteristics of China in terms of practice and the times. Furthermore, we should insist on proceeding from China's reality, and never engage in the rule of law behind closed doors. The rule of law is one of the important achievements of human civilization. The essence and gist of the rule of law is of universal significance to national governance and social governance in all countries. We should learn from the outstanding achievements of the rule of law civilization in the world. However, learning from others is not equal to the simple doctrine of "borrowing." We must uphold the principle of giving priority to ourselves and using such learning for our own benefit, carefully identifying it and reasonably absorbing it. We must not adopt "total westernization" or "full transplantation." [72] Many concepts, principles and rules in the promotion of the rule

[71] XI, fn. 2.

[72] XI, fn. 1 at 110–111.

of law in China come from outside world, which is not only necessary for China in the current development stage, but also reflects our advantage of backwardness. We persist in "learning from foreign countries" with an open mind, actively learning from the beneficial experience of the rule of law promotion abroad, and promoting the rule of law in China. The promotion of the rule of law has its specific time and space, so it is not appropriate to copy the models of other countries in the specific system design. In the practice of building the rule of law in China, we can always follow the direction of the socialist political system with Chinese characteristics and take care of the actual development of our economy and society. Even if we use foreign systems for reference, its specific connotation and scope of application have to be adjusted according to the reality of China. In the future, we should systematically sum up the experience of China's rule of law construction, actively explore the new mode and path of socialist rule of law with Chinese characteristics, and use experience and exploration to guide our overall cause of ruling the country by law. With a broader mind and a broader vision, we should have a comprehensive and accurate understanding of the experience and lessons of the rule of law in the world, with the whole world in mind, as a reference and mirror for the rule of law construction in China.

Conclusion

China's law-based governance on all fronts requires a broad and profound revolution in the field of national governance. This revolution presents not only an important content and distinctive symbol of the modernization of national governance, but is also the only powerful guarantee of realization of the modernization of national governance. On the new journey of building a socialist modernized country in an all-round way, we should pay more attention to and enforce the rule of law, we should give full play to the role of the rule of law in securing the foundation, stabilizing expectations and benefiting the long-term, and we should persist in responding to major challenges, resisting major risks, overcoming major obstacles and resolving major contradictions according to law.[73] Under the guidance of XI Jinping Thought on the Rule of Law, we should unswervingly follow the road of socialist rule of law with Chinese characteristics, adhere to the reform direction and problem orientation. We should meet the requirements of promoting the modernization of the national governance system and capacity, and we should face up to problems and focus on them, thus promoting high-quality development with the high-quality rule of law, so as to provide a strong legal guarantee for building a socialist modernized country on all fronts and realizing the Chinese Dream of the great rejuvenation of the Chinese nation.

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[73] XI, fn. 2.